

Title Monitoring Services and Texas Laws on Forgery

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2021 Texas Land Title Institute – Title Monitoring Services and Texas Laws on Forgery

I. Introduction

Over the past few years, there has been an abundance of television, radio, and social media ads from several companies proclaiming the same frightening message: fraudsters are trying to steal your house! A tweet from the company account for Home Title Lock states, “According to the FBI, #housestealing is one of the fastest growing white collar crimes in America. Protect your home & your family from #titlefraud with Home Title Lock”¹ A company offering similar products, TitleShield, warns in a Facebook post, “Fraudsters are standing by to trap unsuspecting homeowners in their schemes! Get the protection you need, and the security you deserve with TitleShield.”² These messages have made many property owners anxious and concerned about the security of the title to their property. Such companies offer subscription “title monitoring” and “title protection” products and services that purport to protect property owners from these threats.³

Because publicly available property records, including deeds and deeds of trust, contain the names and signatures of the rightful property owners, it is relatively easy for fraudsters to obtain the information necessary to forge signatures on deeds and

deeds of trusts purporting to convey and encumber properties they do not own.

However, as this article will explain, a forged deed or deed of trust is void on its face and cannot legally convey title or encumber real estate. While homeowners have been scared into signing up for these title monitoring services in the hope that they will be protected from such fraud, these title monitoring services do not actually prevent a fraudster from forging a document and filing it with the county. Rather, these services only provide notice when a document has been filed affecting title to the property. After purchasing a property with title insurance, the only true protection available to an existing property owner for new fraudulent transfers is the law, and Texas has numerous laws intended to protect victims from such fraud.

This article will focus primarily on (1) what title monitoring services are and what they cover, (2) Texas law regarding forged and fraudulent documents, and (3) how individuals can protect their property without signing up for subscription title monitoring services.

II. Subscription Title Monitoring Services

A. What are Title Monitoring Services?

Title monitoring services are typically offered as a paid annual or monthly subscription. In most cases, a property owner can sign up online by providing their name and address, and the company performs regularly scheduled scans of the property records for newly filed documents affecting the property. If the search indicates a new document has been filed, the customer receives an alert.

Unfortunately, once a forged document has been filed affecting real property, the document clouds title.⁴ While some of these

¹ Home Title Lock (@hometitlelock), Twitter (April 3, 2018, 5:32 PM),

<https://twitter.com/hometitlelock/status/981298533578915840>. Neither the tweet, nor a video included in the tweet proclaiming a similar message, includes any citation or authority for the purported statement from the FBI.

² TitleShield (@titleshield), Facebook (Sept. 29, 2021, 8:17 AM), <https://www.facebook.com/titleshield/photos/a.110828097645530/245767320818273/?type=3&theater>.

³ While they may provide services beyond mere “title monitoring,” for ease of reference, these companies will be referred to herein as “title monitoring companies” and the services as “title monitoring services.”

⁴ “A cloud on title exists when an outstanding claim or encumbrance is shown, which on its face, if valid, would affect or impair the title of the owner of the property.” *Hahn*

companies include offers to help navigate or contribute financially towards the property owner removing the cloud from title, such services are subject to limitations and may be insufficient to fully address the cloud, as further discussed below. The property owner may have to hire their own attorney to help remove the cloud from title, which can be costly. So in many cases, as a practical matter, the title monitoring service will have only served to let the property owner know that they have an issue that may require the services of an attorney.

B. Title Monitoring Service Packages

There are several companies that offer and advertise “title protection” and “title monitoring” services. These companies include Home Title Lock, LifeLock, and TitleShield, among others. The services and coverage vary between the companies, but this article will discuss these three as illustrative examples.

Currently, Home Title Lock’s website⁵ offers a monthly plan for \$14.99/mo., a yearly plan for \$149.00/yr., and a four (4) year plan for a one-time fee of \$596.00, for services described as follows:

1. Monitoring & Alerts: We monitor the title of your property 24/7. When new documents are recorded that affect your property value or ownership we will alert you of the change.

2. Guidance & Documents in the Case of Fraud: If potential fraud does occur, you are not alone, our team of experts are here to help you navigate the situation. Filing the Affidavit & Notice of False Filing will alert industry professionals that there is potential fraud.

