

220.26 FILING A FALSE [LIEN] [ENCUMBRANCE]. FELONY.

The defendant has been charged with [filing] [recording] a false [lien] [encumbrance].¹

For you to find the defendant guilty of this offense the State must prove three things beyond a reasonable doubt:

First, that defendant presented for [filing] [recording] in a [public record] [private record generally available to the public] a false² [lien] [encumbrance].³

Second, that the defendant [filed] [recorded] this false [lien] [encumbrance] against the [real] [personal] property of an owner or beneficial interest holder.

And Third, that the defendant [knew] [had reason to know] that the [lien] [encumbrance] [was false] [contained a materially [false] [fictitious] [fraudulent] statement or representation].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant presented for [filing] [recording] in a [public record] [private record generally available to the public] a [lien] [encumbrance], that the defendant filed this false [lien] [encumbrance] against the [real] [personal] property of an owner or beneficial interest holder, and that the defendant [knew] [had reason to know] that the [lien] [encumbrance] [was false] [contained a materially [false] [fictitious] [fraudulent] statement or representation], it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, then it would be your duty to return a verdict of not guilty.

1. N.C. Gen. Stat. § 14-118.6 (b) states, “In the case of a lien or encumbrance presented to the register of deeds for filing, if the register of deeds has a reasonable suspicion that the lien or encumbrance is false, the register of deeds may refuse to file the lien or encumbrance.”

2. False is one not legally enforceable.

3. An encumbrance is defined as a claim or liability that is attached to property or some other right and that may lessen its value. *County of Jackson v. Nichols*, 175 N.C. App. 196, 200 (2005). An encumbrance within the meaning of a covenant is any burden or charge on the land and includes any right existing in another whereby the use of the land by the owner is restricted. *Juhan v. Cozart*, 102 N.C. App. 666, 669 (1991).