

Ala. Code 1975, § 13A-9-111(1)

Home Repair Fraud
(Enter into Agreement)

The defendant is charged with home repair fraud.

A person commits the crime of home repair fraud when he/she intentionally and knowingly enters into an agreement or contract for consideration, written or oral, with a person for home repair, and the offending person knowingly engages in any one or more of the following deceptive activities: **[Read all applicable]**

- a. Misrepresentation of a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved, or the creation or confirmation of another's impression which is false and which the offending person does not believe to be true, or promises performance which the offending person does not intend to perform or knows will not be performed;
- b. Use or employment of any deception, false pretense, or false promises in order to induce, encourage, or solicit a person to enter into any contract or agreement;
- c. Misrepresentation or concealment of either the offending person's real name or the name of his/her business or business address;
[AND/OR]
- d. Use of deception, coercion, or force to obtain a person's consent to modification of the terms of the original contract or agreement.

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

- (1) The defendant was a person;
- (2) The Defendant entered into an agreement or contract for consideration, written or oral, with a person for home repair;
- (3) The Defendant knowingly engaged in any one or more of the following deceptive activities: **[Read all applicable]**
 - a. Misrepresentation of a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved, or the creation or confirmation of another's impression which is false and which the offending person

does not believe to be true, or promises performance which the offending person does not intend to perform or knows will not be performed;

- b. Use or employment of any deception, false pretense, or false promises in order to induce, encourage, or solicit a person to enter into any contract or agreement;
- c. Misrepresentation or concealment of either the offending person's real name or the name of his/her business or business address; **(OR)**
- d. Use of deception, coercion, or force to obtain a person's consent to modification of the terms of the original contract or agreement; **(AND)**

(4) The Defendant did so intentionally and knowingly.

Person is any individual, partnership, corporation, business, trust, or other legal entity. [13A-9-110(2)]

Home Repair is the repairing, replacing, altering, or the construction or renovation of an addition to a building on real property which is or will be primarily used as a residence.

Home repair shall include: **[Read all applicable]**

The construction, installation, replacement, repairing, or renovation of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electrical wiring, sewers, plumbing fixtures, storm doors, storm windows, awnings, roofs, insulation, and other improvements to structures within the residence or upon the real property adjacent thereto.

Home repair shall not include: **[Read all applicable]**

The sale, installation, cleaning, or repair of carpets; the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods or materials; the repair, installation, replacement, or connection of any home appliance including, but not limited to, disposals, refrigerators, ranges, garage door openers, television cables, antennas or dishes, washing machines, telephones, or other home appliances when the person replacing, installing, repairing, or connecting such home appliance is an employee or agent of the merchant that sold the home appliance; the performance of repairs to a manufactured home or a mobile home pursuant to a manufacturer's or retailer's warranty or service agreement; or landscaping.

Home repair shall not include home repair made by not-for-profit charitable organizations. [13A-9-110(1)]

Residence is a single or multiple family dwelling including, but not limited to, a single-family home, apartment building, condominium, duplex, townhouse, or mobile home which is used or intended to be used by its occupants as their dwelling place. [13A-9-110(3)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

Intent and knowledge of a person shall be determined by an evaluation of all circumstances surrounding the home repair and the determination shall not be limited to the time of the origination of the contract or agreement. [13A-9-112]

[Read if applicable]: Substantial performance of a home repair contract may be used as a mitigating circumstance and may be raised as a defense. Home repair performed in a manner which is of little or no value, or home repair that fails to materially comply with the appropriate municipal, county, state, or federal building regulations or codes is not substantial performance. [13A-9-113]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of home repair fraud, then you shall find the defendant guilty of home repair fraud.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of home repair fraud, then you cannot find the defendant guilty of home repair fraud.

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

[Approved 9-11-15.]