Addressing Seller Fraud in Real Estate Transactions Pursuant to House Bill 163

Description

Article by Jerry C. Booth, Jr.

Fraud has become increasingly prevalent in our society, and it affects many aspects of our lives. The title and real estate industries are no exception as we also regularly face scams and other fraudulent actions perpetrated by criminals. Seller fraud and impersonation has become increasingly common in our industry. Among other techniques, fraudsters use information available on the internet and digital tools to forge signatures and impersonate property owners. A technical advisory group, including real estate agents, mortgage lenders, mortgage insurers, land title agents and underwriters, settlement agents, notaries, lawyers, and clerks of court, was convened by Virginia Housing and Development Authority in response to 2025 Senate Bill 1270, and its companion House Bill 2396. On November 1, 2025, the group issued its Final Report to the Chairmen of the Virginia House Committee on General Laws and the Senate Committee on General Laws and Technology. This report can be found here. RD690 (Published 2025) â?? Deed Fraud Study Final Report Prepared in Response to Virginia Senate Bill 1270 and House Bill 2396 â?? 2025 2025 Regular Session of the Virginia General Assembly â?? November 1, 2025.

VLTA Examiner

In response, 2026 Virginia House Bill 163 was passed unanimously in the House and Senate. The bill was referred to the Governor, and she has until April 10, 2026, to sign it into law.

The bill institutes significant reforms in order to strengthen protections against seller fraud in the real estate industry, and calls upon professionals in our industry to take additional measures to help prevent fraud. The Bill amends and reenacts Â§Â§ 17.1-258.3:1, 47.1-2, 47.1-5, 47.1-5.1, 47.1-8, 47.1-11, 47.1-14, and 55.1-903 of the Code of Virginia, and adds Â§Â§ 47.1-5.2 and 47.1-8.1. The amendments are intended to improve identity verification in property transactions, increase accountability for notaries and settlement agents in real estate transactions, and establish a no cost electronic property alert system by the circuit court clerks.

The ultimate goal of the new legislation is to curb deed fraud and identity-based title theft, made easier due to widespread public access to online land records and other information readily available on the internet. The bill in Virginia, and other similar bills in many other states, have received overwhelming legislative support, underscoring the need for early detection tools and clearer standards for identity verification.

Specifically, the bill, as passed by both houses of our General Assembly, provides as follows:

1. **New Identityâ??Verification Duties for Settlement Agents**

   Settlement agents responsible for filing deeds, deeds of trust, and other land record documents must obtain satisfactory evidence of identity for any seller of real property prior to settlement.

   Â§ 55.1-903. Duty of settlement agent.

A. Prior to settlement, the settlement agent shall exercise ordinary care to reasonably ascertain the identity of a seller of real property. Methods of exercising such ordinary care may include (i) obtaining satisfactory evidence of identity as defined in Â§ 47.1-2; (ii) requiring multiple forms of photo identification; (iii) a written statement from the sellerâ??s attorney that he has reasonably ascertained the identity of the seller of the real property; (iv) reviewing land records for the subject property; (v) comparing signatures; (vi) performing a credit check; or (vii) asking detailed questions about the subject property. *(Emphasis added).*

B. The settlement agent shall cause recordation of the deed, the deed of trust, or the mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds within two business days of settlement. A settlement agent may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument except (i) funds received that are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds that the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real property, the settlement agent shall provide notification to the purchaser of the availability of ownerâ??s title insurance as required under Â§ 38.2-4616.

VLTA Examiner

C. A settlement agent who uses any of the methods to reasonably ascertain the identity of a seller of real property described in subsection A shall not be liable for any act or omission resulting from his reliance on such information when moving forward with a settlement and recordation of the deed, deed of trust, or mortgage or other documents required to be recorded pursuant to the settlement, provided that the (i) settlement agent did not have actual knowledge that the information provided was false or (ii) act or omission was not a result of the settlement agentâ??s gross negligence or willful misconduct.*(Emphasis added).*

2. Notary Training Requirements

HB 163 requires all new notary applicants, and existing notaries seeking recommission, to complete an instructional course developed or approved by the Secretary of the Commonwealth. The course must be taken within six (6) months prior to application, and includes a mandatory oneâ??hour module on real estate fraud and financial exploitation of elderly individuals, and covering current fraud trends and detection techniques. The Secretary must finalize the curriculum by January 1, 2027, and the training requirement becomes effective July 1, 2027.

