

WHERE TITLE INSURANCE INTERSECTS WITH THE ESTATES CODE

BY:

PAM KEEVER

KEEVER LAW PLLC DBA KEEVER & WIESENTHAL

FEE ATTORNEY WITH AMERICAN TITLE COMPANY OF HOUSTON

6300 W LOOP S, SUITE 405

BELLAIRE, TX 77401

713-995-8200

713-995-8894 - FAX

[PKEEVER@ATCTX.COM](mailto:PKEEVER@ATCTX.COM)

- I. Title Insurance
- II. Guardianships
  - a. Guardianship of the Person
  - b. Guardianship of the Estate
    - i. Application to Sell Real Property, Texas Estate Code 1158.251
    - ii. Report of Sale, TEC 1158.551
      - 1. Contract
      - 2. Sign in Escrow with Title Company
    - iii. Decree Confirming Sale, TEC 1158.556
      - 1. Report on file at least 5 days, TEC 1158.552
      - 2. Court Requirements (bonding), TEC 1158.554 and 1158.555
      - 3. Attach Confirmation to the Deed, TEC 1158.557
- III. Estate of Minors without a Guardianship, TEC 1351.001-1351.006
- IV. Death Occurs
  - a. Who owns it now?
    - i. With a Will, probated
      - a. Standard Probate
      - b. Muniment of title
    - ii. With a Will, no probate
    - iii. Without a Will
      - a. Small Estate Affidavit
      - b. Declaration of Heirs
      - c. Affidavit of Heirship
- V. Case Studies
  - a. NO QUITCLAIMS
  - b. They were married
  - c. The Will said .....
  - d. George and Mary, husband and wife, are Grantees, but not really married...
  - e. John and Susan both married before with children and have joint child(ren)
  - f. Fraudulent Deed
  - g. Liens in intestacy with minors
  - h. But she told me...
  - i. Dad is dead, but I need title changed to my name
  - j. It's my Separate property
  - k. Life Estates
  - l. Abandonment Divorce in another state
  - m. No Blind Trusts
- VI. Special Title Concerns
  - a. MERP
  - b. Authorized party

- c. Power of Attorney
- d. Signing out of the United States
  - i. US embassy
  - ii. Country that is a signed member of the Hague Convention

## I. Title Insurance

Title Insurance is unlike insurance as most people understand it.

Car insurance insures a driver for the given policy period if that driver *has an accident* while the policy is in force.

Homeowner's (hazard) insurance insures your structure if the home is destroyed by fire or damaged by acts of God (but not rising waters) during the policy period.

Flood Insurance insures your home during the policy period *for damage occurring* by rising waters and floods.

Legal Malpractice insurance provides coverage *for claims made* during the policy period.

For each of these policies you have to pay to renew for additional policy periods. Not so with owner's title insurance.

When title insurance is purchased at the time of acquiring a property, the policy premium is paid once and will cover the insured owner (and his or her heirs, living trusts or corporate successors) from the date of acquisition until the property is sold or conveyed to another. *The purpose of title insurance is to insure to the new buyer that the only person(s) having an interest in the property on the day of purchase is the new owner.* The title company has researched the ownership history from the time of the original land grants to the current owners. The title company's search should reveal that there are no broken links in the chain of title. Probate helps clear titles because they tie the generations and owners together.

If during your ownership post-policy issuance, someone attempts to claim an ownership interest in the land, the insurance company will defend your right to ownership and negotiate with the person making the claim if their claim is determined to be valid.

In a recent news report regarding fraud the news reporters explained how title insurance helped save a home for some innocent buyers. I have attached a copy for you.

Owner A --- Owner B (thief) ---- Current Occupant Owner

Owner B (the thief) filed a fraudulent deed showing he obtained ownership from absent Owner A. He then negotiated a sale to the current occupant owner. Current occupant owner did the right things. They required an owner's title policy. The title company searched the real property records and the chain of title appeared complete. The title company insured to the current occupant owner that their ownership was without claims by others. Owner A returned to their property. Current occupant owners filed a claim under their title policy. Upon investigation, including handwriting analysis, it was determined that the deed from "Owner A to Owner B" was a forgery. Upon determining that the deed was fraudulent, the title company claims department chose to negotiate. Owner B is being prosecuted criminally for a fraudulent deed.

There were two possible resolution scenarios. The original owners (Owner A) were entitled to be restored their property or they could be paid off for their interest. In this case, the current owners were innocent of the fraud. The title company negotiated with Owner A and since this property was an investment property and not their homestead, they were willing to receive fair value for their interest and allow the current occupants to remain. However if Owner A had not been willing to receive the value for the property, the title company would have paid the current occupant owner the amount that they had paid the thief for the property purchase.