3. Comprehensive Title Report -

FREE: We provide a free title history report (a \$100 value) with sign up, which allows you to see past activity on your property and learn if you’re already a victim of title fraud.

The third option is not included in the monthly plan. Regarding the second option, Home Title Lock’s website advertises that they provide up to \$100,000 in legal fees for the monthly plan, up to \$250,000 for the yearly plan, and up to \$1,000,000 for the four (4) year plan.

Researching in preparation for this article, no details could be found on Home Title Lock’s website that detail what is actually included in that offer of legal fees, and multiple calls with Home Title Lock’s customer service representatives did not lend clear answers. Upon inquiry, a customer service representative first stated that they have a “research and fraud department” that works towards “reversing” the fraudulent filing. The representative explained that the “reversing” procedure includes first filing an affidavit with the county stating that the fraudulently filed document was forged, and they added that there may be additional fees charged to the customer if required by the county for filing documents. Regarding the company’s advertised offer to cover up to a particular amount of attorney’s fees, the representative stated that they do not typically recommend the defrauded owner hire an attorney, preferring to resolve the matter with an affidavit, and that attorney’s fees are for “backup.” They noted that the company would provide a list of recommended local attorneys if one is needed, but did not clarify how or under what circumstances such an attorney would be paid.

In a follow-up call with another representative, they stated that it would not just be an affidavit filed to address a fraudulent document, but rather, “whatever is necessary.” When asked who determines what is necessary, they did not have a clear answer,

v. *Love*, 321 S.W.3d 517, 531 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

⁵ <https://www.hometitlelock.com/>.

nor could they clarify if they would reopen a case if their initial plan for reversal was rejected by a title company at a later time after the customer has stopped paying for the service.

No representative could point to or provide any available writing to outline exactly what is covered or how such a case would be handled.

It is similarly unclear what LifeLock would cover in the event of a fraudulently filed document. LifeLock currently offers a product called Home Title Protect for \$99.99/yr. or \$9.99/mo. for the first year, and the website description⁶ says it provides:

1. Monitoring for unlimited properties where we find you have an ownership interest,
2. 24/7 Live Member Support, and
3. a dedicated U.S.-based Identity Restoration Specialist.

There are no clear terms and conditions of these services on the LifeLock website, and multiple calls to various LifeLock departments yielded little helpful information.

One LifeLock representative stated that the company would be able to state what is covered and how it will be handled only once a case is opened (i.e. after the fraud has been committed). At least three others brought up “\$1 million of coverage,” but could not explain what “\$1 million of coverage” meant. One said that they provide “\$1 million for lawyers and experts,” without being able to elaborate further. Another said the \$1 million was pursuant to an insurance policy, also without being able to elaborate further. Still another said that a customer would be covered by a “\$1 million protection package” if the transaction falls under “the terms and conditions,” but they could not or would not provide any written terms and conditions.

⁶ <https://www.lifelock.com/home-title-protect/>.

There is a License and Services Agreement⁷ that is hyperlinked from a LifeLock page about Home Title Protect, and its only reference to “title” states:

g. Home Title Monitoring. This Service sends a notification if there is an ownership or other change on the title to your home recorded by your county’s assessor or recorder’s office. If you receive a notification, you will need to contact your local county assessor or county clerk to get more detailed information and/or correct their records. This is a notice only service. The Home Title Monitoring Service does not include remediation Services by Member Services & Support or Stolen Identity Event Insurance.

The Home Title Protect product, and what *it* covers, is not mentioned in the License and Services Agreement.

A representative from the company’s Restoration Team did clarify that they do not cover attorney’s fees, but rather, provide attorneys if the company’s Escalation Team determines one is needed. They said how a case proceeds and what is needed is on a case-by-case basis.

Another representative told us that LifeLock does not offer coverage for attorney’s fees unless the customer purchases the package entitled “Norton 360 with LifeLock Ultimate Plus,” which covers more than title protection matters and is currently offered at \$299.88 for the first year.⁸ After the first year, the plan is \$349.99/yr. A search for the specific terms outlining the conditions under which attorney’s fees would be

⁷[https://www.nortonlifelock.com/us/en/legal/license-services-](https://www.nortonlifelock.com/us/en/legal/license-services-agreement/?_gl=1*5ercp9*_ga4_ga*LU1uZmVxbm5kdFQtNG10OUV11ZjE.*_ga4_ga_ZMF24Q2GWK*MTYzNjkzMzU2OC40LjEuMTYzNjkzMzg0OC42MA.)

