

Ala. Code 1975, § 13A-9-130(c)(1)(b)

Residential Mortgage Fraud
(Uses Misstatement)

The defendant is charged with residential mortgage fraud.

A person commits the crime of residential mortgage fraud when with the intent to defraud, he/she knowingly uses or facilitates the use of any material deliberate and known misstatement or misrepresentation knowing the same to contain a misstatement or misrepresentation during the mortgage lending process with the specific intention that it be relied on by a mortgage broker, mortgage lender, mortgage servicer, mortgage processor, borrower, or any other party to the mortgage lending process.

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

- (1) The defendant knowingly used or facilitated the use of a material deliberate and known misstatement or misrepresentation;
- (2) The Defendant knew the same to contain a misstatement or misrepresentation during the mortgage lending process with the specific intention that it be relied on by a mortgage broker, mortgage lender, mortgage servicer, mortgage processor, borrower, or any other party to the mortgage lending process; **(AND)**
- (3) The Defendant did so with intent to defraud.

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)]

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)]

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

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

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

[Approved 9-11-15.]