

Ala. Code 1975, §13A-9-12(a)

Offering False Instrument for Recording

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

A person commits the crime of offering a false instrument for recording if knowing that a written instrument relating to or affecting real or personal property, or an interest therein, or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he/she presents or offers it to a public office or a public employee, with the knowledge that it will be registered, filed or recorded or become a part of the records of that public office or public employee.

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

- (1) The defendant presented or offered a written instrument relating to or affecting real or personal property, or an interest therein, or directly affecting contractual relationships to a public office or a public employee, **[describe instrument]**;
- (2) The defendant presented or offered it with the knowledge that it would be registered, filed or recorded or become a part of the records of that public office or public employee;
- (3) The defendant knew that the written instrument contained a material false statement or material false information, **[describe statement or information]; (AND)**
- (4) The defendant did so with intent to defraud.

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)]

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(14

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, then you shall find the defendant guilty of offering a false instrument for recording.

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, then you cannot find the defendant guilty of offering a false instrument for recording.

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

[Approved 6-17-16.]