

House Bill No. 5662

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ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES -- FRAUD AND FALSE DEALING {LC1890/1} (Established crime of real estate title fraud and creates private cause of action.)

Rep. Brian Patrick Kennedy

In Favor

Title Theft and Unsolicited Real Estate Solicitations

Title theft occurs when a criminal impersonates a property owner and sells or takes out a second mortgage on the owner's property. In the worst-case scenario, the home goes into foreclosure and/or is deeded to a new purchaser. It is a complicated and expensive process to rectify, if it can be rectified at all. This proposed legislation is modeled after a law that was signed by Governor Kemp in Georgia to create greater safeguards. This law creates a process to validate a person's identity when he or she files a title deed and other real estate and personal property records.

The proposed law also addresses predatory and unsolicited real estate purchase offers that often target older adults. It requires that solicitations of this nature must state that the offer may not be the fair market value of the property. Specifically in the Georgia law, if the solicitation includes a monetary offer, the following text is required in capital letters: "THIS OFFER MAY OR MAY NOT BE THE FAIR MARKET VALUE OF THE PROPERTY." Further, if the solicitation includes a monetary offer that is less than the value of the previous year's assessed value for ad valorem taxation by the county tax assessor for the county in which the property is located, the following text is required in capital letters: "THIS OFFER IS LESS THAN THE ASSESSED VALUE FOR THIS PROPERTY."

The Georgia law also created a private right for those individuals who believe they were deceived. To help property owners stay apprised of any unauthorized changes to their deed, they can sign up to receive notifications of certain changes in filing status through the Filing Activity Notification System (FANS) at [Home Page - Filing Activity Notification System](#). Many local Municipal Clerks offer this service as well. This was considered for the Rhode Island proposal.

"Title theft is ... the perfect [real estate crime](#)," says Tom Cronkright, CEO of CertifID, a wire fraud prevention firm, and Sun Title, a residential and commercial title company in Grand Rapids, Michigan. Unlike other forms of identity theft that require access to victims' online accounts, Cronkright notes, "everything that the fraudster would need to [perpetrate title theft] is

publicly available.” It’s not a commonly reported crime, but can be a mess to untangle if you are targeted.

“Fraud and theft are, unfortunately, pretty common crimes. And what we’ve been seeing over the last couple of years is an uptick in seller impersonation fraud where an individual will ... essentially create a persona that they are the owner of a property,” says Deanne Rymarowicz, senior counsel at the National Association of Realtors. “They will dupe a real estate professional into listing the property and, in some instances, successfully sell the property to an unsuspecting buyer even though they’re not the actual, legitimate owner of the property.”

Impersonating property owners is easy with public records and personally identifiable information acquired from hackers. “All the scammer has to do is look up who the owner is,” Cronkright says. “They can go to tax records to see where the tax bill is being sent, and then they can create identity documents with information that’s purchased from paid sources or through [the dark web](#). Those documents — a passport or some sort of state-issued ID — typically have a money mule’s picture on them, but with information about the real property owner.”

Criminals can use those documents and a forged deed to hire a real estate agent and can eventually present those same documents at closing to complete a sale. As was the case in the Graceland incident, sometimes they’ll even impersonate a notary.

“They’ll find a commissioned notary in the state. They’ll create a stamp that looks legitimate. They’ll receive the documents from the title company by email or overnight package. They’ll sign and notarize. It goes back to the title company or closing attorney. The documents get recorded and reviewed. And then the scammer receives a wire transfer for their net proceeds,” Cronkright explains.

Because scammers are interested in money, not land, properties with no mortgages or high equity are particularly attractive targets, adds Frano, who says victims include real estate owners, buyers and lenders — particularly those without title insurance, which in many cases offers protection against home title fraud. “Without title insurance, a home buyer and their lender could lose the money used to purchase the property and an owner could get stuck with the expense, time and hassle to undo the fraud,” she notes.

Although most purchasers opt in to title insurance when they buy property, “not all title insurance policies cover fraud after you purchase your property,” Sarah Frano, vice president and real estate fraud risk expert at First American Title Insurance Company says. “This is especially true if you purchased your property prior to 1998, she explains, noting that most title insurance policies

issued after 1998 include enhanced coverage for forgery and fraud that occur postpurchase. “This enhanced coverage provides owners additional protection should a fraudster try to sell or put a mortgage on your property while you own it. If you purchased your home before 1998 or if your policy does not have the enhanced coverage, contact your title insurance underwriter to inquire if the enhanced coverage is available as an upgrade to your existing policy.”

Report home title theft

If you think you’ve been a victim of home title theft or another type of real estate fraud, contact your local law enforcement agency and your municipal clerk’s office, consult a real estate attorney and report it to the FBI’s Internet Crime Complaint Center at www.ic3.gov.