

CONSUMER ALERT: What Should You Do If You Learn that a Forged and/or Fraudulent Deed Has Been Recorded Against Your Real Property?

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I. Introduction.

In the current economic climate, criminal fraud related to real property deeds appears to be on the rise. In that regard, the California Department of Real Estate (DRE) has received and continues to take reports of such fraud where forged, false and/or fraudulently induced deeds are recorded against properties in California without the knowledge or consent of the owners.

The purpose of this alert is to briefly educate the public about the document recordation process, highlight some of the different types of deed scams which are being perpetrated against property owners involving the legal title to their homes¹, provide a checklist of warning signs that suggest or signify fraud, and to inform victims of actions they should take, including the immediate reporting of such fraud and criminal activity, and the “quieting” or “cleansing” of title and ownership records.

II. Document Recording in California.

Before identifying some of the different types of fraudulent deed scams that are prevalent today, it is important for property owners to understand the basics of the recording system and how real property deeds and other mortgage-related title documents are recorded.

In California, the recording system allows owners, purchasers, sellers, creditors, and others who are interested in a particular property to determine the legal rights, title and interests in that property.

The process for recordation of documents that affect title to real property is achieved through the offices of the “recorder” in each county, and it commences when a duly executed and properly acknowledged document is submitted for recording to the recorder’s office in the county where the property is located.

The recorder’s office, upon payment of the proper fees and taxes, must accept and record any document that conforms to certain California legal requirements. In the case of a deed, recorders will typically ensure that the deed is properly acknowledged by a notary (unless some exemption applies), is compliant with

¹ While this alert focuses on the issue of fraudulent deeds recorded against real property in general, most of the cases being brought to the attention of the DRE involve the personal residences (or homes) of victims.

the general recording requirements set forth by law, and photographically reproducible. The deed must usually contain original signatures unless it is a certified copy issued by the lawful custodian of record.

Each county recorder has fairly similar recording requirements, but the requirements are not identical; there are variations among the counties. If you are interested in your county's specific recording requirements, please refer to your local county recorder's office and/or website.

What is important to understand here, and not always generally known, is that the county recorder is *not responsible for verifying the validity, authenticity or legitimacy* of the document that is recorded. In other words, the recorder is not responsible for detecting a fraudulent document, and the recorder does not look beyond the document itself. If the document meets the essential recording requirements, and the proper fees are submitted, the county recorder is obligated to and will record the document.

Because of the composition and operation of the recordation system, which is designed to smoothly facilitate the recording of many documents, anyone can go down to a county recorder's office and present a document for recording against a particular property, whether that document is legitimate or fraudulent.

Therefore, there is no true safeguard or deterrent against the recording of illegitimate deeds (forged, fictitious and/or fraudulent) on any property and the prevention of the same is nearly impossible.

Recorder's Anti-Fraud Efforts; Fraud Notification Programs; and "Clouds" on Title Affecting Sales, Financing, and Probates/Estates.

While county recorder's offices do not verify the validity and legitimacy of documents presented for recording, some recorders have protective measures in place to try to contain deed fraud.

For instance, some recorders require signers of real property deeds to provide a thumb print, in addition to a signature, in the journal of the notary public who acknowledged the deed for recordation. This should have a deterrent effect respecting forgeries since an imposter will not likely want to leave a thumb print which can later be used as evidence linking him or her to a felony crime(s).

Other recorders have fraud notification programs in place. Such notification programs require the county recorder's office to send a notice and copy of the recorded document to the property owner of record whenever a document which transfers title or ownership in the property or portion thereof has been recorded on a property.

This notification is also usually triggered by the recording of a deed of trust, which is the recorded document which reflects a "security interest" in a property

as collateral for a loan.

If you, as the owner of real property, initiated the transfer of title, change of ownership, or loan, you have nothing to worry about. However, if you were unaware of any such title transfer or loan, the notice from the recorder may be the only opportunity for you (as the homeowner) to learn about a fraudulent deed(s).

