

WHAT IS DEED FRAUD?



THE TERM “DEED FRAUD” APPLIES TO A VARIETY OF CRIMES where a criminal seeks financial gain through various schemes involving real property. Most of these schemes involve impersonating the actual owner and recording fake or forged documents in local land records. In other cases, property owners are deceived or convinced to sign documents related to their property that are not in their best interests. These crimes result in legal costs, reduction in equity or property value or even property loss. According to the FTC, fraud losses in 2023 were over \$10 billion, with nearly \$2.7 billion coming from impostor scams¹. When it comes to real estate, there has been a significant uptick in Owner/Seller Impersonation Fraud. Criminals target the equity in property, so anyone can be a victim, including those in metro or rural areas. In addition to consumers, notaries and real estate professionals are impacted by these costly crimes. Our organizations are committed to providing education and offering solutions to combat these real estate scams.

What Is Owner/Seller Impersonation Fraud?

Criminals are impersonating actual property owners to illegally sell real property the perpetrator does not own. Because criminals are targeting properties that are not owner-occupied or developed, it can take months or years for the actual property owner to discover the fraud. There are two victims that are immediately impacted when these fraudulent transactions occur - the unsuspecting buyer and the legitimate property owner.

What Can Be Done?

Fraud is constantly evolving, and while spontaneous changes to the real estate transfer system are not practical or sustainable, steps can be taken to help combat these crimes without unintentionally harming innocent American property holders.

¹ <https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-steps-efforts-protect-public>

Preventative Measures

► *ID verification options for notarizations performed in the physical presence of the notary*

State laws should be amended to explicitly allow notaries to utilize the latest identity proofing measures when performing notarizations in the physical presence of the notary and adjust the maximum fee notaries may charge to recover the cost of conducting identity proofing to align these transactions with consumer protections found in remote online notarizations.

► *Public record access security*

Public land records are essential to the real estate ownership transfer process in the United States and are the backbone of property rights. These records must be accessed and reviewed for any real estate transfer or financing. However, changes must be made to better protect taxpayer information as criminals are leveraging data from publicly accessible online land and tax records to perpetrate their crimes. While access to public records should be prioritized, measures must be put in place to prevent bad actors from using large-scale downloads of data to commit Owner/Seller Impersonation Fraud. These changes can better protect the integrity of the public record while still maintaining access for the public.

► *General and professional education*

In addition to consumer education efforts, professional continuing education for real estate professionals, title insurance and escrow professionals, as well as mandatory education for notaries, should include best practices to combat deed fraud.

► *Protection of the public record*

In various types of deed fraud, public officials charged with maintaining the local land records are presented with obviously fraudulent documents for recording, but often are required to record the documents anyway. Local government offices should have the option of reporting these suspected fraudulent documents to local law enforcement. If a document is rejected for recording, to protect property rights, a notice of rejection should be maintained to protect title integrity. Rejection of suspected fraudulent documents should be limited to unknown submitters (excluding trusted submitters such as eRecording vendors, title companies or lenders) and based on objective criteria outlined in state law².



Corrective Measures

► *Free property recording notification systems*

Local land record offices can offer systems that notify property owners if a document pertaining to their property is recorded. This allows property owners to identify a potentially fraudulent transaction and take swift action if there is fraud. These notification systems can work in tandem with judicial processes to cure a fraudulent transaction³.

► *Land record flags to identify fraud*

Local land record offices can track information to help law enforcement more easily identify additional fraud victims. For example, indexing notaries or tracking document submitters can be useful for investigations.

► *Increased law enforcement resources*

Additional law enforcement resources on the local, state, and federal levels are needed to combat this growing threat to property owners. Statewide or federal taskforce coordination can help more easily identify and prosecute criminals. Lawmakers can review current statutory provisions regarding penalties for deed fraud to ensure there are adequate deterrents and property owner protections in state law.

► *Establish remedies for victims*

States can provide resources⁴ and expedited processes for victims to unwind a fraudulent deed and reestablish title in the legitimate owner's name. Where necessary, states can create a judicial process for victims to seek damages and attorneys' fees.

² Colorado Revised Statutes 38-35-202, Nevada Revised Statutes 247.145, Ohio Revised Code 317.13, North Carolina General Statutes 14-118.6

³ Arizona: <https://apps.azleg.gov/BillStatus/BillOverview/78707> Florida: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=78264> Utah: <https://le.utah.gov/-/2024/bills/static/SB0165.html>

⁴ <https://www.rivcoacr.org/Real-Estate-Fraud>