

Counterfeit Credibility:

*The New Threat of
Notary Impersonation Fraud*

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NATIONAL
NOTARY
ASSOCIATION

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INTRODUCTION

Today, a new type of deed fraud is being perpetrated by criminals who are stealing property titles out from under rightful property owners. In what is known as “seller impersonation fraud” (SIF), bad actors assume the identities of legitimate property owners and list their properties for sale without the knowledge of the owners.¹

Since to pull off these heists it is necessary to acknowledge signing a property deed in the presence of a Notary Public, the fraudsters have devised strategies to work around the Notary. A particular strategy crooks use is to layer one criminal impersonation on top of the other by using the legitimate commission information of a Notary Public to forge the Notary’s seal and signature on the bogus property deed conveying title. This makes the Notary a victim along with the defrauded property owner.

This paper will discuss how criminals commit Notary impersonation fraud, the laws currently in place to address it, and several proactive measures that can be taken to protect Notaries from it.

SELLER IMPERSONATION FRAUD

In early 2023, federal law enforcement reported seeing an uptick in real estate scams involving vacant land and unencumbered properties.² Criminals identified vacant lots, vacation homes, rentals, and distressed properties that were clear of mortgages or other liens and posed as property owners in listing the targeted properties for sale. The criminal-as-owner offered the property for sale at below market value, strongly preferring cash transactions that would not invite the scrutiny of a mortgage lender or lien holder. The criminal or a co-conspirator then impersonated a Notary Public on a false deed conveying the property that was subsequently presented to a title company or closing attorney. Unbeknownst to what was transpiring, the title company or closing attorney transferred the closing proceeds to the criminal.³ Since then, the frequency of these scams has increased. No area of the country — north, south, east, or west, sunshine, snowbelt states, and everywhere in between — is immune.

Recently, the American Land Title Association conducted a survey of its members on seller impersonation fraud.⁴ In 2023, nearly 30% experienced at least one incident of SIF, and in April 2024, two in ten experienced attempts. However, for our purposes in this

¹ See “Seller Impersonation Fraud in Real Estate.” American Land Title Association. <https://www.alta.org/file/ALTA-Seller-Impersonation-Handout>. Last viewed on October 11, 2024.

² Business Wire. January 24, 2023. CertifID Partners with Federal Law Enforcement to Issue a Security Advisory on Vacant Property Fraud. <https://www.businesswire.com/news/home/20230124005253/en/CertifID-Partners-with-Federal-Law-Enforcement-to-Issue-a-Security-Advisory-on-Vacant-Property-Fraud>.

³ See [Real Estate Scams | Vacant Properties, Version 1.1](#). United States Secret Service Cybercrime Investigations. Hosted by CertifID Inc. <https://www.certifid.com>. Last viewed on October 10, 2024.

paper, the key finding of critical concern to Notaries was that 31% of respondents said legitimate Notary credentials were somewhat commonly, commonly, or very commonly used in the frauds they encountered. It was the second highest notarization issue identified in the report.⁵

Criminals use legitimate Notary commission information to make a forged deed look as credible and compelling on its face as any genuine deed. In addition, using the real commission information of a currently appointed Notary Public would likely withstand any check to verify the validity of the Notary's commission against a database of Notary Public commissions established by a state.⁶

How do criminals obtain a real Notary's commission credentials to use in committing Notary impersonation fraud?

Public land records. Historically, bad actors seeking to commit deed fraud would visit a county recorder or register of deeds office to identify properties from the public record for their hit list. They also would find any recorded instrument with a legitimate Notary's seal and use that information to produce an unauthorized seal containing the stolen Notary's genuine commission information.

Today, many of the nearly 3,600 land records offices across the country have placed their property records online. Criminals now can more easily scour properties and Notary credentials without ever setting foot in a recorder's office.

Notary Public databases. But there is a newer and easier way for criminals to obtain Notary commission information: extract it from an online Notary Public database. Most state Notary commissioning officials have created online databases of Notary commissions.⁷ These databases can reveal any Notary's commission information with a simple search.