Title policy premiums cannot be “shopped” like other insurance. It is set by the state department of insurance based on Sales Price, Loan Amount or Fair Market Value. I have attached a copy of the current title policy premium chart. If the price is over \$100,000.00, there is a sliding scale formula.

## II. Guardianships

### a. Guardianship of the Person –

- i. does not have impact on title insurance or the ability of the owner to convey.
- ii. The Guardian of the Person has no authority to act as to the Ward’s estate (real property)

Example: Janice was burned and in the hospital. There was a guardianship created while she was in ICU as to both her Person and Estate. Two years later the court moved her bank accounts into a management Trust, but not her real property, and then restored her *as to her estate*.

The guardian of her person attempted to sell the property. Because she had been restored as to her estate, she was the authorized person for herself. She could either sign for herself or appoint someone under a power of attorney. Neither the court appointed guardian of her person nor the Trustee of the Management Trust had no authority to sign to convey her real property.

### b. Guardianship of the Estate -

- i. Application to Sell Real Property – The Guardian must apply to the court to request permission to sell the real property.

Once the application is approved, the home can be listed, enter a sale contract for fair market value and open title work with a title company. The title company’s report will require that the report of sale be filed and a decree confirming sale be issued and attached to the Deed prior to the closing being complete. The closing must be a closing in escrow and will not be a “table-funded file”. Make sure the lender understands the time tables!!!!

- ii. Report of Sale – Section 1158.551

1. Attach copy of the contract, the proposed Deed, the signed HUD showing the funds payable to the Estate
2. Attach copies of any invoices which evidence fees being deducted on the Settlement Statement
  - a. Tax Certificate
  - b. Repair invoices
  - c. Document Preparation invoice
  - d. Home Warranty per contract
3. Sign in Escrow with Title Company – All parties sign at the title company, but the transaction is not complete until the court confirms the sale and the lender provides all funds necessary for the full funding of the file.

CAUTION: The lender needs to realize that the file will NOT table-fund (or even fund within 3 days). They need to process the loan as an escrow closing file!!!

Recent Scenario:

Seller 1: signed May 31, 2014; Seller 2 signed June 2, 2014 out of town and returned documents by overnight mail; Seller 3 (Guardians) and Buyers signed June 3, 2014. Information then provided to attorney for guardianship estate to file the report of sale. Filed on June 6, 2014. Court reviewed on Monday, June 16, 2014 and sent notice of increased bond requirement. Guardians paid premium and increased bond on June 17, 2014. Court confirmed and title company sent notice to lender in the afternoon of the 17<sup>th</sup>. Lender refused to fund unless everyone re-signed. From the Estate perspective, it would have to start the process over. The lender said that for table funding, it must fund within 3 days of signing. They did not understand the timing of the court review and approval. They required a re-signing and changed their instructions to an escrowed closing, not a table funded file. Lender revised documents and instructions and resigning began in July. An “AMENDED Report of Sale” had to be filed.

iii. Decree Confirming Sale, TEC 1158.556

1. Report on file at least 5 days, TEC 1158.552 – After the report of Sale has been on file with the court for a minimum of 5 days, the court will review and may require conditions before funding
2. Court Requirements (bonding), TEC 1158.554 and 1158.555 – The court may require a new bond or an increase to the existing bond

3. Attach Confirmation to the Deed, TEC 1158.557 – Once the court issues the decree confirming sale, the decree must be attached to the Deed when filed in the Real Property Records to confirm the authority of the Guardian to have sold the property

III. Estate of Minors without a Guardianship, TEC 1351.001 – 1351.006

- a. Application to Sell with copy of the proposed contract
- b. Identify the Minors' interest in the property
- c. Value of the Minor's interest may not exceed \$100,000.00
- d. Report of Sale
  - i. Inherited interests
    1. Co-owner's debts are not chargeable to the Minor's interest
      - a. Child Support Liens
      - b. Abstracts of Judgment
      - c. Federal Tax Liens
    2. Debts against the person *inherited from* are chargeable against the sales price and assessed to each beneficiary's interest
      - a. Federal Tax Lien
      - b. Mortgage on the property
      - c. Abstracts of Judgment
      - d. Child Support Liens
      - e. State Tax Liens
  - ii. Deeded Interest

Dad buys a parcel of land and asked that the sellers put in his child's name. He does not tell anyone that the child is a minor. Couple of years later, he decides he wants to sell the property. His child is still a minor. The child is unable to sign a deed, therefore, the parent either has to obtain court permission under this statute or if the property is worth more than \$100,000.00, he will have to be actually appointed as the guardian of his own child and obtain court permission to sell the property.

