

ASSURANCE

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News from Prairie Title



The Fraud Issue

By Frank Pellegrini - Prairie Title CEO

Rather than write a “normal” column of 500 words or so, I decided to focus at length on Elder Fraud, an issue that is becoming more dire as our population ages. I hope you will forgive my verbosity. I feel too strongly about the threat Elder Fraud poses to confine this column to a word count. We also decided to take things a step further and dedicate the majority of this issue to the rapidly growing threat fraud poses to our customers and to us. I believe you will find this issue of ASSURANCE especially valuable.

Time marches on. The United States is slowly, yet inexorably, getting older. In fact, the U.S. is older today than it has ever been.

The aging of our population is reflected in the median age which is just under 40 (38.9). Remember, median anything is the point on a spectrum where there are the same number of things greater as smaller. So, at 40 there are about as many people older as younger. On a state-by-state basis we are even older. One-third of the states have a median age higher than 40; the oldest states are Maine (median age of 44.8) and New Hampshire (43.3).

As you might expect, the current growth of the population age 65 and older is fueled by baby boomers. The Population Reference Bureau (www.prb.org) predicts that the number of Americans 65 and older will increase from 58 million in 2022 to 82 million by 2050. That is an increase of 47%. Stated differently, the 65 and over age group's share of the total population will rise from 17% to 23%.

Criminals have become aware of these statistics and are preying upon older citizens. For

a humorous take on this, watch the movie *Thelma* about a lady in her 90s who, being duped to part with a few thousand dollars, sets out to find the crooks and get her money back.

Seniors can be particularly easy prey for on-line predators. Generally, the elderly have limited technical knowledge, are unfamiliar with electronic platforms, and are possessed of a trusting nature. They are susceptible to phishing emails, phone scams, and other fraudulent schemes. Fake tech support phone calls or emails offering to fix non-existent computer problems give criminals an opportunity to install malware. Social engineering tactics exploit the desire to help others or manipulate emotions.

Recently, I received a call from a friend in her 80s who was contacted by a purported representative of Publisher's Clearing House announcing that she was the winner of \$4.8 million. My friend, in fact, entered the sweepstakes and has a member number, but a quick call to PCH confirmed that hers was not a winning number. Fortunately, she did not disclose personal or banking information that the caller stated was necessary to process payment.

The FBI is focused on these criminal endeavors and tracks activity through the Internet Crime Complaint Center (www.ic3.gov). IC3 has received more than 8 million complaints since its inception in May of 2000, an average of 758,000 per year for last five years. Victims suffered losses of \$12.5 Billion in 2023 alone. Victims over 60 in 2023 numbered 101,068 and lost more than \$3.25 Billion – more than a quarter of all losses among all age groups. The types



of scams that resulted in the highest losses were investment frauds, phony tech support, e-mail compromise, confidence/romance schemes, and government impersonation (think social security).

The internet is not the only place where the elderly are targets. There are plenty of other areas of physical and financial abuse, fraud, neglect, and exploitation, including:

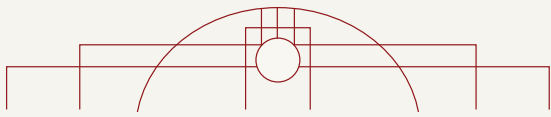
- Forgery
- Coercion, duress, undue influence
- Non-disclosure
- Abuse of power of attorney
- Fraud
- Misrepresentation of legal documents

A recent and notable instance of attempted fraud and forgery involves the Estate of Elvis Presley and his home, Graceland. A

see **MY PERSPECTIVE** page 3

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Meet the Prairie Team

Prairie Title's excellence is directly attributable to the quality of our people. Our professional staff members have decades of experience in the industry, and they are dedicated to the notion that great customer service begins with them. As a result, our clients have easy access to dedicated real estate professionals in an environment where decisions are made quickly, but not imprudently.



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Consumer and Industry Advocates Highlight Deed Fraud Prevention

The American Land Title Association (ALTA), AARP, Mortgage Bankers Association (MBA), National Association of Realtors® (NAR), National Notary Association (NNA) and Property Records Industry Association (PRIA) released a new issue brief with recommendations to help combat the rise in deed fraud.

