

The myth of title theft

What providers of “protection” against it aren’t telling you

“Title theft” was a term unknown just a generation ago. Now advertisers bombard us daily with warnings about it. They say that thieves can “steal” our homes by forging our names on deeds, then resell the property or take out mortgage loans to drain its equity. They pocket the proceeds and “stick” us with any mortgage payments.

But can a thief really “steal” your house through forgery, and are you really obligated to pay off a thief’s mortgage loan?

Smart Business spoke with William Maffucci, a real-estate litigator with Semanoff Ormsby Greenberg & Torchia, LLC, to find out.

Can someone acquire title to a real property simply by forging the owner’s name on a deed?

No. A forged deed conveys nothing. And, having acquired nothing, the forger has nothing to resell to a third party or to ‘mortgage’ to a lender.

Although title theft isn’t real, a forged deed or mortgage can have a very real — often devastating — impact on the owner. Since the forger’s name will appear on the land records, the forger can sometimes deceive a third party into “buying” the property or a lender to take a “mortgage” of the nonexistent title.

The owner cannot simply ignore the forgery unless the defrauded buyer or lender accepts the owner’s account and disclaims any interest in the property. That rarely happens. Usually owners must file a lawsuit to clear title. Most owners need a lawyer to do that, and few lawyers are willing to handle such matters for free. The litigation can be

lengthy, involving expert testimony as to the validity of the signatures, and prohibitively expensive.

Although the owner has no legal obligation to repay the forger’s loan, the owner may ultimately feel constrained to do so as a practical matter. Some owners don’t learn of the forged mortgage until the lender moves to foreclose the mortgage, or even after the foreclosure process is complete and title has passed again. Bringing legal action at that late stage can be particularly expensive.

Why do the advertisements for “protection” against so-called title theft say that a forger who subsequently “mortgages” the property to a lender can “stick the owner with the payments”?

Either the advertisers don’t understand the law, or their statements are intentionally ambiguous. The advertisements speak of ‘putting a shield’ around your title, ‘monitoring’ it, and issuing ‘alerts.’ If you inquire further, here is what you are likely to learn: The provider will regularly check the land records to see whether your name has appeared on any deed or other instruments. The provider will alert you of any such instruments it finds. If you respond that an instrument was forged,



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the provider will prepare and file in the land records document to alert further buyers or lenders that the instrument was forged.

Owners can check the land records on their own, but there’s value to the convenience of having someone regularly check the land records for them. There’s also a value to having a ‘red flag’ affidavit prepared and recorded as to any forged deed that is discovered — but only if the recording is accomplished before the forger succeeds in finding another victim to ‘buy’ or take a ‘mortgage’ on the property.

Will a provider of “title theft” protection also pay for a lawyer to represent an owner in seeking to clear title after a forgery?

That’s the \$64 — or even \$64,000 — question. *If* the provider’s terms include its payment of the legal fees necessary to clear title of any forged instrument that it discovers, the service could prove to be extremely valuable. But that’s a huge ‘if.’

I’m not aware of any providers of ‘title theft’ protection who do cover their customers’ legal fees in litigation to clear title. And if such providers do exist, their service would almost certainly cost much more than the dime-a-day rates advertised widely. ●