He could have avoided this by deeding into his name as custodian for child under the Uniform Transfer to Minor's Act (UTMA). For example, "Pam Keever as Custodian for Tyler J. Keever, minor, UTMA". Then as custodian he would have had the authority to deal with the property for the minor's interest.

- e. Confirmation of Sale

- f. Title Company funds and deposits the Minor's proceeds into the court registry with a W-9 for the Minor's social security number
- g. Title Company records documents

IV. **Death Occurs**

- a. Who owns it now?

Under Texas Estates Code, there is a 4 year statute of limitations in which to present the Will for probate. However, title to real property passes immediately upon death (TEC 1001.001(a)(1) per Will or 1001.001(a)(3) per intestate succession). The issue of filing the Will for probate is to define who it passed to. Title underwriters do not recognize "fictional" entities -- "The Estate of Pam Keever, deceased" or the "Keever Family Trust". They do recognize an individual appointed to represent such entities: Kat Wiesenthal, Executrix of the Estate of Pam Keever, deceased or Pam Keever, Trustee of the Keever Family Trust. If a now deceased person is the last recorded vested owner, the title underwriter will show vesting as "Pam Keever, now deceased [Subject to requirements]". The requirements will be to determine who Pam Keever's legatees or devisees are.

As attorneys, we understand that in order to have an "executrix" of an estate, the Will has to have been filed, a hearing held and an executor or executrix duly appointed by the court. The title company will require at the time of the sale of any property held by the executrix to have a currently issued Letters of Testamentary. "Current" means not more than 2 – 6 months old depending on which underwriter.

Once the Will is presented and the Inventory filed, the title underwriters will show the beneficiary as the owner of the property (not the Executor). However, the title underwriters will accept an Affidavit from the executor that he needs to sell the property in order to pay the debts, but will usually also require that the beneficiary acknowledge the sale.

If a client comes in to meet with you and says "my dad owned his house and he recently died. I need to probate his Will." **Make sure to determine who were the Grantees on last deed and when did the parent actually purchased the property. If while he was married, then community property, so what happened with mom's interest? If more than dad's name is on the deed as Grantee, what happened with other party(ies) named?**

- i) With a Will, probated
  - a. Standard Probate
    - i. The Will needs to have been admitted to probate and the inventory filed before the title insurance underwriter shows the beneficiary under the Will as the owner.
    - ii. If the Will has a power of sale clause giving the executor the power to sell the property, then the executor may do so

- iii. If the Estate needs to sell the property in order to pay debts of the estates, even if there is not a power of sale clause, the Executor may sign an Affidavit of Necessity which will not require the beneficiaries to participate in the sale
  - iv. "Family Settlement Agreement" – if filed with the court will override the Will provided signed by ALL parties
  - v. If the probate is handled in the same county as all the real property, there is not a need for an "Executor's Deed". The property transfers to the named beneficiary per the probate.
- b. Muniment of title
- i. Once the Will is admitted as a Muniment of title, title transfers per the stated beneficiary in the Will.

\*\*\*If the deceased owned real property in a county other than where the probate is, you will need to either

- i) prepare and file in the additional county(ies) an Executor's Deed with the consideration being "Pursuant to Probate Cause No. \_\_\_\_\_, filed in \_\_\_\_\_ County (Probate) court, \_\_\_\_\_ County, Texas" OR
- ii) obtain and file a certified copy of the Will and Order Admitting Will as a Muniment of Title in the additional county(ies)

Example: Pam dies residing in Houston, Harris County, Texas. Her homestead is in Harris County, but she owns investment property in Brazoria County, Waller County and Menard County, Illinois. Deeds or the Will and Order need to be filed in Brazoria County and Waller County. Another state is another issue. You need to determine what that particular state requires.

- ii) With a Will, no probate
  - a. The Will is only effective if probated and a court enters an order admitting the Will to probate
  - b. After the 4 year statute of limitations, an interested part can prepare an Heirship Affidavit with the required two non-family witnesses AND attached a copy of the unprobated Will. The underwriter will require not only all potential heirs (intestacy statutes) but also all persons named in the Will to participate in the conveyance of any property. Make sure that all heirs are properly identified and that all possible children are listed, whether currently alive or dead. Even if child died in childhood, state Child 1, born 1965, died 1967 without having married or had any children born to or adopted by. **Be proactive in identifying all family members and potential heirs.**

