

State of Georgia Criminal Statutes Pertaining to Illegal Foreclosure (non-inclusive)

Note: Statutes are included for situations attempted or completed.

OCGA 16-8-102 Residential mortgage fraud *(Statute not in its entirety).*

(5) Files or causes to be filed with the official registrar of deeds of any county of this state any document such person knows to contain a deliberate misstatement, misrepresentation, or omission.

OCGA 16-8-104 Criminal investigation and prosecution *(Statute not in its entirety).*

District attorneys and the Attorney General shall have the authority to conduct the criminal investigation and prosecution of all cases of residential mortgage fraud under this article or under any other provision of this title. Nothing in this Code section shall be construed to preclude otherwise authorized law enforcement agencies from conducting investigations of offenses related to residential mortgage fraud.

OCGA 16-8-105 Punishment *(Statute not in its entirety).*

(a) Any person violating this article shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten years, by a fine not to exceed \$5,000.00, or both.

(b) If a violation of this article involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, said violation shall be punishable by imprisonment for not less than three years nor more than 20 years, by a fine not to exceed \$100,000.00, or both.

(O.C.G.A. § 16-8-3. Theft by deception. *(Statute not in its entirety).*

(a) A person commits the offense of theft by deception when he obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property.

O.C.G.A. § 16-8-2 Theft by taking. *(Statute not in its entirety).*

A person commits the offense of theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated.

O.C.G.A. § 16-8-4 Theft by conversion. *(Statute not in its entirety).*

(a) A person commits the offense of theft by conversion when, having lawfully obtained funds or other property of another including, but not limited to, leased or rented personal property, under an agreement or other known legal obligation to make a specified application of such funds or a specified disposition of such property, he knowingly converts the funds or property to his own use in violation of the agreement or legal obligation.

O.C.G.A. § 16-8-16. Theft by extortion *(Statute not in its entirety).*

(a) A person commits the offense of theft by extortion when he unlawfully obtains property of or from another person by threatening to:

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(d) A person convicted of the offense of theft by extortion shall be punished by imprisonment for not less than one nor more than ten years.

O.C.G.A. § 16-10-20. False statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions. (*Statute not in its entirety*).

A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.

O.C.G.A. § 16-9-1. Forgery in the first degree. (*Statute not in its entirety*).

(a) A person commits the offense of forgery in the first degree when with intent to defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing.

(b) A person convicted of the offense of forgery in the first degree shall be punished by imprisonment for not less than one nor more than ten years.

O.C.G.A. § 16-9-121. Elements of offense (*Statute not in its entirety*).

(5) Without authorization or consent, creates, uses, or possesses with intent to fraudulently use any counterfeit or fictitious identifying information concerning a real person with intent to use such counterfeit or fictitious identification information for the purpose of committing or facilitating the commission of a crime or fraud on another person.

O.C.G.A. § 16-4-1. Criminal attempt. (*Statute not in its entirety*).

A person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step toward the commission of that crime.

O.C.G.A. § 16-14-4. Prohibited activities. (*Statute not in its entirety*).

(a) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.

(b) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

O.C.G.A. § 51-6-2. (2010) Fraud and Deceit

When misrepresentation of material fact actionable as deceit; effect of mere concealment; knowledge of falsehood essential to deceit; when knowledge implied

(a) Willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his injury, will give him a right of action. Mere concealment of a material fact, unless done in such a manner as to deceive and mislead, will not support an action.

(b) In all cases of deceit, knowledge of the falsehood constitutes an essential element of the tort. A fraudulent or reckless representation of facts as true when they are not, if intended to deceive, is equivalent to a knowledge of their falsehood even if the party making the representation does not know that such facts are false.

O.C.G.A. § 11-3-307. Notice of Breach of Fiduciary Duty

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of subsection

(a) of this Code section is owed.

(b) If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person; and

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) Taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) Taken in a transaction known by the taker to be for the personal benefit of the fiduciary;

O.C.G.A. § 16-10-71. False swearing.

(a) A person to whom a lawful oath or affirmation has been administered or who executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in a matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement.