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Use of False U.S. Consulate Notarial Seals to Commit Deed Fraud: Twenty-First Century Solutions Required

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Deed fraud has become rampant in recent years¹. Scammers, posing as the owner of record of a piece of property, sell the property to an unaware third-party buyer. In addition to traditional “domestic” schemes involving the use of fake IDs, the use of fake notary seals purporting to represent the seal of a U.S. consulate has become commonly employed by fraudsters operating outside of the United States¹. The scheme is seemingly a simple one, which can be illustrated through the following example:

- Fraudster scouts public records for vacant land titled in the name of individuals with an address abroad—a foreign owner would not need to grant access to a surveyor or inspector, so there is a low risk of being caught in the act.
- Fraudster lists the property for sale, either as a “for sale by owner” on real estate platforms such as Zillow or through a Florida-based real estate agent with whom they communicate via email.
- Fraudster requests a below market price to quickly attract a purchaser.
- Fraudster insists on communicating via email with all parties involved, including the closing agent, generically stating that the fraudster is abroad with no ability to communicate on the phone.
- Fraudster states that the fraudster has arranged to execute closing documents at a U.S. consulate and will deliver originals to the closing agent.
- Fraudster provides wire instructions for an account located abroad.
- Fraudster forges the owner’s signature and uses a fake notarial stamp on the documents.

- Upon receipt of the documents, the transaction closes.

Months later, generally when the owner does not receive its notice of proposed property taxes for the following year, the owner will realize what happened. They will then have to embark in lengthy and expensive litigation to purge the fraudulent deed and reclaim title to the property. If title insurance was obtained by the purchaser, this situation will result in a claim.

One of the largest title underwriters nationally, First American Title Insurance Company (FATICO), recently issued an alert³ to its agents reminding them to stay vigilant of the various techniques employed by fraudsters to commit deed fraud.

The problem with forged consular seals, however, seems anachronistic. Consular notarial seals, as well as notary seals used in Florida, do not carry any sort of electronic validation device. This contributes, in the opinion of the author, to the widespread nature of deed fraud. Forging a stamp is likely a minor hurdle for fraudsters. Once a notary seal has been forged, it can be used multiple times, offering the opportunity to scale and repeat the fraud once another suitable property is identified.

During the COVID-19 pandemic, states rushed into offering the possibility of notarizing documents online⁴. This was welcome news for the real estate industry. It is striking, however, that the notarial seal used in e-notary sessions, through widely used Florida or Virginia e-notaries, do not bear an identifier that allows the public to quickly verify that the electronic seal is legitimate⁵.

Local secretaries of state, which oversee notarial commissions as well as corporate registries, have already been using unique identifiers and digital verification devices to allow the public to confirm the validity of good standing certificates issued for corporations⁶. Outside of the United States, QR codes and unique identifiers have become common practice in notarial acts and certificates issued by government authorities⁷. Often, the QR code leads any person with a copy of a document to a trusted government website where it will be possible to verify its validity and download an official copy.

While a technically skilled fraudster could try to devise a mechanism to emulate a government verification website, this would likely require much more time and resources than what is now required to commit deed fraud. It is high time that the U.S. secretary of state, as well as its counterparts at the state level, step up their game in the fight against fraudsters and adopt twenty-first century solutions to an old problem.

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Endnotes

1. See, e.g., Joe Gorchow, Property title thefts rampant in South Florida, business owner, property appraiser fight back, CBS Miami (21 Sept. 2022), <https://www.cbsnews.com/miami/news/property-title-thefts-rampant-in-south-florida-businessowner-property-appraiser-fight-back/>.
2. Alert: Vacant Lot Scams – Beware of Notarizations Taken Abroad, The Fund, <https://www.thefund.com/vacant-lotscams-abroad.aspx>.
3. National Underwriting Communication, NA-2023- 005, from the Corporate Underwriting Department of First American Title Insurance Company (24 Mar. 2023) (on file with author).
4. States Take Emergency Action On Remote Notarization And Signers' ID, National Notary Association (25 Mar. 2020),

- <https://www.nationalnotary.org/notary-bulletin/blog/2020/03/states-emergency-action-remote-notarization>.
5. In Virginia, it is possible to verify online the validity of a notary commission. See Secretary of the Commonwealth, Notary Commissions, <https://www.commonwealth.virginia.gov/official-documents/notary-commissions/>. However, there is no publicly available method to verify the correspondence of a document to what was effectively presented to a notary, thereby creating the potential for misuse of seals.
 6. See, e.g., the Florida Dep't of State – Division of Corporations authentication tool for Certificates of Status, which are assigned a unique identifier, at <https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>. A similar service is offered by the Delaware Division of Corporations, which provides a validation tool at <https://icis.corp.delaware.gov/ecorp2/services/validate>.
 7. In Italy, for example, the National Council of Public Notaries (Consiglio Nazionale del Notariato) is the authority that certifies the digital signatures of public notaries. See Art. 62-bis, L. 89/1913. Digital copies of notarial acts (e.g., a document transferring real estate) bear an electronic signature of the public notary that can be verified online at vol.ca.notariato.it. On the other side of the Atlantic, with the Lei N° 11.419, de 19 de Dezembro de 2006, Brazil established a “National Infrastructure of Public Keys” (Infraestrutura de Chaves Publicas Brasileiras), which created a framework to verify digital signatories and the authenticity of public documents. An example of the application of such framework is the State of Sao Paulo’s corporate registry website, which allows one to verify the authenticity of digital copies of corporate documents online at www.jucesp.sp.gov.br.