

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

2 For you to find the defendant guilty of fraud [as charged in Count \_\_\_\_\_]<sup>1</sup>, 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 had no intention of  
6 keeping] [misrepresented a fact]<sup>2</sup> to \_\_\_\_\_ (*name of victim*), intending to deceive  
7 or cheat \_\_\_\_\_ (*name of victim*);

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

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

13 [4. The \_\_\_\_\_ (*property*) had a market value<sup>4</sup> [of over  
14 \$\_\_\_\_\_];<sup>5</sup>]

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

17

18

USE NOTES

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

20 2. Use applicable bracketed phrase.

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

23 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.]

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

15           Fraudulent intent must exist at the time the defendant obtains the property or the crime is  
16 embezzlement. *State v. Gregg*, 1972-NMCA-001, 83 N.M. 397, 492 P.2d 1260. [~~(Ct. App.), cert.~~  
17 ~~denied~~, 83 N.M. 562, 494 P.2d 975 (1972)]

18           “Fraudulent intent” and “fraudulently” are frequently defined as “with intent to defraud”  
19 or “with intent to cheat or deceive.” See e.g., *State v. Probert*, 19 N.M. 13, 140 P. 1108 (1914);  
20 *State v. Harris*, 313 S.W.2d 664 (Mo. 1958); *People v. Leach*, 168 Cal. App. 2d 463, 336 P.2d 573  
21 (1959); *Roderick v. State*, 9 Md. App. 120, 262 A.2d 783 (1970); *Clark v. State*, 287 A.2d 660  
22 *appeal dismissed and cert. denied*, 409 U.S. 812, 93 S.Ct. 139, 34 L.Ed. 2d 67 (Del. 1972). Perkins,

- 1 ~~*supra.* See also *State v. Dossier*, 88 N.M. 32, 536 P.2d 1088 (Ct. App.), cert. denied, 88 N.M. 28,~~
- 2 ~~536 P.2d 1084 (1975).]~~
- 3 [As amended by Supreme Court Order No. 21-8300-015, effective for all cases pending or filed
- 4 on or after December 31, 2021.]