But it is not just state Notary commissioning offices that have these databases. Notary associations, including the National Notary Association, and other businesses operate their own databases as well. These databases, which the public can use to find a geographically proximate Notary when they need one, allow Notaries in business for themselves to post a listing of their services. Unfortunately, thieves can also use them to extract the commission information of a Notary.⁸

⁴ See "ALTA Critical Issues Study on Seller Impersonation Fraud." American Land Title Association, 2024. <https://www.alta.org/file/Seller-Impersonation-Fraud-Study-Report.pdf>. Last viewed on October 11, 2024.

⁵ First was the use of fraudulent Notary credentials (43%), second was the use of legitimate Notary credentials without the Notary's permission (31%), third was a fraudster duping a Notary by presenting a fake ID (26%), fourth was a Notary who was complicit in the crime (22%), and fifth was a fraudster who used remote online notarization and passed knowledge-based authentication and credential analysis (7%). Respondents reported these issues were somewhat common, common, or very common.

⁶ See "Notary Public databases" immediately below.

⁷ As of the date of publication, 44 U.S. states and jurisdictions have a database or a publicly available list of Notary Public commissions. Nearly half of these states have enacted the Revised Uniform Law on Notarial Acts (RULONA) provision requiring the commissioning officer or agency to stand up a database of Notaries Public "through which a person may verify the authority of a notary public to perform notarial acts" (RULONA § 24(f)).

⁸ An NNA employee recently had his Notary commission information scraped from a private database that was then used by a fraudster to submit a falsely notarized document to a community college in Redding, California.

Currently few, if any, database operators have implemented means to know who is searching the records. As a result, maintainers of these databases may not ever know criminals are using their databases to commit Notary impersonation fraud that puts Notaries at risk of financial loss.

THE NOTARY IS A VICTIM

Seller impersonation fraud thus can involve two impersonations: the first involving the rightful owner whose property is stolen and the second, the unknowing Notary Public whose legitimate commission information is used to forge the deed transferring ownership.

Alarmingly, the Notary Public becomes a victim in the crime with real financial implications for the Notary. The National Notary Association has seen claims in its Notary insurance program where a defrauded property owner sues an insured Notary whose commission information or seal was co-opted to create a fake deed, seeking recovery of damages from their stolen property or estate. It will typically cost an insurer at least four figures at negotiated rates to provide an attorney to present an affidavit from the Notary to the property owner's counsel asserting the Notary's innocence and seeking to dismiss the Notary from the suit. If the plaintiff refuses, the defense costs can quickly escalate because it may be necessary to file additional motions with the court, attend depositions, or negotiate a settlement to resolve the claims against the Notary, even if they are not legitimate. Notaries who have purchased a Notary errors and omissions insurance policy likely will not incur these defense costs themselves, as the policy generally covers, up to the policy limit, the cost of defense and settlement of claims asserted for negligent notarial acts. But the Notary who does not have an errors and omissions insurance policy — and most do not — may have no choice but to pay out of their own pocket to retain an attorney at prevailing rates to mount a defense at the cost of potentially tens of thousands of dollars.

CRIMINAL PENALTIES AND LEGAL GUARDRAILS

Given the real risk of property owners and Notaries suffering financial harm from Notary impersonation crimes, states have created many laws to address it.

First, states have criminalized impersonating a Notary⁹ and unlawfully possessing or using a Notary seal.¹⁰ States also have included Notaries Public within laws criminalizing

⁹ See, e.g., Cal. Gov't Code § 82271; Colo. Rev. Stat. Ann. § 24-21-532; Fla. Stat. Ann. § 117.05(7); 5 ILCS § 312/7-106; Mo. Rev. Stat. Ann. § 578.700.4; N.C. Gen. Stat. § 10B-60(e); Pa. Cons. Stat. Ann. tit. 18, § 4913(a); Va. Code Ann. § 471-29; W.Va. Code § 39-4-33(c).

