



What You Can Do to Prevent Deed and Seller Fraud

Letting your guard down can be costly. These simple steps can help stop this criminal activity in its tracks.

BY ROLAND LOVE

Deed and seller fraud might never happen to you. But unless you take steps to avoid these scams, you're increasing your risk of facing huge hassles, losing big chunks of your time, incurring significant costs, and even being hit with disciplinary action. Your attention to these risks also could save your clients from harmful consequences.

Title companies are doing more to detect and prevent fraud of all kinds, including seller impersonation fraud and deed fraud (also called title theft). The Texas Legislature recently passed helpful measures to curtail deed fraud, too, but real estate agents also play a crucial role. It truly requires an entire team effort to stop this growing crime.

Look for These Red Flags

A red flag is not necessarily an indication something is amiss but should cause you to increase your due diligence. The more red flags, the higher the likelihood of fraud. Here are some common warning signs:

- You obtained a new listing online or via a telephone call.
- The seller only wants to communicate via text or email.
- The seller does not provide a driver's license as identification but uses a passport, which has no property address.
- The name on the seller's ID does not exactly match the name on the deed or title.
- The seller has no acquisition documents such as a title policy or survey.
- The seller refuses to meet in person or even over video.
- The listing involves an absentee seller or unknown seller who is selling as a FSBO.
- The listing involves unimproved, unoccupied property.
- In an occupied property, the seller tells you the people living there are tenants and should not be disturbed.
- The seller is looking for a quick sale.
- The seller is willing to accept less than market price.
- The seller prefers a cash offer.
- There's a recent release of lien that did not involve a title company.
- The seller is out of town for an extended period and cannot attend closing in person.
- The seller wants to use his own notary.
- The seller has a suspicious phone number and/or wire instructions.
- The county records show recent suspicious deed transfers—especially quitclaim deeds.

The perpetrators may face criminal consequences, including being liable for restitution, but that does not completely address the damages sellers and buyers face from a deed fraud. If a transaction has closed, typically the owner's title policy will pay the buyer the policy amount, but it will not address all the miscellaneous uninsured costs the parties may have incurred. Consider all the expenses and the cloud on the title the actual owner has suffered. And even when the transaction has not closed, parties may have incurred costs related to moving, repairs and improvements, and loss of time or housing.

Because of these hassles, the steps you take to head off deed fraud before it progresses any further will go a long way in benefiting you and your clients.


Steps You Can Take Before Scammers Do Damage

In addition to being alert to red flags, you can proactively take steps to thwart criminals trying to cheat property owners. Here are some steps to consider:

1. Ask the title companies you work with what steps they use to verify that the seller is legitimate. Become knowledgeable and comfortable with those processes.
2. Create an intake form to gather personal information from sellers. You may have different intake forms for different types of transactions or even slight changes based on the method the seller uses to communicate with you.
3. Ask for prior surveys, title policies, deeds, etc., from when the property was acquired.
4. If the property is tenant-occupied, ask for a copy of the lease.
5. Ask for a copy of a photo ID, preferably one that shows the property address. While the technology exists to create fake IDs that look convincing, criminals still often make mistakes. Further, while the title company will require a photo ID, this may be a best practice for you in relation to the transaction and the potential buyer. Note that Texas Occupations Code 1101.652(b)(19) subjects the license holder to disciplinary action if the license holder "offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent."
6. Request that the owner complete a video call with you to verify identity.
7. Perhaps the best practice of all: Look up the owner's mailing address on the appraisal district website and send a thank you note and other information about selling "your" home. This will often draw a quick response if the owner is not the person who contacted you impersonating the seller.

Remain attentive to all aspects of dealing with the seller and pay special attention to all communications. Always let your title company know if something is not quite right.

Whatever steps your brokerage develops to verify sellers, keep those confidential. There is no reason to teach the perpetrators how to improve their fraudulent techniques.

Ultimately, your goal is not only to prevent fraud but also to protect the parties to a transaction, avoid lost time and expenses, and preserve your reputation. Be alert—often your gut instincts and common sense are your best tools to prevent fraud. Always bring a healthy skepticism to every deal; your time and reputation deserve it! 

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THE LATEST LAWS TO PROTECT PROPERTY OWNERS FROM TITLE THEFT

The Texas Legislature recently passed important legislation that created two new felonies for real property fraud and real property theft (SB 16). These laws (found in Texas Penal Code Sections 32.60 and 31.23) provide law enforcement with a much-needed tool to charge and prosecute these practices. Ideally, more aggressive and successful prosecution will deter criminals.

The Texas Legislature authorized county clerks to require a person presenting a document for filing in the real property records in person to provide photo identification, and the clerk is authorized to make a copy of such identification for the files. The Texas Legislature also empowered county clerks to question documents presented for recording if those documents appear suspicious. In those cases, county clerks can require additional supporting documentation. If the documents are not provided or the situation remains suspicious, the matter is referred to the county or district attorney for review. (See SB 647, Texas Government Code Section 51.901)

The Legislature also created an expedited process to clear title from a fraudulent deed. (See SB 1734, Texas Government Code Sections 51.901(c) and 51.9035, and Texas Property Code Sections 5.0206 and 5.0207).

In other legislative activity, SB 1333 provides the ability to immediately remove squatters in response to a sworn complaint or declaration by the owner to the sheriff or constable indicating the squatters are unlawfully in the premises, are not a hold-over tenant, and are not family members. (See Texas Property Code Chapter 24B.)

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