Although deed fraud can include a variety of real estate-related crimes, most schemes involve the impersonation of a property owner and the recording of fake or forged documents in local land records. These crimes result in legal costs, reduction in equity or property value and even property loss. According to the Federal Trade Commission, fraud losses in 2023 cost U.S. consumers more than \$10 billion, of which \$2.7 billion is attributed to imposter scams.

“Protecting the property rights of all Americans—and what is likely their largest financial investment—is of utmost importance,” said Elizabeth Blosser, vice president of government affairs at ALTA. “The amount of money lost to deed fraud and other real estate-related scams simply is not acceptable. We must combat these threats.”

against criminals. In a world with increasingly rampant fraud, educating the public and advocating for stronger local and state consumer protections is critical.”

The issue brief outlines numerous ways to help prevent and mitigate deed fraud, including:

- Providing identity verification options for notarizations performed in the physical presence of the notary
- Providing better security for access to public records
- Requiring continuing education for real estate professionals and notaries
- Allowing local government offices to report suspected fraudulent documents to law enforcement
- Offering property owners free access to property recording notification systems

“The National Notary Association believes these owner/seller impersonation deed fraud policy recommendations are reasonable and necessary steps that should be adopted to protect property owners, real estate professionals and even Notaries who are victims of these crimes,” said Bill Anderson, vice president of government affairs at NNA. “The NNA urges Notaries in every state to learn the warning signs of owner/seller impersonation deed fraud and be vigilant in verifying the identities of all grantors seeking notarization of real property conveyance deeds.”

To support victims of these crimes, ALTA, AARP, MBA, NAR, NNA and PRIA are calling for legislatures to strengthen data gathering needed to help law enforcement more easily identify deed fraud victims; increase the resources given to local, state and federal law enforcement to combat this growing threat; and provide resources and expedited processes for victims to reestablish title in the legitimate owner's name.



“Older Americans are at higher risk of deed theft and the results are financially and emotionally catastrophic,” said Jenn Jones, vice president of financial security and livable communities at AARP. “We must do more to protect unsuspecting homeowners and homebuyers

sham investment firm claimed title to Graceland through a deed purportedly executed by his daughter, Lisa Marie. The Trustee of the Graceland Trust, Lisa Marie's daughter, Riley Keough, was forced to file suit to establish that the signatures and even the notary were forged.

Title fraud of this kind is certainly unusual, but not rare. The FBI estimates losses of \$145 million from real estate fraud in 2023. Interestingly, everything a fraudster needs to perpetuate title fraud is available in the public records.

Most states have created laws to address the problem of elder fraud. Illinois is one of them. Examples of such statutes in Illinois are: The Adult Protective Services Act, The Presumptively Void Transfers Act (also known as the Illinois Caregiver Statute), and the Prohibition of Unfair Service Agreements Act.

The Adult Protective Services Act (320 ILCS 20) became effective July 1, 2013 and has been amended a number of times, most recently as of January 1, 2024. It is a large and comprehensive statute dealing with a broad range of issues such as what is abandonment, what constitutes abuse, who is a caregiver, what is a domestic living situation, who is an eligible adult, what it means to be a financial adviser, what is neglect, etc. Notably, the Act creates a registry of known offenders in cases of abuse, abandonment, neglect, and exploitation.

The Presumptively Void Transfers Act (755 ILCS 5/4a-10 et seq.) creates a rebuttable presumption that a transfer instrument is void if the transferee is a caregiver and the fair market value of the transferred property exceeds \$20,000. A "transfer instrument" may be a will, trust, deed, a payable-on-death designation form, a TODI, contract, a beneficiary designation form, etc. The determination of who is a caregiver is left to the court, but family members of the transferor are excluded from being considered a caregiver. The presumption that the transfer is void is rebuttable by a preponderance of evidence that the transferee would have received the property anyway and clear and convincing evidence that the

transfer was not the product of fraud, duress, or undue influence. Further there is a two-year statute of limitation for a proceeding to be brought after the death of the transferor.

In real estate transactions, a BFP or mortgagee is protected provided the interest is acquired before a lis pendens notice is of record. Nonetheless, additional care should be taken in the estate planning process and in examination of real estate titles.