iii) Without a Will

- a. Small Estate Affidavit – only deals with homestead real property, not other real property
- b. Declaration of Heirs – underwriter will rely on the court's order determining who the Heirs are
- c. Affidavit of Heirship – Underwriters currently require that the deceased have been dead for at least 2 years, but prefer the 4 year period. If the deceased has been dead less than 2 years, and based on the family circumstances, the underwriters will review on a case by case basis as to whether to take the risk.
  - i. \$4,000 vacant land owned for many years by husband and wife, information in Affidavit basically shows wife would be sole heir (married long time since both parties were young, have children together, witnesses knew deceased for very long time): underwriter probably willing to take risk.
  - ii. \$1.5 million dollar property, husband and wife bought together; he was 75, she's 30 but only married 5 years; he's dead 2 months; and she wants to do Heirship stating she is only heir and can sell: unlikely underwriter would take the risk --- probable that there are children or other family that would inherit

V. Case Studies

- a. NO QUITCLAIMS – Do not have your clients sign a Quitclaim! Title underwriters' view is that a Quitclaim conveys everything and nothing with no recourse, and therefore it is not an insurable document. Other states use them, Texas does not. If a quitclaim shows up in the title to a tract of land, the underwriter will require that a replacement deed be procured. Convey by Special Warranty or Gift Deed, but not a quitclaim.

Problem within problem: Frank signed a Quitclaim to his brother, Bill, several years ago. Frank has died. Bill wants to now sell his property, but it is not insurable with the Quitclaim. Obviously cannot get Frank to sign from the grave. Did Frank have a Will probated? Who was the beneficiary of his interest? Or, who were his heirs under intestacy laws? They can sign, but they may want payment for their relative's interest.... New family feud, which Frank was trying to avoid, but did not because he used the wrong document.

- b. They were married

“Mom died, so dad obviously gets her share” – The general population is often under the misconception that the spouse inherits. We know this is not the case.

Did they have all joint children?

Was it Community Property?

Was it Separate Property? Don't forget there is a Life estate interest

Was it their homestead prior to this spouse's death? Even if separate property, living spouse retains a homestead interest and the heirs/beneficiaries cannot kick out the living spouse.

1. Man and wife married 65 years. They bought property (acreage) together soon after marriage and lived there their entire lives. Had no children together. He had 7 children from 6 different outside relationships during their marriage. He had a Will which left all of his property to 3 of his 7 children. She died intestate.

Title came back to heirs of wife (to be determined) and the 3 named children. Wife was 95 when she died. The children did not know her family history. To date they have been unable to clear title.

2. Kim calls. She is living in house that she grew up in. Both parents are dead more than 4 years. Neither had a Will.

As we discussed an Heirship Affidavit, I found that her parents purchased the property together in 1966.

Mom had 3 children from a prior marriage.

Mom and dad had two children, Kim and Kayla.

Mom dies intestate in 1989. REMEMBER: she had 3 children from prior marriage and 2 from current husband.

HER  $\frac{1}{2}$  interest would have gone to her 5 heirs ( $\frac{1}{10}^{\text{th}}$  of whole [ $\frac{1}{5}^{\text{th}}$  of the CP  $\frac{1}{2}$ ]).

Dad dies in 2009. He had not remarried. Had the two kids. They each receive  $\frac{1}{2}$  of his  $\frac{1}{2}$  ( $\frac{1}{4}^{\text{th}}$  each).

So, owners A B & C each own  $\frac{1}{10}^{\text{th}}$  each. Kim and Kayla each own  $\frac{1}{10}^{\text{th}}$  PLUS  $\frac{1}{4}^{\text{th}} = \frac{7}{20}^{\text{th}}$ .

$\frac{1}{10}^{\text{th}} + \frac{1}{10}^{\text{th}} + \frac{1}{10}^{\text{th}} + \frac{7}{20}^{\text{th}} + \frac{7}{20}^{\text{th}} = \frac{20}{20}^{\text{th}}$  (1 whole)

c. The Will said .....

Regardless of what a Will says, the Will is not enforceable until it is probated. So if the Will says it goes to Joey, once the Will is filed then it goes to Joey. Luckily, even if it is after the 4 year limitations period, the courts will usually allow a late filed Will solely for the purposes of making public the terms of the Will (muniment). Once filed and entered, the Will defines who the owner is.

d. Deed said to George and his wife, Mary, but they were never married...

Example: the 1964 Deed for a property granted to George and "wife" Mary. George had children from his "commonlaw wife", Mary. George and Mary went their separate ways and Dad kept the house. George married Susan in 1976 and she moved into "his" house. They had no children. George dies in 2004 without a Will. Susan signs contract to sell the property.

