

N.C.P.I.—CRIM. 220.32 CONSPIRACY TO COMMIT RESIDENTIAL MORTGAGE FRAUD. G.S. § 14-118.12(a)(4). FELONY.

The defendant has been charged with feloniously conspiring to commit residential mortgage fraud.

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

First, that the defendant and (*name other person or persons*)¹ entered into an agreement.

Second, that the agreement was to commit residential mortgage fraud. Residential mortgage fraud occurs when a person, acting for financial gain and with the intent to [deceive] [defraud], knowingly

[(a) [makes] [attempts to make] any material² [misstatement] [misrepresentation] within the mortgage lending process]³ with intent that a [mortgage lender] [mortgage broker] [borrower] [*any other person*] involved in the mortgage lending process rely on it.

[(b) omits material information within the mortgage lending process.]

[(c) [uses] [facilitates the use of] [attempts to use] [attempts to facilitate the use of] any material [misstatement] [misrepresentation] [omission] within the mortgage lending process] with intent that a [mortgage lender] [mortgage broker] [borrower] [*any other person*] involved in the mortgage lending process rely on it.

¹ If one or more co-conspirators are named in the indictment state their names. The jury must find that the defendant entered into an agreement with at least one of the named persons. *S. v. Minter*, 111 N.C. App. 40 (1993), cert. denied, 335 N.C. 241 (1993). See also, *S. v. Mickey*, 207 N.C. 608 (1935).

² "A fact is material...if it had been known to the party, would have influenced [its] judgment or decision in making the contract at all." *Godfrey v. Res-Care, Inc.*, 165 N.C.App. 68, 75, 598 S.E.2d 396, 402 (2004) (quoting *Machine Co. v. Bullock*, 161 N.C. 1, 7, 76 S.E. 634, 636 (1912)).

³ For a definition of "mortgage lending process" see G.S. § 14-118.11(a)(2).

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[(d) [[receives] [attempts to receive]] [[loan proceeds] [*describe other funds*]] in connection with a residential mortgage closing that the person [knew] [should have known] resulted from [making] [attempting to make] [using] [facilitating the use of] [attempting to use] [attempting to facilitate the use of] any material [misstatement] [misrepresentation] [omission] within the mortgage lending process with intent that a [mortgage lender] [mortgage broker] [borrower] [*any other person*] involved in the mortgage lending process rely on it.]

And Third, that the defendant and (*name other person or persons*) intended that the agreement be carried out at the time it was made.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant agreed with (*name other person or persons*) to commit residential mortgage fraud, and the defendant and (*name person(s)*) intended at the time the agreement was made that it would be carried out, 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, it would be your duty to return a verdict of not guilty.