[agreement/?_gl=1*5ercp9*_ga4_ga*LU1uZmVxbm5kdFQtNG10OUV11ZjE.*_ga4_ga_ZMF24Q2GWK*MTYzNjkzMzU2OC40LjEuMTYzNjkzMzg0OC42MA.](https://www.nortonlifelock.com/us/en/legal/license-services-agreement/?_gl=1*5ercp9*_ga4_ga*LU1uZmVxbm5kdFQtNG10OUV11ZjE.*_ga4_ga_ZMF24Q2GWK*MTYzNjkzMzU2OC40LjEuMTYzNjkzMzg0OC42MA.)

⁸ <https://us.norton.com/products/norton-360-lifelock-ultimate-plus.>

provided under that plan also yielded no answers.

Finally, TitleShield⁹ currently offers three plans: (1) a monthly plan at the cost of \$14.99/mo., (2) an annual plan at \$149/yr., and (3) a lifetime subscription at \$799. TitleShield's website claims that, pursuant to these plans, the company: i) monitors for ownership changes, foreclosure activity, new liens, and tax delinquencies; ii) "prevents title theft" by providing a sophisticated home security sign that they recommend customers display in front of their homes; iii) publishes a list of their protected homes on their website in hopes that "title thieves" check their website before filing fraudulent deeds and do not choose their customers as victims, knowing they are likely to get caught since TitleShield is monitoring those particular homes.¹⁰

Regarding actual legal help if the fraud does occur, TitleShield's website also states that they provide authoritative guidance to customers who have fallen victim to title fraud. While they say they have a network of attorneys available to help with a free consultation, if the customer needs representation, attorney's fees are not covered by the plan, and the attorneys will represent TitleShield's customers on a contingency fee basis "when appropriate." If a case is "not suitable" for a contingency fee, then they provide a 10% discount to customers of TitleShield.

Even though companies such as Home Title Lock, LifeLock and TitleShield purport to provide prevention and/or protection from title fraud, the only service that seems to be guaranteed under the plans is that the customer will be notified once forged documents filed of record are detected. The circumstances under which Home Title Lock and LifeLock would provide attorney services or attorney's fees seem unclear at best; and even if they are provided, it's unclear the

extent to which a customer would be covered in the future if a title company does not accept the method by which attorneys under the Home Title Lock or LifeLock plans addressed the matter. (For example, if the company's attorneys consider the matter resolved by filing an affidavit in the property records, and years later, a title company determines the affidavit insufficient and requires court action to insure a transaction on the property, will those companies take on the suit if the customer no longer subscribes to the service? Despite diligent efforts in preparation for this article, no writing could be found, and no verbal answer was provided, that indicates they would. While TitleShield more clearly explains what they will do in the event of fraud, they explicitly do not cover attorney's fees and instead just recommend attorneys who offer contingent fees or 10% discounts to TitleShield customers.

While the companies' presentations want you to believe that they prevent or "shield" you from fraud, of the three, only TitleShield highlights anything having to do with actual prevention (yard signs and website postings), the impact of which is speculative. However, deterrents against fraud and recourse for victims of fraud can already be found in the existing laws of Texas.

III. Texas Law on Forged Deeds

A. Forgery and Punishment Statutes

Under Texas criminal statutes, an individual commits forgery if he forges a writing with the intent to defraud or harm another.¹¹ The statute defines "forge" as follows:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

⁹ <https://www.gettitleshield.com/pricing>.

¹⁰ <https://www.gettitleshield.com/our-process/>.

¹¹ Texas Penal Code § 32.21(b).

- (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
- (iii) to be a copy of an original when no such original existed; or

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B)¹².