The notification will also typically provide the homeowner with a phone number to call (usually the local district attorney's office) in the event of suspected or actual real estate fraud.

Prior to the advent of such notification programs, or in counties where there is not such a program, a property owner may not find out about a fraudulent deed until he or she goes to sell or refinance the property. With regard to sales, a fraudulent deed will actually "cloud" the property title and prevent a homeowner from selling his or her property until title is cleared or cleansed, or until the other "lienholders" are satisfied. The cleansing of title will be discussed below. Regarding refinancings, it is both interesting and sad to note that a number of fraudulent deeds on a property may not preclude a refinancing if there is sufficient equity in the property. The DRE is aware of one matter where a "reverse mortgage" was approved and taken out by a senior homeowner where there were a number of fraudulent deeds recorded against her property.

Surprisingly, without a notification program, a property owner may not discover fraudulent deeds (where the owner still maintains some ownership interest) during his or her lifetime, especially if the owner does not endeavor to sell, finance, or refinance the property. In such a case, the property will pass to the heirs of the homeowner with the fraudulent deeds intact. This can have a serious impact on the heirs to the property owner, and can interfere with the decedent's probate or administration of the estate.

The notification programs discussed above allow property owners to react swiftly to unwind, invalidate and clear the fraudulent deeds, and any improper transfers and loans, and to contact the appropriate authorities right away.

Please check with your local county recorder's office to determine if a notification program exists and which type of recorded documents trigger the notification.

III. Common Types of Scams Involving Fraudulent Deeds; With Some Notes of Caution.

There are numerous types and scenarios of deed fraud, and they are only limited by the creativity, abilities, and tactics of the fraudsters. Thus, the cases mentioned below are not exhaustive, but illustrations only.

A fraudster may forge a homeowner's name on a quitclaim deed or another deed to a home. The deed is acknowledged and signed by a notary public (either legitimately based on false identification or illegitimately), and then recorded, effectively transferring the property to the scammer without the knowledge of the true homeowner. The bad actor then obtains a mortgage loan on the home and uses the loan proceeds for his or her own use. The loan payments are not made and the home goes into foreclosure.

A criminal might trick or pressure a homeowner into signing a deed for the home, thus "transferring" the property to the fraudster or another when the deed is recorded. The homeowner is essentially unaware that the document they are signing is a grant deed. In this regard, it is extremely important for a property owner to never sign documents with blank spaces left in them, and to *never* sign a real property deed or property-related document that he or she has not read and does not fully understand. Owners should also be very skeptical of assertions that documents to be signed are of no consequence or are "just a bunch of legalese" and not really important. Where owners are unsure, or have questions regarding real estate title documents, they should contact a licensed California real estate broker or salesperson, or a California lawyer, for advice and counsel.

Sometimes the homeowner is falsely told the deed will be recorded upon the happening of a condition, but the deed is recorded regardless of the condition being satisfied or completed.

A distressed homeowner might seek help in avoiding, or be approached by a person who falsely claims that he or she can help the homeowner to avoid, a pending foreclosure. A homeowner may be falsely advised to sign a number of recordable deeds or other documents, which are then recorded and "cloud" (create defects in) the title to the home. A party who receives the deeded interest may take out a loan or sell the property to another. Also, more commonly, a fractional deed may be recorded, with or without the property owner's knowledge, over to a party who has filed for bankruptcy protection. This deed transfer and the pending bankruptcy are then sent to the lender in order to delay the pending foreclosure. It is important to understand that these types of scams may *delay* a foreclosure while the lender or servicer of the home loan unwinds the fraudulent deeds, but it will not stop an otherwise lawful foreclosure. In this regard, property owners must be extremely wary of claims by solicitors who tell owners that a deed must be recorded on their property(ies) (transferring ownership to the solicitor or some other third party) in order to save the property(ies) from foreclosure.

