

26.2 RICO — USE OR INVESTMENT OF PROCEEDS FROM PATTERN OF RACKETEERING ACTIVITY

§ 895.03(1), Fla. Stat.

To prove the crime of Unlawful Use or Investment of Proceeds from a Pattern of Racketeering Activity, the State must prove the following four elements beyond a reasonable doubt:

Elements #1 and #2 need to be reworded if only two incidents of racketeering conduct are alleged.

- 1. At least two of the following incidents occurred. Read incidents of racketeering conduct alleged in information.**
- 2. Of those incidents that occurred, at least two of them had the same or similar [intent] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.**
- 3. (Defendant), with criminal intent, received proceeds that were derived directly or indirectly from such incidents.**
- 4. (Defendant) [used] [invested] some of these proceeds [or proceeds derived from the investment or use thereof] either directly or indirectly [in acquiring some right, title, equity or interest in real property] [in establishing or operating an enterprise].**

Define the crimes alleged to be incidents of racketeering conduct.

§ 895.02(7), Fla. Stat. Give if there is no express stipulation regarding dates.

In order to find (defendant) guilty of Unlawful Use or Investment of Proceeds from a Pattern of Racketeering Activity, you must also find the State proved beyond a reasonable doubt that:

- 1. at least one of the predicate incidents alleged occurred after October 1, 1977;**
and
- 2. the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.**

Give in every case.

Receiving proceeds with criminal intent means that the defendant, at the time [he] [she] received the proceeds, either knew the source of the proceeds or had [his] [her] suspicions aroused but deliberately failed to make further inquiry as to the source of the proceeds.

Give if applicable. § 895.02(9), Fla. Stat.

“Real property” means land and whatever is erected on it. It includes but is not limited to any lease or mortgage or other interest in that property.

Give if applicable. § 895.02(5), Fla. Stat.

“Enterprise” means any individual,* sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An “enterprise” is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.