Title comes back showing vested owner is Mary and the Heirs and Devisees of George. Since the property was George's separate property and had children outside marriage, Susan does not receive ownership, only a homestead and life estate interest. His children receive his fee interest.

As the facts are revealed, George and Mary were never really married, they "just hung out for a while had children together and then she left". Regardless of their actual marital status, as a deeded grantee, she still owns her interest.

e. John and Susan were both married before, had children from their prior marriages and had a joint child. After they married, they purchased the current property. John died last year. Susan died this year.

Susan's kids are wanting her Will probated so they can sell mom's home.

- i) Did John have a Will?
- ii) Was it probated?
- iii) Or, did he die intestate? --- If so, his children (from prior marriage and current marriage) receive his community property share
- iv) Susan had a homestead interest and a life estate interest until her death. Now her Will says HER children, not step children, receive her community property interest.

f. Fraudulent Deed

Daddy owns property. Enters into a construction contract in 1987. Daddy dies in 1988 with a Will stating all property goes to his daughter, Michelle. Michelle is a minor and ex-wife does not probate Will. In 1989, "daddy" signs a Deed to the contractor. Contractor then sells property to Jose. Jose gets a title policy at time of purchase. Michelle turns 18 in 1999 and wonders about daddy's property. Has

to file a lawsuit to prove the Deed is invalid since daddy could not have signed in the year after he died.

Court enters judgment that Deed is a forgery and declaring the deed invalid. Judgment is filed in real property records. Claim is also filed with underwriter of title policy. Home is restored to Michelle. Jose is paid the amount of his purchase price.

g. Liens and attachments

Edgar owns property and dies in 2001. Edgar has no Will, is currently unmarried and had 8 children (E Jr., A, B, C, D, F, G & H).

E Jr. has a child support lien against him. It attaches to *his share* of the property interest.

B D F & H are clear

A has a judgment against him. Payment *from his share* with either a partial or full release is required.

C – predeceased daddy E. Has a child who is 17 ½. (Wait for child to turn 18 before selling the properties)

G – predeceased daddy E. Was divorced prior to his own death and has a child age 6 (Kristin). Kristin's mother has custody. G died without a Will, so passes by intestacy to Kristin. Mother DOES NOT automatically have authority to sign for minor child. No guardianship created because remaining natural parent has rights of custody and control BUT NO AUTHORITY TO SELL THE MINOR'S PROPERTY.

The parent will need to file a TEC Section 1351.001 action if interest is less than \$100,000.00, or a full guardianship action to obtain authority over the property of the Minor.

NOTE: that judgment against A and child support lien against E Jr. only affect their interest and cannot be charged against the minor's share. Need to determine each of the 8 shares values and deduct the two judgment/liens against that person's share, not against the property as a whole.

BUT, any judgment or lien against Edgar himself are taken off the top, prior to any heir receiving an interested share.

h. But she told me....

Jackie left her job and came to take care of her Friend for the last 10 years.

Friend dies. No-one knows of any Will. Jackie was not related to Friend. Friend was not married and had no children. Jackie says that Friend told her she could have the property after Friend died.

There is no written documentation of this. As we discuss the family history, the family may not be close, but there is someone who is related by blood to the deceased. May only be a distant cousin, even though Friend never met them, but they exist somewhere!

- i. "My dad is dead. I just need you to Deed the property to me."

We often get calls from people who want the deceased person to now convey (transfer) title to them. A deceased person cannot sign the conveyance so they cannot transfer the property

- j. It's my separate property...

Joey purchases property in 1980. Examiners find Joey was divorced in 1991 and the decree makes no reference to the property Joey is trying to sell. Title insurance underwriters are going to be more conservative in their view. Will ASSUME that the property was community property that was omitted from Divorce Decree and will PRESUME it was community property and ex-wife has to sign.

If Joey can prove that he was not yet married to his ex-wife (i.e., marriage license showing they married in 1985), and therefore property was separate property and not subject to community property division, then ex-wife does not have to be tracked down.

Another option would have been for the court to confirm in the decree that the property was his separate property and not subject to the divorce.

- k. Life Estate

- i. Joe and Nell were both married before and had children from their prior marriages. Wife has cancer and updates her Will to leave her community property interests to her two sons.

Nell dies in 1999. Her Will is probated. Joe retains his ½ share, plus has homestead interest and surviving spouse life estate.

Son1 dies in 2011 without a Will. Married to his second wife, Eula, and had child from his first marriage, Dianna.

