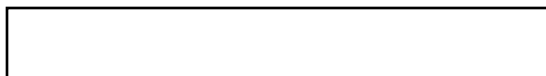


**REPORT & ANALYSIS**  
**The Growing  
Real Estate Fraud  
Problem in Florida**

**How Requiring a Thumbprint  
in a Notary Recordbook  
Can Significantly Diminish  
Real Property Scams  
in the State**

March, 2003



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# ABSTRACT

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**Identity thieves  
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years.”**

*Bob Farrell,  
Sergeant, Fort  
Lauderdale Police  
Department*

The tragic events of September 11, 2001, have revealed a worsening national problem: clever impostors may execute illegal schemes with little fear of detection.

Whether their intent be mayhem or fraud, the identity thieves who circulate among us know how to exploit the current system with an often devastating impact on our personal fortunes, if not our very lives.

Homeowners are among the most vulnerable to exploitation by identity thieves. Using a phony real property deed, an impostor may pose as the property's actual title holder and then sell or borrow against the property. At best, the true owner will have to pay thousands of dollars in legal fees to clear the title. At worst, the owner will lose the home.

Because every real property deed must be notarized before it can be recorded in the public record, real estate con artists have techniques for “neutralizing” the Notary as a fraud-deterrent agent:

- They may present virtually undetectable false IDs to the Notary.
- They may select a less than conscientious or observant Notary.
- They may steal, “borrow” or forge the Notary's seal.

However, none of these, or any other conceivable schemes, will work — or work for very long — if the Notary takes a simple precaution: require every document signer to affix a thumbprint in the Notary's journal of notarial acts.

If the impostor is not scared off by the very request for a thumbprint, the print will provide prosecutors with valuable evidence that a fraud was attempted and that a particular individual attempted it. It will also provide incontestable evidence that the true owner of the property never appeared before the Notary nor signed the forged document. The matter may then be quickly settled without further clogging our already overburdened court system with more civil and criminal lawsuits.

The purpose of this report is to propose a solution to the growing problem of real estate fraud in Florida: requiring each Florida Notary Public to keep a minimal chronological record of their official acts and requiring each document signer to leave a thumbprint in that record. ■

# THE SITUATION IN FLORIDA

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**"The scheme can yield thousands of dollars and bears little risk unless the forger is caught on videotape at the county records office. And even then, it isn't likely the forger will be discovered because the tape is erased every 30 days."**

Kevin Allen,  
Detective, Fort  
Lauderdale Police  
Department

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**The victims may be uneducated and barely literate. They are often elderly widows with little practical business experience, or they may be recent immigrants.**

According to a recent Federal Trade Commission report, Florida suffered the nation's fourth highest number of identity theft victims in 2002, with nearly 11,000 documented incidents. Yet while criminal impostors may start by stealing identity, many end up stealing valuable personal assets — often even the equity in a home.

Earlier this year, for example, the *South Florida Sun Sentinel* reported at least a dozen forgery incidents in the course of two months wherein fake documents were used to fraudulently claim ownership of property in Broward County.

Fort Lauderdale Police Sergeant Bob Farrell, head of his department's economic fraud team, described the aftermath of these and other similar frauds: "Eventually most people get it straightened out, but not before they find they have a second mortgage on their property, then have to hire a lawyer and face a nightmare of paperwork. If they want to sell the property, they find their title is held up. It will be resolved in the end and the bank will take the loss, but that could take years."

Fort Lauderdale Police Detective Kevin Allen explained that these schemes can generally be pulled off with impunity: "The scheme can yield thousands of dollars and bears little risk unless the forger is caught on videotape at the county records office. And even then, it isn't likely the forger will be discovered because the tape is erased every 30 days."

Florida has more than 350,000 commissioned Notaries statewide who serve as impartial witnesses responsible for authenticating the most important personal transaction executed by the typical American consumer: the purchase and sale of real property. However, in boom times and bad, these transactions are a common target for scam artists.

Especially vulnerable to real estate scams are elderly and low-income families, and those with poor English-language skills.

But there is a remarkably simple solution to help Notaries deter such frauds: the requirement that all Notaries keep a record of their official acts in a bound book and that each document signer affix a thumbprint in that record.

While a county recorder's videotape may be erased every 30 days, the thumbprints in a Notary's recordbook are never erased!