By default, forgery in the state of Texas is a Class A misdemeanor, with a fine of up to \$4,000.00 and/or up to a year in jail.¹³ However, forgery is a state jail felony, which may be punished by a fine of up to \$10,000 and up two years in jail, “if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution or similar sight order for payment of money, contract, release, or other commercial instrument.”¹⁴ Forgery is a third-degree felony, with up to a \$10,000 fine and 10 years in prison, if the forged writing falls into certain categories, including a “government record,” which is defined for the purposes of this section as: “a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States.”¹⁵

Further, the above categorizations are subject to the caveat that if the actor engaged in the forgery “to obtain or attempt to obtain a property or service,” the offense is classified as follows based on the value of the property or service:

Classification ¹⁶	Punishment	Value of Property
Class C misdemeanor	Up to: \$500 fine ¹⁷	<\$100
Class B misdemeanor	Up to: \$2,000 fine and/or 180 days in jail ¹⁸	\$100 or more but < \$750
Class A misdemeanor	Up to: \$4,000 fine and/or 1 year in jail ¹⁹	\$750 or more but < \$2,500
State jail felony	180 days-2 years in state jail and up to \$10,000 fine ²⁰	\$2,500 or more but < \$30,000
3 rd degree felony	2-10 years in prison and up to \$10,000 fine ²¹	\$30,000 or more but < \$150,000
2 nd degree felony	2-20 years in prison and up to \$10,000 fine ²²	\$150,000 or more but < \$300,000
1 st degree felony	5-99 years or life in prison, and up to \$10,000 fine ²³	\$300,000 or more

Because title fraud forgeries often involve attempts to “obtain” real property from the rightful owner, and most real property is valued in excess of \$30,000, title fraudsters are risking serious prison time.²⁴

¹² Texas Penal Code § 32.21(a)(1).

¹³ Texas Penal Code § 32.21(c); Texas Penal Code § 12.21.

¹⁴ Texas Penal Code § 32.21(d); Texas Penal Code § 12.35.

¹⁵ Texas Penal Code § 32.21(e); Texas Penal Code § 12.34.

¹⁶ Texas Penal Code § 32.21(e-1).

¹⁷ Texas Penal Code § 12.23.

¹⁸ Texas Penal Code § 12.22.

¹⁹ Texas Penal Code § 12.21.

²⁰ Texas Penal Code § 12.35.

²¹ Texas Penal Code § 12.34.

²² Texas Penal Code § 12.33.

²³ Texas Penal Code § 12.32.

²⁴ While beyond the scope of this article, it should also be noted that deed fraud schemes can also involve federal charges, typically related to wire fraud (broadly, using interstate wire communications such as email, phone, and text in carrying out fraud), and bank fraud (broadly, obtaining funds or credit from a

B. Exception to 5-Year Adverse Possession

In addition to criminal statutes addressing fraud, other Texas statutes protect property owners from being subject to an adverse possession claim if the claim includes reliance on a forged deed or deed executed under a forged power of attorney. While Texas has several adverse possession statutes with different statutes of limitations, the statute that references reliance on a duly registered deed is the 5-year statute, which provides:

(a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:

(1) cultivates, uses, or enjoys the property;

(2) pays applicable taxes on the property; and

(3) claims the property under a duly registered deed.

(b) This section does not apply to a claim based on a quitclaim deed, a forged deed, or a deed executed under a forged power of attorney.²⁵

In short, a person who claims ownership or rights to a property under a forged deed cannot use the five-year adverse possession statute of limitations as a legal basis to claim the property from the rightful owner.

Texas courts have stated that the exception does not apply to the 10-year statute of

limitations found in Tex. Civ. Prac. & Rem. Code § 16.026, which does not explicitly include such an exception.²⁶ However, recovery under the 10-year statute of limitations would also require meeting the element that the property must be “held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.”²⁷ Adverse possession is defined in the statute as “an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.”²⁸

Further, in Texas courts, “it is well settled, that, where a party relies upon naked possession alone as the foundation for his adverse claim, it must be such an actual occupancy as the law recognizes as sufficient, if persisted in for a long enough period of time, to cut off the true owner's right of recovery. It has been said that such possession must not only be actual, but also visible, continuous, notorious, distinct, hostile (i.e., adverse), and of such a character as to indicate unmistakably an assertion of a claim of exclusive ownership in the occupant.”²⁹

The title monitoring companies described above are stoking fear in the average homeowner, one whose only real property is the home they live in. No fraudster can actually possess the home you actually live in, for 10 whole years, without you knowing it. So having your home stolen from you pursuant to adverse possession should not be a concern for the vast majority of people.