¹⁰ See Fla. Stat. Ann. § 117.05(3)(d); Pa. Cons. Stat. Ann. tit. 57, § 323(f)(3).

the impersonation of public officials.¹¹ In at least one state, counterfeiting a seal with intent to defraud constitutes forgery.¹²

Second, states have enacted various protections around the issuance of official Notary seals. California and Missouri — two states where the proliferation of unauthorized Notary seals has been widespread — have enacted laws regulating vendors who manufacture Notary Public seals¹³ while a few other states require a Notary to present a copy of the Notary's commission certificate or other proof of commissioning to a seal vendor before a seal can be made.¹⁴ However, most states do not have any such laws and, remarkably, two states even require an applicant for a Notary commission to purchase a seal before being appointed.¹⁵

Third, state laws have been created requiring Notaries to protect their official seals from unauthorized use,¹⁶ report seals that are lost or stolen,¹⁷ and turn seals in to the commissioning official or destroy them when they are no longer a Notary.¹⁸

Many of these statutes pertain specifically to the protection of physical Notary seals which may not directly address the frauds today's criminals are committing, and the statutes punishing impersonation are only effective if the criminal is caught and ordered to make restitution to the Notary.

PROACTIVE MEASURES

Therefore, forward-looking proactive solutions that can protect Notaries from impersonation frauds and ultimately, make an aggrieved Notary whole, are needed. We will discuss several such solutions.

Notary notification service. Some county recorders have established a system to alert homeowners whenever a deed or encumbrance is filed on their properties. This allows the property owner to address any fraud that may have been committed against their property at the earliest opportunity.

¹¹ See Ala. Code § 13A-10-132; D.C. Code Ann. § 22-1404; Mass. Gen. Laws Ann. ch. 268, § 33; S.C. Code Ann. § 16-17-735(C).

¹² See Cal. Pen. Code § 470(b).

¹³ See Cal. Gov't Code §§ 8207.2-8207.4; Mo. Rev. Stat. Ann. § 486.735.

¹⁴ See Ariz. Rev. Stat. Ann. § 41-267.B; Ga. Code Ann. § 45-17-6(b); Ill. Admin. Code § 176.510 a); Nev. Rev. Stat. Ann. § 240.045.3; N.C. Gen. Stat. § 10B-36(e); N.D. Cent. Code § 44-06.1-16; Or. Admin. Code § 160-100-0125(2); Utah Code Ann. § 46-1-17(1).

¹⁵ Applicants in South Dakota and Wisconsin must affix an impression of the seal on the commission application prior to submission.

¹⁶ See, e.g., Alaska Stat. § 44.50.064(a); Ariz. Rev. Stat. Ann. § 41-267.A; Ark. Code Ann. § 21-14-107(d); Cal. Gov't Code § 8207; D.C. Code Ann. § 1-1231.17(a); Fla. Stat. Ann. § 117.05(3)(b); Idaho Code § 51-118(3); Ill. Admin. Code § 176.500 g); Kan. Stat. Ann. § 53-5a19(a); Neb. Admin. Code tit. 433, § 6.002.02(D); N.M. Stat. Ann. § 14-14A-17.A; Okla. Admin. Code 655:25-5-2(a); Utah Code Ann. § 46-1-16(2)(a).

¹⁷ See, e.g., Fla. Stat. Ann. § 117.05(3)(c); Ind. Code Ann. § 33-42-10-3(e); Md. Code Ann. (St. Gov't) § 18-218(b); Miss. Code Ann. § 25-34-35(2); N.J. Stat. Ann. § 52:7-10.6.c; Or. Rev. Stat. § 194.295(4); Wash. Rev. Code Ann. § 42.45.160(2); Wis. Stat. Ann. § 140.18(2).