Joe has progressive dementia. Guardianship of Joe is obtained. Guardian keeps Joe in home as long as possible. Once Joe can no longer live at

home, is moved to Alzheimer's unit. Joe and his guardianship estate is responsible for maintaining the property (bills, utilities, taxes, insurance, etc.). When obvious that Joe will not move back, Guardian pursues selling the property.

Affidavit of Heirship done for Son1.

Title comes back with owners as: Frank, Guardian for Estate of Joe, IP; Son1's current wife, Eula (life estate only); Son1's child, Dianne (remainder); and Son2

Although court agrees that the sale of the property will benefit the guardianship estate, must obtain cooperation of Son1's wife, Eula, Son1's daughter Dianne and Son2.

- ii. Kathleen dies with a Will. Kathleen's Will is probated. She leaves everything to Al.

Al dies with Will which is also probated. Al's will leaves a life estate to daughter Charlotte and remainder to remaining children, Ginnie, Tammy and Aries.

Ginnie, Tammy and Aries execute a Deed to Charlotte. Her life estate merges with the fee interest.

Charlotte dies, single, no children and no Will. Charlotte has an IRS lien against her and a first lien home equity lien against the property.

Aunt and Uncle were living in home with Charlotte, but they have no ownership interest. Based on intestacy, Charlotte's ownership would go to her siblings since she had no spouse, kids or parents living.

The lender (home equity loan) will not talk with aunt, uncle, or siblings until the court decrees who the heirs are. They will allow anyone to make payments, but not to obtain other information regarding the loan.

1. Abandonment Divorce

Shami, a married person, and Yalda, a single person, purchase property together and are named this way on the Deed. Shami is Yalda's mother and lives in North

Carolina with her second husband at the time of the purchase. Yalda lives in Texas and resides in the property she and her mother purchased together.

Shami obtains an abandonment divorce through North Carolina courts because her husband was deported. There is no mention of the property interest in the Texas property in the NC Abandonment Divorce Decree. Because Shami was married at time of acquisition, under Texas law, the interest is community property. Therefore, Shami's ex-husband must sign the Deed to allow Shami and Yalda to sell the property.

m. Title underwriters will not allow "Blind Trusts". The person named as Trustee must be a Trustee for a named beneficiary.

Not Allowed: John Smith, Trustee

Allowed: John Smith, Trustee of the John Smith Irrevocable Trust;  
John Smith, Trustee for Jackie Smith, a minor

VI. Special Concerns:

- a. MERP (Medicaid Estate Recovery Program) – if the owner received Medicaid benefits after 2005, the state has a lien against the sale proceeds of the homestead. The title company will require a MERP certification. There is a standard form from the state which is faxed to the DADS office in Dallas. Usually within a week, the state will send you a response as to whether there is any claim being assessed.
- b. Authority to sign:
  - i. Letters of Guardianship – gives the guardian authority to sign on behalf of the guardianship estate
  - ii. Letters Testamentary – if the Will had a power of sale clause, this document gives the executor/executrix the authority to sign on behalf of the estate. The Estate must have its own tax ID.
  - iii. Corporations: Corporate Resolution which states who is authorized to sign
  - iv. Limited Liability Company – Unanimous Consent of the members or managers appointed the person or persons who are authorized to sign
- c. Power of Attorney – title company prefers the current statutory POA that is property specific. If there is an older POA, and the grantor can no longer sign a new one, they will consider on a case by case basis. REMINDER: POA is automatically invalid upon the death of the grantor.
- d. Signing out of the US
  - i. US embassy – most now require you to make an appointment to have a document notarized at the embassy. The longest time frame we have seen is 24 days out.

- ii. Is the foreign country a participant of the Hague Convention relating to the Apostille process?

[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=41](http://www.hcch.net/index_en.php?act=conventions.status&cid=41)

- a. Note: Canada is NOT a participant in the Apostille convention
- b. If so, you can use an appropriately appointed notary in that state or country, but must receive an appropriate Apostille certification in order for the document to be able to be filed here.

## Thieves stealing homes from unsuspecting owners

Author: Jace Larson, Investigative Reporter, [jl Larson@click2houston.com](mailto:jl Larson@click2houston.com)

Published On: Feb 13 2014 10:38:15 AM CST Updated On: Feb 14 2014 06:54:48 AM CST



### HOUSTON -

Prosecutors tell Local 2 Investigates they are seeing more cases of crooks trying to steal land and homes from unsuspecting owners.

“We have a significant problem,” said Harris County Assistant District Attorney Valerie Turner.

Criminals are filing fake deeds with the clerk’s office.

The deeds show a crook purchased a specific property, even though he has no right to the home.