C. Forged Deeds are Void

Texas case law has also been “uniform and unwavering” in asserting that forged deeds are

financial institution using fraud), carrying penalties of up to 20 years in prison and a \$250,000 fine for wire fraud, and 30 years and \$1,000,000 for bank fraud, pursuant to 18 U.S.C. Section 1343 and 1344, respectively. *See, e.g.*, <https://www.justice.gov/usao-sdtx/pr/former-mortgage-broker-charged-deed-fraud-scheme>.

Under federal law, a court may also sentence a defendant to pay restitution to the victims of such crimes. *See* 18 U.S.C.3663A(c)(1)(A)(ii).

²⁵ Tex. Civ. Prac. & Rem. Code § 16.025.

²⁶ *See Moses v. Dibrell*, 21 S.W. 414, 416 (Tex. Civ. App.—Austin 1893, no writ) (concluding that since forgery is specifically excepted in the 5-years statute, but not the 10-year statute, the legislature did not intend for forgery to be an exception if the elements of the 10-year statute were met).

²⁷ Tex. Civ. Prac. & Rem. Code § 16.026(a).

²⁸ Tex. Civ. Prac. & Rem. Code § 16.021(1).

²⁹ *Rhodes v. Cahill*, 802 S.W.2d 643, 645 (Tex. 1990).

void.³⁰ The Texas Supreme Court has held that “a forged deed is an absolute nullity; a purchaser under it acquires no title; and it therefore affords no foundation for the defense.”³¹ Because the original grantee under a forged deed never receives legal title to the land, a subsequent purchaser in the chain of title can never qualify as an innocent purchaser to acquire title from their grantor.³²

This strict stance regarding forgery is in contrast to other situations in which an “innocent purchaser” may be protected by estoppel, even when there is a void deed in title.

For example, in *Steffian v. Milmo National Bank*, the grantor executed a deed that was to be held by the grantor until the purchase price was paid.³³ However, the grantee convinced the grantor to deliver to the grantee the deed before it was paid, saying that he wanted it “for the purpose of copying the field notes of the land therein described.”³⁴ The grantee then went to the bank to give the bank a lien on the property in exchange for an extension of time to pay an existing debt to the bank.³⁵ The bank had no knowledge that the original grantor did not intend to deliver the deed to the original grantee as a conveyance of the property.³⁶

The court held that the deed to the grantee was void due to the lack of intent from the grantor to deliver the deed, as it was not intended to be an effective and final delivery, and therefore, that the bank could not be

granted bona fide purchaser status as a lienholder of grantee.³⁷

However, the court noted in dicta that the bank *could* be entitled to judgment in its favor through equitable estoppel if the bank could show that the original grantor was “grossly negligent in permitting the deed to pass into the possession of” the grantee and that “substantial injury [accrued] to the bank by reason of the transaction, which it entered into upon faith of the deed.”³⁸

Note that the court said it could only consider the application of equitable estoppel doctrine to protect a bona fide purchaser in this case if the actions of the original owner (the grantor) were found to be grossly negligent. The same kind of logic is unlikely to be seen in a forged deed scam, where the fraudsters operate completely independently and without the cooperation of the rightful owners. Therefore, Texas property owners can feel confident that Texas courts will uphold their rights over forgers, and even innocent third party purchasers, when they become victims of forgery.

IV. Other Ways to Protect Yourself Against Deed Fraud and Forgery

A. Free Fraud Alerts in Many Texas Counties

Many Texas counties have set up free property fraud alert services via their county websites. Counties currently offering this service include: (1) Dallas, (2) Ellis, (3) Galveston, (4) Tarrant, (5) Fort Bend, (6) Collin, (7) Brazoria, (8) Williamson, and (9) Hidalgo.

For example, the Dallas County website’s Property Fraud Alert page³⁹ links to an external Real Property Alert Service page, which allows users to set up alerts, described in Terms and Conditions as follows:

³⁰ Richard E. Flint, *Time to Repair the Chain: Void Deeds, Subsequent Purchasers, and the Texas Recording Statutes*, 48 St. Mary’s L.J. 1, 19 (2016).