In a recent column of the National Notary Association's *Florida Notary Bulletin*, State Representative Will S. Kendrick remarked: "Over the past 10 years, our Notary laws have worked very well to protect those who do business here; but more can and should be done to provide a written record of notarial acts...a record that can be utilized in

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Notaries  
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a legal proceeding, if necessary, to provide a complete history of any particular transaction.”

A pilot program in Los Angeles County has had a tremendous effect on reducing real estate fraud in Southern California. It has required that signers of deeds to leave a thumbprint in a Notary’s journal.

Since that thumbprint requirement went into effect, law enforcement and consumer affairs investigators reported that their forgery caseloads have significantly diminished — and, in some cases, disappeared altogether.

Los Angeles County Supervisor Michael D. Antonovich stated, “This effort has been effective in preventing crimes involving the loss of real property titles, and in enabling quick resolution of disputes over the authenticity of signatures on property deeds. This program has been praised by law enforcement and prosecutors for both preventing real estate fraud and simplifying the prosecution of forgers.”

Indeed, the program was so effective in curbing real estate fraud that it was implemented statewide by the California legislature, effective January 1, 1996.

The National Notary Association urges Florida lawmakers to consider a similar journal and thumbprint requirement for its Notaries to protect consumers and turn the tide on forgers and scam artists in the state. ■

# BACKGROUND

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For generations, home ownership has been a treasured part of the American dream. Owning a home means security — a roof over one's head and a personal asset in which to build equity. But increasingly, home ownership also means vulnerability. Homeowners are frequent targets for unscrupulous impostors.

## Real Estate Fraud

While most homeowners never fear they will be swindled by a scam artist, the reality is that real estate fraud is all too common. And this is especially true for the elderly and low-income families in poor and working-class neighborhoods throughout Florida — particularly homeowners with poor facility in English.

Elderly people are targeted because they likely purchased their homes long ago and now have substantial equity.

Through a myriad of schemes and scams limited only by the ingenuity of the criminal mind, real estate is lost or its title clouded, costing individual property owners much personal agony and thousands or tens of thousands of dollars to clear their titles, and lenders or insurers hundreds of thousands of dollars to replace stolen equity.

There is no typical scenario, and the diversity of schemes makes the problem more difficult.

## Forgeries and Scams

In general, most real estate fraud falls into two categories: forgeries, where an impostor forges the rightful property owner's signature on documents transferring title; and scams, where the naïve, trusting or ignorant are tricked into signing away their property.

An example of forgery would be where a con artist poses as the homeowner and takes a loan out on the property, forging the property owner's signature on loan documents. The loan is never repaid, and the house is foreclosed, then sold by the lender, who is often challenged in court by the distressed homeowner. Or the con artist may call a real estate broker, list the property for sale, sign over a bogus deed to an unsuspecting buyer and walk away with the proceeds of the sale. Sometimes the actual homeowner is elderly and hospitalized, allowing the impostor to show the property to prospective buyers.

Scams frequently begin with a homeowner encountering financial problems and failing to make mortgage payments. With foreclosure a threat, the con artist steps in and offers to help save the home. But when

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**"A thumbprint is absolutely necessary to prosecute anymore. There has to be a thumbprint or photo ID — no other evidence is really helpful. A thumbprint is only common sense and probably the best deterrent there is."**

*Jim O'Nolan,  
Detective, Forgery  
Unit, Tampa Police  
Department*

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**"A journal would indicate the type of ID produced and we could follow up to see if it was false — same with the thumbprint. Both journal and thumbprint would help identify the perpetrators and the crimes they commit."**

*Gerry Champagne,  
Assistant State  
Attorney, First Judicial  
Circuit*

the homeowner signs what are represented as "loan documents," a deed is slipped in, and the homeowner unwittingly signs away the property. Or the homeowner is convinced that, in order to secure a loan, title of the property must be "temporarily" signed over. In fact, the con artist has no intention of ever returning it.

### **Notarization Is Not Immune to Fraud**

To guard against real estate fraud, county recorders and lenders require deeds and loan documents to bear the certification of a Notary Public verifying the identity of the signing property owner.

In today's mobile society, where business transactions between strangers are common, we rely heavily on the Notary Public to verify that the signers of important documents are who they claim to be.

This act of identification provides assurance that a signer is not an impostor trying to cheat an innocent victim out of valuable property through a phony document.

However, positive identification of a signer by a Notary is no easy task. It is often a very difficult responsibility, and the Notary is not immune to forgery and scams.

Typically, the impostor presents phony identification to the Notary and again forges the property owner's signature in the Notary's journal. Or the con artist tricks or bullies a Notary into notarizing a document without the required personal appearance of the document signer. Or an unscrupulous Notary may even be part of the scam.