“These thieves are identifying properties that have been abandoned or have heavy tax liens on them,” Turner said. Without the true owner knowing what’s going on, the thief files fraudulent paperwork, she said. “They change the locks, file a forged deed and then put a sign in the neighborhood selling it to the nearest buyer.”

Turner says it’s happening more and more often and doesn’t just happen in low-income neighborhoods.

“There are some very nice houses that have had some forged deeds inserted to change the title. It really can happen to anyone,” Turner said.

### STEALING LAND CAN BE EASY

Turner said land thieves know it is easy to file a fake deed because it can be done anonymously. State law does not allow county clerks to require someone filing a deed to show identification.

“It’s very easy to file a fake deed,” she said.

Harris County Chief Deputy Clerk George Hammerlein says the no-ID issue is frustrating.

"I think there is a real hole that can be exploited," he said. "I could research your house, prepare a document that says you sold it to me, even if you didn't. Then I could come down here and file a fake deed tomorrow."

Even if county employees believe someone is filing a fake document, they cannot refuse to record it as long as the form is fully filled out with information – real or fake.

"I see more and more cases coming through," Turner said. Half of her docket is filled with land theft cases, she said. In past years, a thief might just steal one property, but that's changing.

"Typically land thieves don't steal just one piece of property. They are going to steal multiple pieces of property. Our investigations involve many properties," Turner said.

Two men from Houston were involved in the theft or attempted theft of 24 properties. Turner prosecuted the men, Richard Nugent and Craig Davidson, who were eventually given probation and told to repay victims.

One man, Dwayne Jordan, stole or attempted to steal about 30 properties, Turner said.

Oscar Martin and Jo Martin unknowingly bought a property near Reed Road and Cullen Boulevard that Jordan tried to steal from the true owner. E Jordon, Inc., a company Jordan was closely involved with according to Turner, granted the property to Garman Homes, which in turn sold it to the Martins.

The Martins were living in a duplex on Houston's south side when the true owner of the property knocked on the door.

"She said she owned this property," Jo Martin said. "I was just in disbelief."

The Martins spent months wondering if they would have to move out of the home.

"I saw this was a real situation where by we could potentially lose our property," Oscar Martin said.

In the end, a title insurance policy the Martin's bought when they paid for the property helped settle the situation. The title insurance company paid the actual owner for the property and now the Martins legally own it.

## **PROTECT YOUR PROPERTY**

Experts say when buying property, title insurance is a necessity.

You can also see who has filed deeds on your property by doing a search at the Harris County Clerk's [website](#).

It is important that you run the search by putting your last name in the grantor field and then run the search again with your last name in the grantee field. The result will show deeds filed with your name, including the correct deed filed when you purchased property or your home.

## **BILL TO REQUIRE ID FAILED**

A bill introduced in the Texas legislature last session would have required clerks to ask for and make a copy of a person's ID when he or she recorded a document.

That bill did not make it out of committee before the session ended so it died.

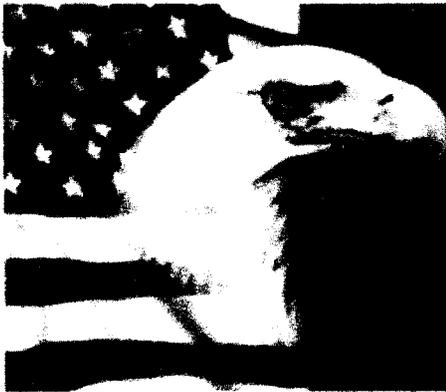
Texas Rep. Ana Hernandez, D-Houston, worked on the bill and hopes it will pass next session.

"I think requiring photo identification when you record a transfer of real estate is an additional safeguard for property owners," Hernandez said. "If someone is filing fraudulent documents and trying to steal your property, at least we have their photo ID on file to help the investigation."

The bill proposed last session would not make copies of the ID available to the general public.

Have you seen a victim or do you have a story for investigative reporter Jace Larson to investigate? Send him a message on [Facebook](#).