³¹ *Hennessy v. Blair*, 173 S.W. 871, 874 (Tex. 1915).

³² *See, e.g., Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 209 (Tex. App.-Fort Worth 1992, writ denied) (denying a party innocent purchaser protection because, “by definition, [one] cannot be a bona fide purchaser when there is forgery in [one’s] chain of title”).

³³ *Steffian v. Milmo Nat’l Bank*, 6 S.W. 823, 823 (Tex. 1888).

³⁴ *Id.* at 824.

³⁵ *Id.* at 823

³⁶ *Id.* at 823-24.

³⁷ *Id.* at 824-25.

³⁸ *Id.* at 825.

³⁹ <https://www.dallascounty.org/government/county-clerk/property-fraud.php>.

The Property Alert System is a registration program that is intended to provide notice to property owners when deeds, mortgages and deed- or mortgage related documents affecting an ownership interest in real property, have been recorded against a single property or an interested party's name in Dallas County. The system provides a registration page that allows a citizen to enter an individual or business name that is then used as a monitor against newly filed documents. There is a daily process that will scan newly recorded documents for citizen registered names and then alert the citizen, via email that a document was filed that includes the citizen provided name.

In addition, a user of the system may search for existing documents and then create a similar alert but using the property description and/or address of the property associated with a currently recorded document. The same daily process will then scan newly recorded document for matching property descriptions and addresses. If one is found, then an alert is sent via email to the citizen.⁴⁰

This page also states that the “service [is] provided by Kofile and your County Clerk designed with the goal of reducing fraudulently-recorded documents that could affect your property ownership.”

The counties listed above currently offering such free alert services cover almost one-third of the population of Texas,⁴¹ and more counties are expected to be adding this service as awareness of deed fraud grows and the public demand increases. For the millions of Texans who live in or own real property in these counties, it may be superfluous to pay

for a title monitoring company to provide a service the county already offers for free.

B. Other Proactive Steps to Discover Attempted Title Fraud

Even without an alert set up, property owners in many counties can periodically check their deed records by accessing their county website and searching a name and/or address for any newly filed documents. While some counties may provide a list of documents, they may charge to download a copy of a specific document.

A property owner can also check their county's appraisal district website to see if a search of the property address still shows the property to be in the correct name. While appraisal district records are not definitive for title purposes, they can be a helpful resource indicating that the appraisal district has picked up a fraudulent document.

It is also prudent for property owners to keep an eye out for any missing bills pertaining to the property (i.e., utility bills and tax bills no longer being mailed to the owner). For example, if the taxing authorities have picked up on a newly filed deed indicating a transfer of ownership, the property tax statement for that year may be mailed to the address of the grantee on the forged deed.

Lastly, in the case that there a forged deed of trust is filed on the property, monitoring one's credit report is an easy way for a property owner to know if they are up to date with payments and to ensure that there have been no fraudulent loans taken out in their name.

C. What to do When a Forged Document has been Filed

Once a property owner discovers that a forged deed or other document affecting title is filed with the real property records, they should consult with a real estate attorney. While the attorney may suggest the filing of an

⁴⁰ <https://dallas.tx.publicsearch.us/property-alert>.

⁴¹ Statement based on 2020 county and state census numbers from <https://www.census.gov/>.

affidavit informing the public of the forgery, as may be Home Title Lock’s first step in the resolution process, such an affidavit may not be acceptable to the title insurance company, lender or purchaser in a resale transaction. While it may serve to indicate that a prior deed is fraudulent, the title remains clouded by an outstanding claim to the property that the title company may not want risk having to spend their resources to combat.

