The Claims Corner: Trends in Vacant Land Fraud Claims

Description

Title insurance serves as a safeguard promising protection against potential property ownership disputes. However, even with this coverage in place, homeowners may still be compelled to file a title insurance claim. These claims, often triggered by issues relating to unreleased liens or deeds of trust, boundary disputes, or fraud, can be complex and daunting. In this article, we will talk about why we care about claims, how claims arise, and some common claims areas, specifically focusing on seller impersonation.

Without title insurance claims being filed, the demand for title insurance would be significantly reduced. Claims highlight the value of title insurance to the insured and the importance of conducting a thorough title examination.

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Successful title insurance claims arise from issues described as covered risks in the title insurance policy that are not included as an exception or exclusion in the policy. There also must be actual loss. Title insurance policies state that they insure against loss or damage, not theoretical, potential, or probable harm.

In Virginia, the trending source of claims losses are vacant land theft, especially in mail away transactions, and fraudulent seller claims.

Additionally, notary fraud that involved a combination of five elements has been on the rise:

1. No one meets the seller face to face
2. Unimproved, vacant land owned by Foreign Nationals or out of state parties;
3. Mail away closing with notarization at US Foreign Embassies from a country other than the sellerâ??s country or out of state;
4. Proceeds wired to a bank or person out of state or a foreign country; and/or;
5. All communications are via email.â?•[1]

In 2023, in Virginia, there are a variety of fraud risks. These include:

1. Seller impersonation,
2. Entity Fraud,
3. Fraudulent Payoffs,
4. Fraudulent Wiring Instructions for Sellerâ??s Proceeds, and
5. Fraudulent Wiring Instructions for Purchaserâ??s Funds[2]

This article will focus on Seller Impersonation fraud. Impersonation of the seller is old-fashioned fraud. The fraudster pretends to be the seller. He presents falsified identification that identify him (falsely) as the record owner. In all the cases between September 2022 and June 2023, the seller has been located outside Virginia. How do you protect yourself and the consumer and avoid a loss?

Red flags that suggest your â??sellerâ?• is actually a fraudster:

- No face-to-face/in person communication with the seller with anyone in Virginia
- All communication via emails
- For sale by owner
- Seller signing by POA
- Property priced below market value
- Property is vacant land
- Seller difficult to reach by phone
- Quick settlement/cash transaction
- Real estate agent has never met the seller
- Discrepancy between the address of the party trying to sell the property and the ownerâ??s address according to property tax records
- Proceeds are to be wired to a third state (e.g., property in Virginia; seller in Georgia; funds to be wired to Texas)

Tools to combat seller impersonation fraud:

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1. If you donâ??t personally know your seller and all communication is electronic, contact the seller using independent means of contact:
    - Use Google to locate a phone number. See if it matches any number provided to you by the person claiming to be the seller.
    - Mail an information letter to the seller at the address in the tax records explaining how delighted you are to be working with them and asking for confirmation they are selling. Let them know itâ??s part of your fraud prevention process and for their protection.
2. Have the settlement agent with whom you normally work get the title company to provide a signed document from the land records (if one is available) so signatures can be compared. Itâ??s not foolproof as signatures change, but itâ??s a possibility. Remember that certain electronic signature platforms such as Doc-u-sign are not platforms that verify identity or provide signatures for comparison purposes. Signatures may need to be scanned and emailed for comparison purposes.
3. Be especially careful when the land is unimproved and is priced for a quick, cash transaction. Much of the current fraud involves this situation.
4. Simple things that can be done to verify identity of the seller include:
    - Having a conversation with the seller about aspects of the property a seller might know that someone researching the real estate might not know. This works better with improved rather than unimproved property.
    - Double check the email and phone number with a verification program. Your settlement agent may be able to help if your Broker doesnâ??t have such a program available.
    - Compare the sales price to the value of the property, the tax assessment and current area sales prices. If the price is particularly low be suspicious. Legitimate reasons may exist for a low price, sometimes as simple as an elderly seller who just wants to get rid of the property as soon as possible and isnâ??t current on values.
5. When no one in the transaction knows the seller on a personal level use some type of credential analysis or knowledge-based authentication (KBA) process for verification.
    - This is not something you would necessarily do yourself, but you could let the seller know up front that at least one document will need to be signed and notarized remotely to have a video of the process and third-party verification of identity. That way, if you have a fraudulent seller, you have not invested time and money in the listing if they just walk away to find someone else to defraud.

- The settlement agent should require the seller to sign at least the Ownerâ??s affidavit with a Virginia licensed electronic notary. Most electronic notaries knowledge-based authentication (KBA) to prove identity. With this, they ask a series of questions to the signatory to be answered within a few seconds of being asked. The questions are things like â??What year did you graduate from high school?â?•, â??Did you ever live at 1609 Grove Avenue?â?•, â??What was your first automobile?â?• The information is pulled from credit reports. If the person canâ??t answer 4 of 5 questions correctly within a couple of minutes, then the notary should refuse to notarize the document. Not all electronic notaries are well trained, so itâ??s important for the settlement agent to know who is acting as notary. Itâ??s not unreasonable for settlement agents to use a Virginia licensed electronic notary known to them.
- Settlement agents may not require the deed be signed electronically since many lenders refuse to loan with an electronically notarized deed. However, when possible, they should have the deed signed that way. An electronic notary has a video of the signing, as well as the KBA and a photo ID.

6. If you can obtain a photo ID:
   - Request copies of more than one photo ID (e.g., driverâ??s license and passport). Pictures and signatures should not be identical. Pictures should be realistic and not â??perfect,â?• like a picture of a model pulled off the internet.
   - Reverse image sellerâ??s photo to confirm identity.
7. For sellers outside the U.S
   - whenever possible have a POA signed in the U.S. prior to traveling to another country.
   - consider having documents signed at the U.S. embassy or require an apostille.

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8. Have a telephone conversation with an absent seller and record it if possible. In the event of fraud this may help find the fraudster.

9. Confirm that the settlement agent and the sellerâ??s attorney or coordinator uses security requirements similar to those spelled out above to further verify the sellerâ??s identity.

In summary, the rise of seller impersonation in title insurance claims presents a challenging issue for real estate transactions. The complexities and potential financial losses stemming from fraudulent activities underscore the critical need for heightened vigilance and comprehensive preventative measures within the industry. By adopting proactive strategies, enhancing verification protocols, and fostering industry-wife awareness, we can work together to mitigate claims resulting from seller impersonation fraud.

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[1] See Appendix A (2022 Fraud Notices)

[1] See Appendices B â?? F. (Purchaserâ??s Funds / seller impersonation / wire diversion (last 3 emails) / entity fraud)

[2] See Appendices B â?? F. (Purchaserâ??s Funds / seller impersonation / wire diversion (last 3 emails) / entity fraud)

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