The Prohibition of Unfair Service Agreements Act (PA 103-0993) was signed into law by the Governor on August 9, Of 2024 and became effective on the same day. This law prohibits the creation long-term listing agreements (as well as other services) which would create a covenant in favor of unscrupulous real estate brokers. These covenants have cropped up in Illinois and other states purporting to establish an exclusive listing agreement for up to 40 years. Seniors have been lured into these agreements which have implications for the owners and their estates. The Act applies to residential real estate only; and, an agreement is regarded as unfair when its applicability exceeds one year, purports to run with the land, allows assignment without notice or consent of owner, and purports to create a lien on title. County Recordors may refuse to record these instruments. Affected owners may recover attorney fees and court cost to remove the encumbrance.

Seniors are vulnerable both while on their computers or other devices and in more traditional dealings. Vulnerabilities of this group are being exploited at an increasing rate. The activities of the FBI and legislatures of most states will provide much needed protections, but awareness and experience among industry professionals and aging clients will be important to prevent losses.

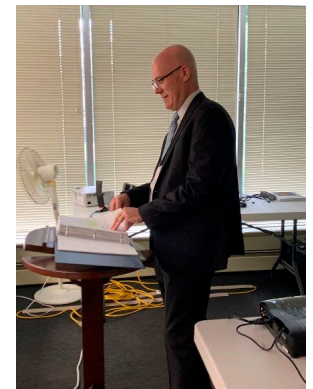
I urge you to provide educational opportunities and materials to your client base regarding the rampant fraud issue we all face. At a personal level, let's all make sure that the seniors we know in our lives (I am a proud member of that cohort) understand the potential for fraud and how to prevent it.



At this past summer's Illinois Land Title Convention, a number of ILTA past presidents gathered for a photo. From left: Dan Mennenh, retired from HB Wilkinson Title Co., Patrick Quist, Chicago Title, Christina Sparks, Stewart Title, Mary and Frank Pellegrini, and Walt Adams, Fidelity National Financial. Frank and Mary are believed to be the only husband and wife team to serve separate terms as ILTA president. Frank and Dan are also past presidents of the American Land Title Association.



Prairie Title's Nancy Goggin and Michael Guerin at Oktoberfest with the Main Street Organization of Realtors.



Below: Marty Cann, vice president and Underwriting Counsel, Old Republic National Title, gave a CLE Ethics presentation to a group of local attorneys in August at Prairie Title.

Need a Little Humor in your Life?

We recommend *The Humor Habit: Rewire Your Brain to Stress Less, Laugh More, and Achieve More'er* by Paul Osincup. A veteran speaker, corporate trainer, and comedian, Osincup delivers a hilarious and effective new take on how to make yourself and your team more productive and resilient by focusing on the funny side of work and life. In the book, you'll learn why humor isn't an in-born quality you're either born with or without. Instead, it's a habit you can develop over time. It's well worth your time and effort to read *The Humor Habit* and bring its lessons to bear in your life.



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**

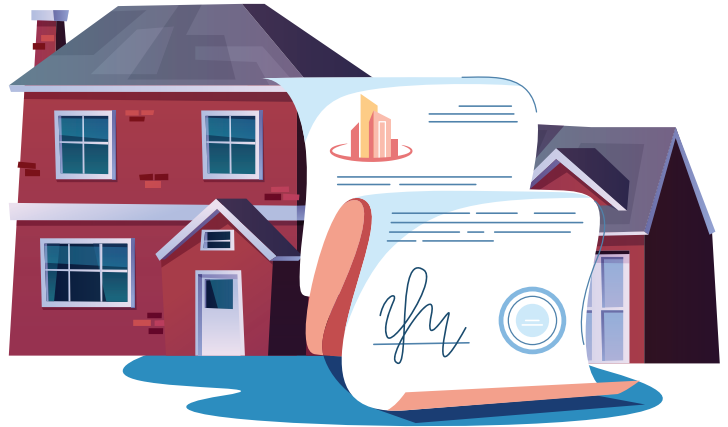
Public land records are essential to the real estate ownership transfer process in the United States and are the backbone of property rights. These records must be accessed and reviewed for any real estate transfer or financing. However, changes must be made to better protect taxpayer information as 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>

Security Buzz - Encoded URLs are used to Bypass Secure Email

By Genady Vishnevetsky, Chief Info Security Officer, Stewart Title Guaranty Company

In today's digital world, we're all familiar with the importance of being cautious about clicking on suspicious links in our emails. However, cybercriminals are constantly finding new ways to outsmart our defenses, and their latest tactic is both clever and concerning. Cybercriminals have discovered a sneaky method to bypass our email security systems. They're now using something called "encoded URLs" to hide malicious links in emails. This technique makes it harder for security software to detect these harmful links, increasing the chances that unsuspecting users might click on them.