In most cases, the attorney will have to file suit to have the forged deed or deed of trust declared invalid. Notably, Texas Government Code § 51.903 offers a procedure to lessen the burden of typical litigation for fraud victims. It provides that a purported debtor or property owner “who has reason to believe that [a recorded] document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property is fraudulent” may file a motion, supported by an affidavit, entitled Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim.⁴²

The statute goes on to include suggested forms for the motion (claiming the documentation is fraudulent and asking the judge to review it),⁴³ the motion’s accompanying affidavit,⁴⁴ and the judge’s finding of fact and conclusion of law.⁴⁵ The suggested form for the finding of fact and conclusion of law includes an optional finding that “[t]here is no valid lien or claim created by this documentation or instrument.”⁴⁶ The finding of fact and conclusion of law is then to be “filed and indexed in the same class of records in which the subject documentation or instrument was originally filed,”⁴⁷ and the county clerk may not charge for such a filing.⁴⁸

This section also provides that the judge may make a ruling “solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence. An appellate court shall expedite review of a court’s finding under this section.”⁴⁹

While this particular avenue may not be appropriate for all fraudulent document cases (an attorney should advise on a case-by-case basis as to the appropriate course of action), its streamlined process is another example of the ways in which the existing laws of Texas seek to benefit victims of fraud.

D. The Need for Title Insurance

In Texas, the Owner’s Policy of Title Insurance (Form T-1) promulgated in the Basic Manual of the Texas Department of Insurance, states that, subject to certain exclusions and exceptions described therein, the title insurance company insures against:

2. Any defect in or lien or encumbrance . . . [including but not] limited to insurance against loss from:
 - (a) A defect in Title caused by:
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation . . .⁵⁰

This coverage, subject to certain limited exceptions, applies to fraudulent documents filed as of the date of the policy (in most cases, the date the deed or deed of trust is recorded in the property records).

Therefore, generally speaking, title insurance protects a property owner against forged documents affecting the property that were recorded before their ownership. This is why the title company acts as a safeguard, reviewing the chain of title prior to closing to

⁴² Tex. Gov’t Code § 51.903(a)

⁴³ *Id.*

⁴⁴ Tex. Gov’t Code § 51.903(b)

⁴⁵ Tex. Gov’t Code § 51.903(g)

⁴⁶ *Id.*

⁴⁷ Tex. Gov’t Code § 51.903(e)

⁴⁸ Tex. Gov’t Code § 51.903(f)

⁴⁹ Tex. Gov’t Code § 51.903(c)

⁵⁰ Similar language appears in the forms for the other two primary insuring forms in Texas: the Texas Residential Owner’s Policy of Title Insurance One-to-Four Family Residences (T-1R), and the Loan Policy of Title Insurance (Form T-2).

try to eliminate the risk of any fraud or forgery in the chain of title affecting the insured in the future. If any questionable documents or clouds are discovered, the title company will require these matters to be resolved before issuing title insurance. This is among the many reasons why purchasing title insurance is highly recommended for anyone purchasing real property in Texas.

By contrast, the title monitoring companies do not afford any protection or coverage with respect to title fraud or theft occurring before or after the time one is a paid subscriber to their services. As described above, they notify the property owners of new filings, and they *may* offer some kind of help to get the cloud of the forged document removed from the title. But they do not provide insurance in any form, and they are certainly not a replacement for title insurance, the one-time payment for which provides ongoing coverage against all kinds of title defects that occurred prior to closing, beyond just forgery, the value of which cannot be overstated for property owners.

V. Conclusion

While title monitoring companies are creating fear among the general populace that criminals are going around stealing homes and causing people to lose their equity, this is misleading at best. A fraudulent deed is void, and while it may be burdensome and costly for the victim to get the cloud on title removed, the fraudster does not succeed at legally “stealing” anything. These companies cannot prevent forged documents from being filed, and their primary benefit is to monitor property records to inform property owners that they may have a forged document filed on their property, a service that is already provided for free by many counties. The extent to which these companies will help to remove the fraudulent documents from affecting title in the future is unclear, and the property owner may have to hire their own attorney despite having purchased one of these companies’

services. Therefore, these services could be seen to be taking advantage of public panic by offering services that are unnecessary or insufficient. Purchasing title insurance remains the most important action a property owner can take to protecting their interest in real property, as prior fraudulent deeds in a chain could actually cause a complete loss of title. Property owners may benefit from taking proactive steps to set alerts and monitor easily accessible public records in order to address attempted fraud at the earliest opportunity, but you should rest easier knowing that, despite the headlines, your house cannot be stolen from you with fraudulent documents.