Florida Notaries need stronger laws to give them the tools to turn the tables on criminal impostors and help to deter, detect, and prosecute real estate fraud. ■

# THE VALUE OF A JOURNAL AND THUMBPRINT

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**"A thumbprint  
would be  
helpful because  
you can forge a  
signature but  
you can't forge  
a fingerprint.  
It's almost  
foolproof."**

*Mark Bowen,  
Assistant Chief,  
Jacksonville Police  
Department*

Keeping records is a business-like practice that every prudent and conscientious public officer, Notaries included, should follow. By recording critical facts about each notarization, the Notary creates an official public record that safeguards citizens' rights to valuable property and to due process under the law. Properly maintained, the Notary's journal provides and protects invaluable physical evidence.

When state law allows Notaries to require each document signer to affix a thumbprint in the journal of notarial acts, the state's strongest weapon against document fraud is unsheathed.

The Notary journal thumbprint requirement is the fraud-deterrent weapon most feared both by "professional" real estate scam artists and by "amateur" would-be forgers pressured by an imminent divorce or business failure into committing a crime.

A thumbprint in the Notary's official journal prevents fraud in five ways:

## **Deters Criminal Imposters**

No forger would choose to leave behind evidence that a crime was attempted. But that's exactly what a thumbprint is — evidence — and it's the strongest kind of evidence.

Not only can a Notary journal thumbprint link a forged signature to a suspect in police custody, it can even link the forgery to a person who was in custody years ago. This is possible through the computerized fingerprint ID devices that are today revolutionizing law enforcement.

In a matter of a few minutes, an Automated Fingerprint Identification System can allow a police officer to match a print from a Notary's journal against millions of other prints of persons arrested for crimes. Even a decade ago, this would have taken thousands of detective hours.

The criminal impostors who approach Notaries with forged documents are well aware how a thumbprint can be used against them. In all likelihood, they have been arrested many times before and their prints are already on file. Even if not, they know that a Notary journal thumbprint can be the critical evidence that convicts them for the serious crime of forgery.

What will the typical career forger do when asked by a Notary to affix a thumbprint in a journal? He or she will refuse, leave and very likely move to a state where Notaries don't ask for thumbprints.



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**"If someone comes in with a lot of evidence, it can all be fake, but a fingerprint isn't. A thumbprint gives us evidence that is irrefutable. We love thumbprints!"**

*Ed Griffith,  
Spokesperson,  
Miami/Dade State  
Attorney's Office*

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**In the current epidemic of identity theft, Notary journals are a fraud-deterrent measure of proven effectiveness that can have an immediate positive impact on the growing real property fraud problem in the state of Florida.**

## **Deters Signers with Second Thoughts from Claiming Fraud**

It is not unusual for an individual to change his or her mind after having signed an important document. These second thoughts may sometimes occur years after the document was signed and notarized.

An uncle, for example, may have gifted a piece of property to his favorite nephew and then, after a family spat, decided that the youth didn't deserve the property after all. The uncle may claim that his notarized signature on the deed is a forgery and that he never appeared before the Notary.

Usually the individuals making such false allegations of forgery are not professional criminals. They're ordinary people under extreme pressure — whether it be pressure from a crumbling marriage, a family vendetta or a failing business.

The Notary journal thumbprint will quickly torpedo the launching of any false claim that a properly executed notarization was false. The journal print prevents groundless lawsuits.

## **Alerts Signers**

Around the nation, a new breed of foreclosure shark is tricking elderly and unsophisticated homeowners into signing away their hard-earned property. These fast-talking con artists may promise home repairs or the restructuring of an onerous mortgage, but what they're really after is the homeowner's signature on a deed or a loan document with impossibly difficult repayment terms that trigger a foreclosure.

The victims may be uneducated and barely literate. They are often elderly widows with little practical business experience, or they may be recent immigrants. The crucial documents, which normally have to be notarized, are often hidden by the sharks in the middle of a stack of less important papers.

However, when a Notary asks a signer for a journal thumbprint, it immediately alerts them that something important is being executed. It naturally prompts them to look over the document more closely, or to have a personal friend or adviser review it.

Journal thumbprints complicate the lives of foreclosure sharks.

## **Helps Prosecutors**

Beyond its front-line deterrent effect against impostors and signers with second thoughts, and its proven ability to get a signer's attention, a Notary journal thumbprint provides critical evidence that a public prosecutor can use to convict a criminal forger.