¹⁸ See, e.g., Ariz. Rev. Stat. Ann. § 41-267.A; Cal. Gov't Code § 8207; Colo. Rev. Stat. Ann. § 24-21-518(1); Del. Code Ann. tit 29, § 4331(b); Haw. Admin. R. § 5-11-17(a)(2); Ky. Rev. Stat. Ann. § 423.375(2); Mont. Code Ann. § 1-5-617(2)(b); N.C. Gen. Stat. § 10B-55; Wyo. Stat. Ann. § 32-3-117(a).

Public land records officials could establish a similar service to alert Notaries when their commission information is used on a deed, mortgage, power of attorney, or other instrument of value that is recorded with their offices. This will allow Notaries to immediately respond to a suspicious filing. The Department of Records of the City of Philadelphia, Pennsylvania notifies Notaries who have enrolled in their deed fraud alert system when their signature and seal are used on a recorded document.¹⁹

Online property records. Perhaps it is time to rethink whether it is good public policy to place real property records online. Not everyone thinks it is. For example, California is one state that does not allow online access to land records.²⁰ Anyone — including property owners of record — must physically visit a county clerk/recorder’s office in person to obtain copies of property records.

At the very least, land records offices offering online access to property records should require persons accessing the records to register so they can know who is viewing them and put measures in place to prevent bad actors from indiscriminately downloading large amounts of data to commit seller and Notary impersonation fraud.²¹

Limited commission information. Private database operators may require Notaries who create a listing in their databases to provide their commission information to prove they are a Notary. They may even require or permit Notaries to upload a copy of their commission certificate. These steps are intended to establish the credibility of the database for the protection of the public. Even so, private database operators must protect the information they collect. The best way to ensure that a Notary’s commission information cannot be used to commit Notary impersonation fraud is to collect as little information as necessary and not disclose it if it is collected.

Limited search results. The purpose for which databases hosted by state Notary Public commissioning officials exist is to allow the public to verify the authority of a Notary to perform notarial acts.²² As public officials, Notary commissioning officials must be transparent in providing these records.²³ But transparency may not necessarily require disclosure of a Notary’s full commission information. When implemented using more granular search parameters discussed below, the database can return a simple affirmative or negative response to a query seeking to validate the commission without divulging the Notary’s commission information.

¹⁹ See <https://www.phila.gov/services/property-lots-housing/get-help-with-deed-or-mortgage-fraud/sign-up-for-deed-fraud-protection>. Last viewed on October 11, 2024.

²⁰ See “Recorded Documents in California.” County Recorders Association of California, March 2024. <https://www.craonline.org/assets/CRAC%20Access%20vs%20Privacy-2024.pdf> at 3. Last viewed online October 11, 2024.

²¹ See “What Is Deed Fraud?” American Association of Retired Persons, American Land Title Association, Mortgage Bankers Association, National Association of Realtors, National Notary Association, and Property Records Industry Association, 2024. <https://www.alta.org/file/What-is-Deed-Fraud.pdf>. Last viewed October 11, 2024.

²² See note 7.

²³ In some states, certain information of a Notary is a matter of public record. See, e.g., Ga. Code Ann. § 45-17-2.2; Ind. Admin. Code tit. 75, § 7-2-1(d); Md. Stat. Ann. (Gen. Prov.) § 4-332; Nev. Rev. Stat. Ann. § 240.007; Tex. Gov’t Code § 406.012. In the light of seller and Notary impersonation frauds, if a state law requires certain commission information of a Notary to be public information, a legislature should carefully reconsider whether disclosure of this information constitutes a compelling public purpose.

Granular search parameters. Persons seeking to verify the validity of a Notary’s commission from a public database should be required to enter more information about the Notary to return a result than just the Notary’s name.²⁴ For example, a person who has had a document notarized and seeks to validate the Notary’s commission will have all the relevant data related to the Notary’s commission from the Notary’s seal affixed to the document.²⁵ The person can enter into the database search engine the Notary’s full commission name, identification number (if it appears on the Notary’s seal), and expiration date. Upon doing so, the database can then return the affirmative or negative response suggested above. This will satisfy the need of persons who use the database for its intended purpose²⁶ while keeping criminals who conduct “fishing expeditions” from mining data to perpetrate Notary impersonation fraud.

