

**Ala. Code 1975, § 13A-9-46**

**Defrauding Secured Creditors**

The defendant is charged with defrauding secured creditors.

A person commits the crime of defrauding secured creditors if he/she destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

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

- (1) The Defendant destroyed, removed, concealed, encumbered, transferred, or otherwise dealt with property, **[describe the property]**, which was subject to a security interest; **(AND)**
- (2) The Defendant did so with intent to hinder enforcement of that interest.

*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. [13A-8-1(11)]

*Security interest* means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 7-2-401, but a buyer may also acquire a "security interest" by complying with Article 9A. Except as otherwise provided in Section 7-2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 7-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to Section 7-1-203. [13A-9-46(b); 7-1-201(35)]

A person acts *intentionally* with respect to a result or to conduct 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 above elements of defrauding secured creditors, then you shall find the defendant guilty of defrauding secured creditors.

If you find that the State has failed to prove any one or more of the elements of defrauding secured creditors, then you cannot find the defendant guilty of defrauding secured creditors.

[Approved 02-27-17.]