

1 **14-1640. Fraud; essential elements.**

2 For you to find the defendant guilty of fraud [as charged in Count _____]¹, the state
3 must prove to your satisfaction beyond a reasonable doubt each of the following elements of the
4 crime:

5 1. The defendant, by any words or conduct, [made a promise [~~he~~defendant had no
6 intention of keeping] [misrepresented a fact]² to _____ (*name of victim*), intending
7 to deceive or cheat _____ (*name of victim*);

8 2. Because of the [promise] [misrepresentation]² and _____['s]
9 (*name of victim*) reliance on it, defendant obtained _____ (*describe property or*
10 *state amount of money*);³

11 3. This _____ (*property*) belonged to someone other than the
12 defendant;

13 [4. The _____ (*property*) had a market value⁴ [of over
14 \$ _____;]⁵]

15 5. This happened in New Mexico on or about the _____ day of
16 _____, _____.

17 USE NOTES

18 1. Insert the count number if more than one count is charged.

19 2. Use applicable bracketed phrase.

20 3. If money is involved, state whether the amount charged is “over \$20,000” or [over]
21 “over \$2,500” or “over \$500” or “over \$250.”

22 4. See UJI 14-1602 NMRA for definition of “market value.”

1 5. Use this bracketed provision for property other than money if the value is over
2 \$250. State whether the value of the property at issue is “over \$250,” “over \$500,” “over \$2,500,”
3 or “over \$20,000.” If the charge is a petty misdemeanor (\$250 or less), do not use this bracketed
4 provision.

5 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as
6 amended by Supreme Court Order No. 21-8300-015, effective for all cases pending or filed on or
7 after December 31, 2021; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
8 effective for all cases pending or filed on or after December 31, 2025.]

9 **Committee commentary.** — See NMSA 1978, § 30-16-6[~~NMSA 1978~~]. Reliance is included as
10 an element of this instruction following the interpretation of the statute in *State v. McKay*, 1969-
11 NMCA-009, 79 N.M. 797, 450 P.2d 435. See also Perkins, *Criminal Law* at 297 (2d ed. 1969). To
12 establish reliance, the state must prove (1) that a particular misrepresentation of fact (2) caused the
13 victim to act in a way the victim would not have otherwise acted. See *State v. Garcia*, 2016-NMSC-
14 034, ¶¶ 18-20, 384 P.3d 1076 (concluding that there was sufficient evidence of reliance based on
15 the defendant’s misrepresentation that [~~she~~defendant was the victim’s “[~~girlfriend or loving~~
16 partner”).

17 Fraudulent intent must exist at the time the defendant obtains the property or the crime is
18 embezzlement. *State v. Gregg*, 1972-NMCA-001, 83 N.M. 397, 492 P.2d 1260.

19 [As amended by Supreme Court Order No. 21-8300-015[~~, effective for all cases pending or filed~~
20 ~~on or after December 31, 2021~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]