Notification and consent. All Notary Public database operators — public and private — should clearly and conspicuously disclose to Notaries the commission information they will be collecting and how they will be using it. They also should obtain the listing Notary’s acknowledgment and approval before posting the information.

The preceding paragraphs urge recording officials and database operators to take steps to protect Notaries from impersonation crimes. The following protections are measures Notaries Public can take to protect themselves.

Careful database use. Notaries must be as diligent in protecting their commission information as they are their personally identifiable, financial, and medical information. Notaries who choose to create a listing in a private database should select operators that have earned relevant industry cybersecurity certifications²⁷ to prove they take protecting consumer information seriously.

Recordkeeping. Notaries should practice the diligent habit of creating a complete, accurate, and legible record of every notarial act they perform in a journal of notarial acts. A journal record can be a valuable tool in litigation actions to show a Notary acted appropriately. Attorneys representing Notaries have successfully used the journal in this way to convince plaintiffs’ counsel to dismiss Notaries from the lawsuit. Conversely, when Notaries have not kept records, it is often not possible to secure dismissal without a settlement payment. In litigation involving Notary impersonation fraud, the presence of detailed journal records of the notarial acts the Notary performed in the past, coupled with the absence of a journal entry for the notarial act in question, can be used to prove the Notary did not perform the notarial act.

²⁴The National Notary Association has discovered that simply entering a common last name into many state Notary databases will return the full commission information of Notaries with that last name.

²⁵In the few states that do not require Notaries to authenticate notarial acts with an official seal, Notaries are generally required to print, type, or stamp this information on the notarized document near their signature.

²⁶Document signers who want to confirm the validity of a Notary’s commission before the Notary renders notarial services could ask the Notary to provide the more specific information needed to access the database over the phone or from the signing table.

²⁷The American Institute of CPAs® Service Organization Control version 2 (SOC 2) standards and the Payment Card Industry Data Security Standard 3.0 (PCI: DSS) established by the PCI Security Standards Council are two such standards.

Notary errors and omissions insurance. Criminals bent on committing Notary impersonation fraud are no respecters of persons. They can target even the best Notaries who have taken reasonable precautions to protect their commission information from being stolen. Perhaps the best — and possibly the only — way Notaries can protect themselves from the financial loss resulting from Notary impersonation fraud is by carrying an optional Notary errors and omissions insurance policy. The insurer is required to defend insured Notaries against allegations of negligent notarial acts that were performed during the policy period, including those arising from Notary impersonation fraud, like the unauthorized use of a Notary’s seal on a bogus property deed. Without a policy, Notaries could be required to bear the entire cost of defense themselves.²⁸

CONCLUSION

The criminal element is targeting Notaries Public in rising incidents of real property seller impersonation fraud that rob rightful property owners of the title to their properties. Not content to just impersonate legitimate property owners, illicit actors will also impersonate Notaries with impunity to commit their thefts. Existing statutory penalties punishing criminal impersonation and protections for Notary seals by themselves are insufficient to address Notary impersonation fraud. Land records officials and Notary database operators must proactively implement additional preventative measures to protect Notaries. Ultimately, Notaries too must take steps to protect themselves lest they become victims of the financial fallout associated with these vexing frauds.

²⁸A policy with a coverage limit of \$25,000 for the length of the Notary’s full commission is inexpensive. A policy typically costs less than \$50 per year of the Notary’s term. Premiums vary by state, policy amount, and underwriting company so consult your insurer for an exact quote.

ABOUT THE NATIONAL NOTARY ASSOCIATION

Established in 1957, the National Notary Association (NNA) is the leading professional authority on the American Notary office and is dedicated to educating, serving and advocating for the nation's 4.4 million Notaries. The NNA published the *Model Notary Act* and the *Model Electronic Notarization Act* to help lawmakers enact effective legislation, and created *The Notary Public Code of Professional Responsibility*, a standard for best practices and professional conduct. To learn more, visit NationalNotary.org.

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