Prosecutors are universally in favor of journal thumbprint requirements. Over the years, thousands of criminals have been convicted and imprisoned through the matching of fingerprints. Fingerprints are

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**"We  
wholeheartedly  
endorse the  
Notary  
recordbook  
fingerprint  
requirement...It  
will reduce  
forgeries and  
thereby reduce  
claims made  
against the  
Notary's  
bond."**

*John L. Molinari,  
Branch Manager,  
Old Republic Surety*

irrefutable proof that an individual was present at a particular place and touched a particular object — a murder weapon, the doorknob to a burglarized room, or a Notary's journal.

### **Lessens the Burden on Overcrowded Courts**

In deterring forgers and enabling quick detection of fraudulent transactions, a Notary journal thumbprint reduces the caseload and lessens pressure on our court system, particularly our civil courts, in which real estate disputes are typically argued. ■

# POLICE, DISTRICT ATTORNEYS STRONGLY FAVOR JOURNALS

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**"I can't remember getting (cases) with forged, notarized signatures... since the (California) legislation went into effect."**

*Paul Harvey,  
Detective,  
Bunco/Fraud Detail,  
Inglewood (Calif.)  
Police Department*

By keeping a definitive record of a business transaction — in particular, asking a signer to leave a thumbprint, the Notary will deter many impostors and would-be criminals who naturally do not want to leave behind proof positive of an attempted forgery.

And when document fraud does occur, the journal thumbprint will enable quick resolution of both criminal charges and civil disputes. It is difficult to claim that a homeowner's forged signature on a deed is genuine when the owner's thumbprint does not appear in the Notary's journal.

Both the police who investigate document frauds and the district attorneys who prosecute these crimes strongly endorse the practice of keeping journals of notarial acts and of requiring each document signer to leave behind a thumbprint in the journal.

"A thumbprint is absolutely necessary to prosecute anymore," said Detective Jim O'Nolan of the Tampa Police Department's Forgery Unit. "There has to be a thumbprint or photo ID — no other evidence is really helpful. A thumbprint is only common sense and probably the best deterrent there is."

"Both a journal and a thumbprint would be helpful," said Assistant State Attorney Gerry Champagne. "A journal would indicate the type of identification produced and we could follow up to see if it was false — same with the thumbprint. Both journal and thumbprint would help identify the perpetrators and the crimes they commit."

In the Florida law enforcement community, there is unanimity on the prosecutorial value of a Notary journal containing the thumbprints of document signers. The journal print requirement will both prevent countless frauds and allow forgers to be readily prosecuted. ■

# THE IMPORTANCE OF A JOURNAL

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The societal benefits of a Notary journal are numerous.

In the many states that require Notaries to keep a journal record of their official acts, the Notary's journal is often the only physical proof that a particular contested fact about the document is true or false. The record becomes especially important when a document is lost or fraudulently altered.

As a deterrent to crime, the Notary's journal is extremely effective. When the Notary asks each signer for identification, records the details of the ID in the journal and then requires this individual to sign and leave a thumbprint, most would-be forgers are deterred from following through with their crime. They know that the signature or fingerprint they leave behind can be the evidence that convicts them.

The Notary's journal can prevent and abort lawsuits that are without foundation. A signer may have second thoughts about a document and claim that his or her signature was forged. Yet, if the Notary's journal contains this person's thumbprint, as well as date from personal identification documents, the claim is readily refuted. Without the Notary's record, disputes such as this can be tied up in the courts for years.

When a deed, will or other document is contested in court, the Notary's testimony can be critically important in determining whether a signature was forged, coerced or incompetently made. Without a journal entry to aid the Notary in recalling the event, that typically occurred many years in the past, most Notaries would find it extremely difficult to remember the exact circumstances of the notarization. The absence of a notarial record can result in prolonged litigation and unfounded lawsuits that otherwise would be resolved easily. ■

## CONCLUSION

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**Legislation is long overdue in Florida to require that Notaries keep a minimal record of their official acts.**

Legislation is long overdue in Florida to require that Notaries keep a minimal record of their official acts. Such a notarial record is decidedly in the public interest, especially if document signers are required to affix a thumbprint in this record. In other jurisdictions, Notary journal thumbprints have had a startling impact in reducing real property frauds.

In the current epidemic of identity theft, Notary journals are a fraud-deterrent measure of proven effectiveness that can have an immediate positive impact on the growing real property fraud problem in the state of Florida. ■