In other cases, a grant deed may be signed under a power of attorney for real property transactions, and then recorded. In this type of situation, the person with the alleged power of attorney will sign the deed on behalf of the grantor and the homeowner never signed a power of attorney document authorizing the power of attorney and/or does not know the person executing the deed under a

power of attorney.

There have even been cases where a property owner's deed is stolen and then used by the fraudster to create a new deed and forge the homeowner's signature. For this reason, it is extremely important to safeguard your original recorded property deed and any real property title documents. Having said that, it is noted that even where your deed is safe and secure, everything a criminal needs to commit this type of fraud in California is available in the public records maintained by the recorder in the county in which your property is located. It may take a bit of effort by the criminal, but he or she can access a copy of a deed on your property and simply create a new deed showing himself or herself as the transferee, and then record that forged deed.

It should be observed at this point that while perpetrators of this type of fraud can be a family member or business associate of the property owner, or entirely unknown by the property owner, this fraud may involve the work of a complicit, fraudulent notary public. Because grant deeds, quitclaim deeds, and deeds of trust are documents that must be signed in the presence of notary public in California, the forging of any such document may also involve a cooperating notary public. In some instances, an individual may impersonate a notary and unlawfully acknowledge the document, or may be a true notary (*i.e.*, appointed and commissioned by the Secretary of State) who acknowledges a deed *without* confirming and/or reviewing the signer's identification document in compliance with California law. In both cases, the documents are acknowledged fraudulently and then presented to the county recorder for recordation.

A Note Regarding Fraud "Targeting":

The victims of fraud involving forged and/or fraudulent deeds are often times senior citizen homeowners, who have substantial equity in their property or who own their homes free and clear of any mortgage loan. In such cases, the fraudsters can create a fake Promissory Note showing that the senior citizen owes the scammer money, and then forge and record a Deed of Trust securing the Promissory Note. The senior may never know about the recorded deed during his or her lifetime. Please see the discussion above in Section II for more information. Obviously, a number of fraudulent deeds could be created and recorded where a property has significant equity.

In addition, homeowners whose primary language is not English may be a potential target of deed fraudsters.

Moreover, those who commit deed fraud also target distressed areas and neighborhoods where there are abandoned and vacant homes. In those cases, the criminal would conduct a title search on the targeted property, forge a deed with the name of the true owner, record the false deed, and then either sell the home or take out a loan against the home.

IV. **Warning Signs of Deed Fraud.**

When you receive notification or become aware of:

1. A recorded document on your property where you never signed the document and your signature was forged;
2. A recorded document on your property where ownership in your property, or a portion thereof, was transferred or sold to another party without your knowledge;
3. A recorded document on your property where the signer of the document was deceased at the time of execution of the document;
4. A loan was taken out on your property without your knowledge; and
5. Changes or alterations were made to a recorded document after you signed it.

Also, if you:

1. Stop receiving your property tax bill or notices;
2. Receive a Notice of Default or Notice of Trustee's Sale when you own your home outright (free and clear of a mortgage loan), or when you have a mortgage and you are not delinquent on your loan payments;
3. Receive loan documents in the mail for a loan that was obtained without your knowledge; and/or
4. Receive real estate documents in the mail for a transaction on your property that was conducted without your knowledge.

V. **If You Have Been a Victim of Fraudulent Deed Activity, You Must Take Immediate Action:**

A. **Report The Activity to Government and Enforcement Authorities.**

Whether you learn of the forged and/or fraudulent deed from the county recorder, your title company, a lender or servicer, a real estate licensee, or from any other source, you must act *immediately* to protect your ownership interest in your home.

You should *immediately* gather and collect all of the information, documents, and other evidence you have and report the forged and/or fraudulent deed to:

1. Your local police and/or Sheriff's department, and to such police agencies where the property is located (if different from where you reside).
2. The offices of the City and District Attorneys where your home/property is located. The Los Angeles District Attorney's office has helpful tips for consumers regarding foreclosure fraud on their website. It can be accessed at <http://da.co.la.ca.us/cpd/foreclosure.htm>
3. The office of the recorder in the county where your property is located.

