

Unmasking Property Fraud: Protecting Your Rights and Interests

Safeguarding your property rights and what to do when a fraudulent deed is filed on your property

Blair Raggio, President, Allegiance Title Company, Member, Texas Land Title Association

Blair Nash, Senior Counsel, Allegiance Title Company, Member, Texas Land Title Association

Bad actors are impersonating owners of real property all over the United States. They are attempting to “sell” property to innocent buyers, or borrow against property from unsuspecting lenders, by forging the signatures of the true owners. Most of these attempts are perpetrated against unimproved land or vacant



property where the owner is not present. The fraudsters typically request that the transaction is handled remotely so the bad actor does not have to appear at the title company. The bad actor then either conspires with a notary, tricks a notary with a fake ID, or fraudulently reproduces the seal and signature of a notary, in order to produce a document that appears valid on its face. Many times, the real owner does not even discover that a fraudulent deed or lien has been filed until the real owner goes to sell or refinance their property, and the title search reveals the forged documents.

Forgery is a crime, and in Texas the courts have been clear that forged deeds are void.[1] So a deed or lien filed on your property through a forged deed or deed of trust does not change your rights or interests in the property.

In other words, property cannot actually be “stolen” from an owner through a forged deed. Further, Texas holds that the buyer under a forged deed cannot qualify as an “innocent purchaser,” which would afford them rights to the property.[2] (Thus, obtaining title insurance is more important than ever, as without a title policy, a buyer who has purchased under a forged deed could lose the property entirely and never recover any funds paid for it.)

While forged deeds are void and thus the property never legally transfers out of the true owner’s hands, this has not stopped the forgery from occurring, as the fraudsters are difficult to track down and prosecute, and they continue to profit from the money received from fraudulent transactions. Additionally, and unfortunately for the real owners, the fraudulent documents can cloud title, preventing a title company from insuring the property until a court rules on the forged deed, or the deed is otherwise legally removed from the chain of title.



[1] Richard E. Flint, Time to Repair the Chain: Void Deeds, Subsequent Purchasers, and the Texas Recording Statutes, 48 St. Mary’s L.J. 1, 19 (2016).

[2] See, e.g., *Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 209 (Tex. App.-Fort Worth 1992, writ denied) (denying a party innocent purchaser protection because, “by definition, [one] cannot be a bona fide purchaser when there is forgery in [one’s] chain of title”).

While a disputed claim of fraud may require more lengthy and expensive litigation (such as a quiet title action), in many cases, the owner may be able to use a streamlined process available under Texas law to legally remove the fraudulent documents. Under Texas Government Code § 51.903, the real owner, or his attorney, can file a motion supported by an affidavit, entitled Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim. Suggested forms for the motion, affidavit, and the judge's finding of fact and conclusion of law, are actually set out in the statute^[3], making it fairly easy for the true owners to file the necessary documents without having to hire an attorney, or significantly reducing the cost of an attorney's services.



The suggested form for the finding of fact and conclusion of law includes an optional finding that "[t]here is no valid lien or claim created by this documentation or instrument."^[4] The finding of fact and conclusion of law is to be "filed and indexed in the same class of records in which the subject documentation or instrument was originally filed,"^[5] and the county clerk may not charge for such a filing.^[6]

This section provides that the judge may make a ruling "solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence" and that the court's review "may be made ex parte without delay or notice of any kind."^[7] This allows for the judge to rule on the motion quickly, without additional hearings or the involvement or inclusion of the fraudster, whose real identity may not even be known.

While this particular avenue may not be appropriate for all fraudulent document cases (an attorney should advise on a case-by-case basis as to the appropriate course of action), its streamlined process can be incredibly helpful for many victims of property fraud.

[3] Tex. Gov't Code § 51.903(a), (b) and (g)

[4] Tex. Gov't Code § 51.903(g)

[5] Tex. Gov't Code § 51.903(e)

[6] Tex. Gov't Code § 51.903(f)

[7] Tex. Gov't Code § 51.903(c)