

20.22 UNLAWFUL FILING OF FALSE [DOCUMENTS] [RECORDS] AGAINST [REAL] [PERSONAL] PROPERTY

§ 817.535(2), Fla. Stat.

To prove the crime of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) [filed] [or] [directed a filer to file] an instrument.
2. At the time, (defendant) had the intent to defraud or harass another.
3. The instrument contained a materially false, fictitious or fraudulent statement or representation that purported to affect an owner's interest in the property described in the instrument.

Enhancements. Give if applicable.

§ 817.535(3), Fla. Stat.

If you find (defendant) guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that the owner of the property subject to the false instrument was a public officer or employee.

§ 817.535(4), Fla. Stat.

If you find (defendant) guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that (defendant) committed the crime while [incarcerated in a jail or correctional institution] [participating in a pretrial diversion program under any form of pretrial release or bond] [on probation or parole] [under any postrelease supervision].

§ 817.535(5), Fla. Stat.

If you find (defendant) guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that the owner of the property covered by the false instrument incurred financial loss as a result of the instrument being recorded in the official record. Financial loss includes costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record.

Definitions. Give as applicable.

§ 817.535(1)(a), Fla. Stat.

“File” means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

§ 817.535(1)(b), Fla. Stat.

“Filer” means the person who presents an instrument for recording in an official record or causes an instrument to be presented for recording in an official record.

§ 817.535(1)(c), Fla. Stat.

“Instrument” means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any

other document that relates to or attempts to restrict the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

§ 817.535(1)(d), Fla. Stat.

“Official Record” means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State.

§ 817.535(1)(e), Fla. Stat.

“Public officer or employee” means, but is not limited to:

1. A person elected or appointed to a local, state, or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority.
2. An employee of a state, county, municipal, political subdivision, school district, educational institution, special district agency or entity, including judges, attorneys, law enforcement officers, deputy clerks of court, and marshals.
3. A state or federal executive, legislative, or judicial officer, employee or volunteer authorized to perform actions or services for any state or federal executive, legislative or judicial office or agency.
4. A person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or consultant to any state or local governmental entity.
5. A person who is a candidate for public office or judicial position.

§ 817.535(2)(b), Fla. Stat.; *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

Give in the second part of a bifurcated proceeding if the defendant is charged with having a prior violation of § 817.535(2)(a), Fla. Stat.

Now that you have found (defendant) guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must determine whether the State proved beyond a reasonable doubt that [he] [she] has committed the offense of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal Property] a second or subsequent time.

Lesser Included Offenses

UNLAWFUL FILING OF FALSE [DOCUMENTS] [RECORDS] AGAINST [REAL] [PERSONAL] PROPERTY — 817.535(2)

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

Comments

A special instruction will be necessary in the event the position held by the alleged public officer or employee is not listed within § 817.535(1)(e), Fla. Stat.

According to § 817.535(6), Fla. Stat., a person who fraudulently records a claim of lien in the official records pursuant to part I of chapter 713 is subject to the fraud provisions of § 713.31, Fla. Stat., and not § 817.535(6), Fla. Stat.

This instruction was adopted in 2016.