20.20 MORTGAGE FRAUD

§ 817.545(2) & (5), Fla. Stat.

In order to prove the crime of Mortgage Fraud, the State must prove the following element beyond a reasonable doubt:

(Defendant)**, with intent to defraud, knowingly:**

Give a, b, c, d, and/or e as applicable.

a. made any material [misstatement] [misrepresentation] [omission] during the mortgage lending process with the intent that the [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] [or] [any other person or entity] involved in the mortgage lending process];

b. used or facilitated the use of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process with the intent that the material [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender][a borrower] or [any other person or entity] involved in the mortgage lending process;

c. received any [proceeds] [or other funds] in connection with the mortgage lending process that [he] [she] knew resulted from the making of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process that was made with the intent that the [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] [or] [any other person or entity] involved in the mortgage lending process];

d. received any [proceeds] [or other funds] in connection with the mortgage lending process that [he] [she] knew resulted from the use of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process that was made with the intent that the material [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] or [any other person or entity] involved in the mortgage lending process];

e. filed or caused to be filed with the clerk of the circuit court for any Florida county a document involved in the mortgage lending process which contained a material [misstatement] [misrepresentation] [or] [omission].

Give if applicable. § 817.545(5)(b), Fla. Stat.

If you find that the defendant guilty of Mortgage Fraud, you must also determine if the State proved beyond a reasonable doubt whether the loan value stated on documents used in the mortgage lending process exceeded $100,000.

§ 817.545(2)(a) & (b), Fla. Stat.

Omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered material omissions for purposes of Mortgage Fraud.

§ 817.545(1), Fla. Stat.

Documents involved in the mortgage lending process include, but are not limited to, mortgages, deeds, surveys, inspection reports, uniform residential loan applications, or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

§ 817.545(1), Fla. Stat.

"Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not limited to, the solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

"Knowingly" means that the defendant is aware of the act and is not acting through ignorance, mistake or accident.

"Material" means a fact a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision. Any misrepresentation or concealment must be reasonably calculated to deceive persons of ordinary prudence and comprehension.

Lesser Included Offenses

MORTGAGE FRAUD — 817.545

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

The crime of Mortgage Fraud may not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process. See § 817.545(3), Fla. Stat.

This instruction was adopted in 2014.