

Trusts & Estates

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Stealing Houses?

BY FRANK PELLEGRINI

What do you get when you combine identity theft with mortgage fraud? The FBI calls it *house-stealing*. The FBI warned of this activity as far back as March of 2008. At that time, the FBI noted that “House-stealing is not too common at this point, but we’re keeping an eye out for any major cases or developing trends.” They referred to house stealing as “the latest scam on the block.” So, what’s been going on since 2008? It’s hard to tell. While statistics are available for all sorts of wire fraud and mortgage fraud, instances of house-stealing are not broken out. What experts do know is that, thanks to the internet, crime of this sort is on the rise.

In its most recent report, the Internet Crime Complaint Center of the FBI stated that there were 467,361 wire fraud complaints resulting in losses of \$3.5 billion in 2019.¹ In the category of real estate fraud, 11,677 victims lost over of \$221 million. It is not possible to extract the numbers specifically for home title fraud itself, but trends are all rising. As the numbers I just recited indicate, the number of all complaints rose from 288,012 in 2015, a 62% increase in four years. Total losses rose more than three-fold by 2019 from \$1.1 billion in 2015. The growth in dollar amounts of losses far exceeds the growth in the number of complaints. This pace of increased productivity is likely not lost on the criminals perpetrating these schemes. To bring the problem home, in 2019 Illinois ranked ninth in the country in number of victims, but it ranked sixth in total

losses. Individuals over 60 had the highest victim count and the highest dollar losses compared to other age groups.

In the 2008 alert, the FBI described house stealing as follows:

The con artists start by picking out a house to steal—say, YOURS. ...Next, they assume your identity—getting a hold of your name and personal information (easy enough to do off the Internet) and using that to create fake IDs, social security cards, etc. ...Then, they go to an office supply store and purchase forms that transfer property. ...After forging your signature and using the fake IDs, they file these deeds with the proper authorities, and lo and behold, your house is now THEIRS.

Vacant homes (second homes, vacation homes, or rentals) can be particularly attractive targets for the fraudsters because the scheme may not be discovered for some time. A simple three-step process for stealing a house was laid out in the FBI article:

- 1) Pick a house;
- 2) Assume the identity of the owner;
- 3) Forge the signatures on a deed placing the crooks in title and record it.

After they have assumed “ownership”, the crooks may sell or mortgage it, pocket the money, and disappear. Rightful owners may be able to successfully contest the interest created by the forgery (a forged

instrument is void), but they may suffer sizeable expenses for attorney fees and court costs. Buyers and lenders may not ever be able to recover their losses. In a common scenario, the crook steals the identity of the owner, signs for a home equity line of credit (HELOC), accesses the account, and makes off with the cash. The property owner is left with a heavily encumbered title.

A variant on this theme is to identify property owners having financial difficulties. The owners are coaxed into selling to fake buyers who borrow the funds to close on the purchase. The fake buyers then resell the property and disappear. The owners lose their title and the bank loses their money.

What does the FBI suggest for property owners to protect against these scams? They recommend checking the county records for instruments that appear against title, and which are not recognized by the owners. Great idea, but who has the time or know-how to do this? Enter the pros at a title lock insurance company. For the price of a couple of lattes per month the guardians at title lock will monitor activity at the recorder’s office and report it to you. This sounds like a great deal until you consider that anyone with a computer can visit the recorder’s website in very little time and with little or no experience. Usually, searches may be performed under the property identification number assigned by the tax collector. In Cook County and surrounding counties, this is very simple and straightforward. It costs nothing, as

long as document copies are not needed. If the property owner is still feeling intimidated and overwhelmed, services offered by the recorders in at least 55 of the 102 counties in Illinois offer fraud alerts at no cost. One merely registers and provides an email, phone/text, or snail mail address and the Recorder sends an alert to the registered owner if any activity occurs on the title to the property.

For owners of property in other states (vacation homes), I found similar no-cost fraud alert programs in sixteen other states, including Arkansas, Florida, Wisconsin, Missouri, Indiana, and Minnesota, to name a few where Illinoisans may have property.

The lesson here is very obvious: why pay for a service from a private company when the county offers the identical service for no charge at all.

For those who have not registered for the county monitoring service, there are clues that they may have fallen victim to title fraud. Utility bills, real estate tax bills, or assessment notices stop coming. Rent payments due to the owner get diverted. Payment statements for loans or default notices arrive. The Kiplinger newsletter published a very good article on this in June of 2019.²

Statistics on the success of title fraud alerts are not readily obtainable. My attempts to contact the Cook County Recorder of Deeds to ask about them were not successful. However, Karen Miller, an old friend and fellow member of the Illinois Land Title Association who is now the LaSalle County Recorder, spent a few moments on a phone call with me. LaSalle County is one of the many counties that offers a free fraud alert program. Ms. Miller's Office tracks the number of registrations for the program. She reported that there is increasing interest in the program and there are regular inquiries about it, as well. The number of property owners registering for fraud alerts is growing year-to-year. However, the Recorder's Office is not able to track instances of criminal activity. The Recorder's role is confined to notifying property owners of activity on the registered property.

An interesting aspect of this service that Ms. Miller mentioned is that it is somewhat

popular among children who register for the alerts on behalf of elderly parents. In some instances, the children are concerned about caretakers or even siblings attempting to obtain title of the older person's home.

Residential property owners in several states have an additional shield against "house stealing" that we do not yet enjoy in Illinois. While the coverage in the standard Owner's Policy is generally limited to occurrences before the effective date, the "Homeowner's Policy of Title Insurance" is an enhanced policy which expands covered risks to include certain stated post-policy occurrences. Provision #3 of the Covered Risks section of the policy jacket states: "Someone else claims to have rights affecting Your Title because of forgery or impersonation." Provision #7 of Covered Risks states: "Any of Covered Risks 1 through 6 occurring *after* the Policy Date."³ Clearly, the two portions taken together provide continuing coverage against forgery occurring after the policy's effective date.

In states where underwriters offer the Homeowner's Policy, a higher premium is charged and a sworn statement by the proposed insured is required. There are also provisions for deductibles assumed by the insured. Underwriters doing business in Illinois either avoid or flatly refuse to issue the Homeowner's Policy. The reasons I have gleaned for the reluctance to issue the Policy stem from the lack of a proper rate structure which would allow for higher premium amounts retained by the underwriter to support prudent reserves against claims stemming from these post-policy occurrences. Yet another reason why title insurance rates in Illinois should be thoroughly examined and made more favorable for consumers.

Before concluding, another scheme designed to separate people from their money involves mailing notices to addresses of properties recently purchased offering the new property owners a copy of their "official deed" for a mere \$100 or so. As real estate lawyers know, deeds are returned from the Recorder's office within a reasonable period of time after closing (before COVID-19 anyway). It is not necessary to pay a fee for the "official" document. It is becoming good

practice for the buyers' attorneys to alert their clients at the closing that they should be wary of these offers.

From the beginning of time, humans have spent considerable time and effort concocting various clever schemes to pick the pockets of others. The rest of us have to spend considerable time and effort to prevent that happening to us and sharing what we know with others more vulnerable. ■

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1. www.ic3.gov.

2. <https://www.kiplinger.com/article/real-estate/t048-c050-s002-how-to-protect-your-home-from-deed-theft.html>

3. Emphasis added.