4. Your local city's or county's department of consumer affairs.
5. The California Secretary of State, Notary Public Section. The Notary Public Section is responsible for investigating violations of law by notaries. If violations are found, the Section may take disciplinary action against the law-breaking notary pursuant to the California Administrative Procedures Act. If you would like to file a complaint against a commissioned notary public, or wish to report a person impersonating or fraudulently using the credentials, seal or other indicia of a notary, please contact the Secretary of State, Notary Public Section at (916) 653-3595 or via the Internet at www.sos.ca.gov/business/notary/. Also, if you are interested in filing a claim against or learning about the availability of a notary public's surety bond, please contact the county clerk's office identified in the notary's seal and request information about the notary public's bonding company.
6. The California Department of Real Estate at www.dre.ca.gov if a real estate broker or salesperson, or unlicensed person purporting to be a real estate licensee, is involved in the forging of any deed or fraudulent recording of a false, fictitious, or forged deed. The DRE has a Consumer Recovery Fund that may be able to compensate you (up to statutory limits) if you meet certain requirements.

B. Other Actions to Protect Your Property Interests.

1. Review Your Title Insurance Policy; Contact Your Title Insurer.

If you have a title insurance policy on your property (this is a policy that may have been obtained when you first purchased the property), contact the title company that issued the policy to inquire if you have insurance against forged deeds recorded after you purchased your home. Some policies do offer homeowners protections against forgery after the homeowner has taken title to the property. More importantly, if you become aware of a forged deed in the chain of title to your home, and have a title policy with forgery protection, the title company may be able to help you get the fraudulent deed removed from the record via civil litigation and/or to cover certain costs up to the policy's coverage limits.

2. Seek and/or Commence Legal Action to Unwind Deed Scam(s) and to "Clear" and "Quiet" Your Property's Title.

Because of the "cloud" on your home title created by fraudulent deeds, an action in court must be commenced to "quiet" title to the property. That is the legal term which refers to cleaning, cleansing or clearing the title to the property's official records by invalidating the forged, fraudulent and improperly recorded deed(s) and document(s).

Sometimes a City Attorney or District Attorney may be able to obtain a court order quieting the title in connection with a criminal prosecution of the criminals or fraudsters for forgery, grand theft, and other criminal counts. If that is not a

possibility, you should contact, meet with and hire a knowledgeable California lawyer to bring a quiet title action. If you cannot afford a civil litigation lawyer, you should call the State Bar of California or a local county bar association and ask for a referral to a public interest law firm, and then meet with a lawyer there as soon as possible.

The important thing is for you to act *immediately* to protect your ownership rights. Lawyers have the training to know whether a fraudulent deed is “void” (*invalid from the beginning* – this is the case with a “forged” deed; and which may be also be the case where a property owner has been fraudulently deceived about the nature of the title document executed and thereby “excusably ignorant” as to the effect of the document) or “voidable” (*valid until annulled* by a court or official action), the necessary and/or most advantageous legal and equitable arguments to make on your behalf, the various applicable remedies available to you as the victim of fraud – which might include, in addition to a “quiet title action” and without limitation, causes of action for declaratory judgment and ejectment, and the proper way to plead the case to a court².

VI. Conclusion.

Deed fraud seems to be ever growing, and it can scam you out of your home or any other property you own. As discussed in this alert, such fraud can be perpetrated against any property.

You need to be proactive, stay informed about the status of your property title and records, protect yourself as much as possible³, and take immediate action if you become a victim.

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² Because each case is different and is based on the property record and the facts of the crime or scam, this “consumer warning” has been written in general terms and is not – and should not be viewed as – a substitute for the professional and competent legal advice that you should seek.

³ In addition to safeguarding your original property transaction records as recommended above, (and while it may be bothersome) property owners should periodically check “title” to their property, just as they check on their credit. Also, the next time you purchase and/or finance real property and are considering a title insurance policy, it would be wise to inquire with the title company about the different protections and risks covered under their policy.