

Ala. Code 1975, §13A-9-12(c)

Offering False Instrument for Recording Against a Public Servant

The defendant is charged with offering a false instrument for recording against a public servant.

A person commits the crime of offering a false instrument for recording against a public servant if the person offers, for recording, a written instrument which relates to or affects the real or personal property, or an interest therein, or a contractual relationship of a public servant, knowing that the written instrument contains a materially false statement or materially false information, with the intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his/her duties.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant offered, for recording, a written instrument which related to or affected the real or personal property, or an interest therein, or a contractual relationship of a public servant, **[describe instrument]**;
- (2) The defendant offered it knowing that the written instrument contained a materially false statement or materially false information, **[describe statement or information]**; **(AND)**
- (3) The defendant did so with intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his/her duties.

A written instrument means **[Read as appropriate]**:

- a. Any paper, document or other instrument containing written or printed matter or its equivalent; **(OR)**
- b. Any token, stamp, seal, badge, trademark or other evidence or symbol of value, right, privilege or identification;

which is capable of being used to the advantage or disadvantage of some person. [13A-9-1(1)]

Property is any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents, although the rights represented hereby have no physical location), contract right, chose-in-action, interest in a claim to wealth, credit, or any other article or thing of value of any kind. Commodities of a public utility nature, such as gas, electricity, steam, and water, constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or

other equipment shall be deemed a rendition of a service rather than a sale or delivery of property. [13A-9-1(9) & 13A-8-1(10)]

A *public servant* is any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function. [13A-10-1(7)]

Intent to defraud is a purpose to use deception, or to injure another person's interest which has value. [13A-9-1(8)]

[Read as appropriate]: *Deception* occurs when a person knowingly:

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true; or
- b. Fails to correct a false impression which the defendant previously has created or confirmed; or
- c. Fails to correct a false impression when the defendant is under duty to do so; or
- d. Prevents another from acquiring information pertinent to the disposition of the property involved; or
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property when the defendant is under a duty to do so, whether that impediment is or is not valid, or is not a matter of official record; or
- f. Promises performance which the defendant does not intend to perform or knows will not be performed. Failure to perform, standing alone, however, is not proof that the defendant did not intend to perform.

The term *deception* does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons. "Puffing" means an exaggerated commendation of wares or services. [13A-8-1(1)]

[Read as appropriate]: *Value* is the market value of the property at the time and place of the criminal act. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities shall be evaluated as follows:

- a. The value of an instrument constituting as evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.
- b. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

When the value of property cannot be ascertained pursuant to the standards set forth above, its value shall be deemed to be an amount not exceeding five hundred dollars (\$500).

Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense; provided, that only one conviction may be had and only one sentence enforced for all thefts included in such aggregate. [13A-8-1(15)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of offering a false instrument for recording against a public servant, then you shall find the defendant guilty of offering a false instrument for recording against a public servant.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of offering a false instrument for recording against a public servant, then you cannot find the defendant guilty of offering a false instrument for recording against a public servant.

[If lesser-included offenses are included, the Court should instruct on these offenses at this point.]

[Approved 6-17-16.]