3. Enhanced Notarial Recordkeeping Standards

Beginning July 1, 2026, notaries must maintain a log of all notarial acts, documenting the form of identification used to verify the identity of principals and any credible witnesses.

Â§ 47.1-14. Duty of care.

A. A notary shall exercise reasonable care in the performance of his duties generally. He shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial or electronic notarial act.

B. Unless *the identity of* such person is personally known by the notary, identity shall be ascertained upon presentation of satisfactory evidence of identity as defined in this title.

C. A notary *performing notarial acts or an electronic notary* performing electronic notarial acts shall keep, maintain, protect, and provide for lawful inspection *a record of notarial acts, or, in the case of an electronic notary,* an electronic record of notarial acts*,* that contains at least the following for each notarial act performed: (i) the date and time of day of the notarial act; (ii) the type of notarial act; (iii) the type, title, or a description of the document or proceeding; (iv) the printed name and address of each principal; (v) the evidence of identity of each principal in the form of either a statement that the person is personally known to the notary, a notation of the type of identification document, which may be a copy of the driverâ??s license or other photographic image of the individualâ??s face, or the printed name and address of each credible witness swearing or affirming to the personâ??s identity, and, for *any* credible witnesses who are not personally known to the notary or electronic notary, a description of the type of identification documents relied on by the notary *or electronic notary;* and (vi) the fee, if any, charged for the notarial act *or electronic notarial act.* If*, in the case of an electronic notary,* video and audio conference technology authorized under Â§ 47.1-2 is the basis for satisfactory evidence of identity and the principalâ??s identity has been ascertained upon presentation of such satisfactory evidence of identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The electronic notary shall take reasonable steps to (a) ensure the integrity, security, and authenticity of electronic notarizations, (b) maintain a backup for his electronic record of notarial acts, and (c) ensure protection of such backup records from unauthorized use.

VLTA Examiner

D. The record of any non electronic notarial act performed on or after July 1, 2026, shall be maintained for a period of at least five years from the date of the transaction. The electronic record of an electronic notarial act shall be maintained for a period of at least five years from the date of the transaction.

E. A notary performing electronic notarial acts shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

F. A notary performing electronic notarial acts shall keep his record, electronic signature, and physical and electronic seals secure under his exclusive control and shall not allow them to be used by any other notary or any other person.

G. A notary performing electronic notarial acts shall use the notaryâ??s electronic signature only for the purpose of performing electronic notarial acts.

H. A notary performing electronic notarial acts, immediately upon discovering that the notaryâ??s record, electronic signature, or physical or electronic seal has been lost, stolen, or may be otherwise used by a person other than the notary, shall (i) inform the appropriate law-enforcement agency in the case of theft or vandalism and (ii) notify the Secretary in writing and signed in the official name in which he was commissioned.

4. Mandatory Property Alert Notification Systems

Circuit court clerks who operate electronic landâ??record filing systems must establish a noâ??cost electronic property alert system. Property owners (or others) may enroll by name or tax parcel identification number, and the system must send alerts whenever a document containing the enrolled information is filed. These provisions take effect July 1, 2027.

5. Broker and Licensee Duties Per 18VAC135-20-280

A set of updated and revised regulations from DPOR will become effective on April 1, 2026. Included in the new Real Estate Regulations was a combining of 18VAC135-20-280 and 290, and with various amendments. The new regulatory section will be known as 18VAC135-20-280, Improper financial transactions and dealings. Subsection B was added as follows:

B. Actions constituting improper dealing include offering real property for sale or for lease without the knowledge and consent of the owner or the ownerâ??s authorized representative without taking reasonable steps to verify identity, or on any terms other than those authorized by the owner or the ownerâ??s authorized representative.

VLTA Examiner



Jerry C. Booth, Jr.
Jerry Booth has practiced in real estate and title insurance for over 30 years, and is currently Underwriting Counsel in Virginia and West Virginia for Fidelity National Title Insurance Company. A graduate of Wake Forest University and the University of Richmond School of Law, he was previously a title attorney, agency counsel and claims counsel for Lawyers Title, LandAmerica and Fidelity. Before joining Fidelity in 2016, he was engaged in the private practice of law where his practice focused on commercial real estate transactions and real estate and business related litigation.

Category

1. In the News
2. Settlements
3. Title Examination
4. Uncategorized

Tags

1. featured

Date Created

2026/03/31
Author
vltaexaminer

VLTA Examiner