Many companies use Secure Email Gateway (SEG) as a layer of email protection. A secure email gateway essentially rewrites every URL in an outgoing email into a link pointing to its infrastructure. When a recipient clicks on the encoded link, the user is first directed to the SEG system, which checks if the URL is safe before redirecting the user to the intended destination. The checks usually involve assessing the URL using reputation, blacklists, signatures, and other mechanisms, which means sometimes it might take an SEG days and even weeks

before it designates a URL as malicious.

The problem is that, often, when SEGs detect URLs in emails that are already encoded, they do not scan them, passing them right through to the user. While this new threat is concerning, there are steps you can take to protect yourself:

- Be skeptical: Even if an email looks like it's from a trusted source, always approach links with caution.
- Don't rush: Cybercriminals often create a sense of urgency. Take a moment to think before clicking.
- Verify independently: If an email asks you to log in to an account, go directly to the website by typing the address in your browser instead of clicking the link.
- Educate yourself: Stay informed about the latest cyber threats. The more you know, the better prepared you'll be to protect yourself and others. Share this knowledge with friends and family to help them stay safe online.

This new tactic is part of a broader trend of sophisticated cyber attacks. It's a reminder that our online safety requires constant vig-

ilance and adaptation. By staying informed and following best practices, we can make it much harder for cybercriminals to succeed. Remember, your online safety is in your hands. Stay alert, think before you click, and err on the side of caution when in doubt.

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Why Prairie Title?

We put our decades of experience to work for you by:

- Providing trustworthy, conservative advice
- Solving knotty title problems
- Offering alternatives to fix unusual challenges

Our customers enjoy the convenience, flexibility and adaptability of a small company combined with the strength and security of seven of the nation's largest title insurance underwriters.



Why Misguided Calls to Scrap Title Insurance Would Make Homeownership More Costly and Threaten the Economy

Over the past several months, a growing number of federal regulators and officials have signaled a desire to eliminate title insurance as part of a push to lower the cost of purchasing a home. The Consumer Financial Protection Bureau (CFPB), for example, recently suggested that title insurance amounted to a "junk fee."

Making homes more affordable for Americans is a worthy goal, but targeting title insurance—a one-time premium that is far lower than many other closing costs—would have the opposite effect. That's because title insurers play a foundational but largely misunderstood role in the real estate industry: enabling the reliable transfer of property ownership.

Accuracy of Property Records is Maintained by the Title Insurance Industry

Put simply, when you buy a home, you need some way to know the seller actually owns the property, has the right to sell it, and that

there aren't any competing claims, long-lost cousins, court judgments, or simple paperwork errors that could lead to someone showing up on your doorstep with a piece of paper that says your new house isn't really yours. The catch – no single government entity actually keeps track of all of those things.

Instead, the work of collecting and maintaining the property records that underpin the reliability of every real estate transaction in the country falls to the private sector, specifically the title insurance industry. To get an idea of how big a job this is, start with the fact that there are more than 3,500 jurisdictions in the U.S. that record deeds, all using their own systems and recording practices. And the deed to a property only gives you part of the story.

Between October 2022 and October 2023, various entities filed 1.9 million court judgments or orders, 1 million financing

statements, almost 900,000 local, city, utility, and other government-related liens, 600,000 state and federal tax liens for unpaid taxes, over 200,000 HOA foreclosures, and 150,000 mechanics liens, each with the potential to threaten a transaction.

Title insurers are the ones who spend the time and money to find, review, synthesize, validate, and correct those records where necessary – and critically, they do this work proactively, on an ongoing basis. This means when you get ready to close on your new house, your title insurer will review the relevant documents, identify errors in the public record or other potential problems, and help to resolve them so the title can be traded without incident. If an unforeseen problem arises later, the title insurer will step in and fund your legal defense for covered issues. Title insurers continue to protect the ownership rights of policy holders, while striving for greater efficiency and cost savings. In fact, the average premium per dollar of insurance is down by more than a third since 2018, a result of the technological advances of the title industry.

By Mark Fleming, chief economist at First American Financial Corp. Published by alta.org.