# AMERICAN TITLE COMPANY OF HOUSTON

6300 West Loop South, Suite 405 Bellaire, TX 77401 | 713.995.8200

## TEXAS SCHEDULE OF BASIC PREMIUM RATES FOR TITLE INSURANCE Effective May 1, 2013

Policies up to and including	Basic Premium	Policies up to and including	Basic Premium	Policies up to and including	Basic Premium	Policies up to and including	Basic Premium	Policies up to and including	Basic Premium
10,000	\$238								
10,500	242	28,500	368	46,500	497	64,500	625	82,500	753
11,000	244	29,000	373	47,000	499	65,000	628	83,000	757
11,500	248	29,500	376	47,500	503	65,500	631	83,500	759
12,000	252	30,000	380	48,000	508	66,000	635	84,000	762
12,500	255	30,500	383	48,500	512	66,500	640	84,500	767
13,000	260	31,000	387	49,000	515	67,000	644	85,000	770
13,500	264	31,500	390	49,500	518	67,500	645	85,500	773
14,000	267	32,000	393	50,000	522	68,000	649	86,000	776
14,500	270	32,500	398	50,500	525	68,500	653	86,500	781
15,000	272	33,000	401	51,000	527	69,000	656	87,000	785
15,500	276	33,500	405	51,500	531	69,500	659	87,500	788
16,000	280	34,000	408	52,000	536	70,000	664	88,000	791
16,500	284	34,500	412	52,500	540	70,500	668	88,500	795
17,000	288	35,000	415	53,000	543	71,000	672	89,000	799
17,500	292	35,500	419	53,500	547	71,500	674	89,500	801
18,000	296	36,000	422	54,000	550	72,000	677	90,000	804
18,500	298	36,500	426	54,500	553	72,500	681	90,500	809
19,000	301	37,000	429	55,000	556	73,000	685	91,000	813
19,500	304	37,500	433	55,500	559	73,500	688	91,500	817
20,000	309	38,000	437	56,000	565	74,000	692	92,000	819
20,500	312	38,500	441	56,500	568	74,500	696	92,500	823
21,000	317	39,000	443	57,000	571	75,000	700	93,000	827
21,500	320	39,500	447	57,500	575	75,500	702	93,500	831
22,000	324	40,000	450	58,000	579	76,000	706	94,000	832
22,500	327	40,500	455	58,500	581	76,500	709	94,500	837
23,000	330	41,000	457	59,000	585	77,000	713	95,000	842
23,500	333	41,500	462	59,500	589	77,500	716	95,500	845
24,000	337	42,000	465	60,000	593	78,000	720	96,000	847
24,500	340	42,500	469	60,500	597	78,500	725	96,500	851
25,000	345	43,000	471	61,000	600	79,000	729	97,000	855
25,500	348	43,500	475	61,500	603	79,500	730	97,500	859
26,000	352	44,000	479	62,000	607	80,000	734	98,000	862
26,500	355	44,500	483	62,500	611	80,500	738	98,500	866
27,000	358	45,000	487	63,000	613	81,000	742	99,000	870
27,500	361	45,500	490	63,500	617	81,500	744	99,500	873
28,000	365	46,000	493	64,000	621	82,000	748	100,000	875

**Premiums shall be calculated as follows for policies in excess of \$100,000**

**1. For policies of \$100,001 - \$1,000,000  
Basic Premium**

- (1) Subtract \$100,000 from policy amount.  
 (2) Multiply result in 1.(1) by **0.00554**  
 and round to nearest whole dollar  
 (3) Add **\$875** to result in 1,(2).

**2. For policies of \$1,000,001 - \$5,000,000  
Basic Premium**

- (1) Subtract \$1,000,000 from policy amount.  
 (2) Multiply result in 2.(1) by **0.00456**  
 and round to nearest whole dollar  
 (3) Add **\$5,861** to result in 2,(2).

**3. For policies of \$5,000,001 - \$15,000,000  
Basic Premium**

- (1) Subtract \$5,000,000 from policy amount.  
 (2) Multiply result in 3.(1) by **0.00376**  
 and round to nearest whole dollar  
 (3) Add **\$24,101** to result in 3,(2).

**4. For policies of \$15,000,001 - \$25,000,000  
Basic Premium**

- (1) Subtract \$15,000,000 from policy amount.  
 (2) Multiply result in 4.(1) by **0.00267**  
 and round to nearest whole dollar  
 (3) Add **\$61,701** to result in 4,(2).

**5. For policies in excess of \$25,000,000  
Basic Premium**

- (1) Subtract \$25,000,000 from policy amount.  
 (2) Multiply result in 5.(1) by **0.00160**  
 and round to nearest whole dollar  
 (3) Add **\$88,401** to result in 5,(2).

**Below are the premiums calculated for specific amounts.**

**If there is any variance from these policy amounts, you must use the formula set out above.**

Specific Amount	Basic Premium								
101,000	881	130,000	1,041	159,000	1,202	188,000	1,363	217,000	1,523
102,000	886	131,000	1,047	160,000	1,207	189,000	1,368	218,000	1,529
103,000	892	132,000	1,052	161,000	1,213	190,000	1,374	219,000	1,534
104,000	897	133,000	1,058	162,000	1,218	191,000	1,379	220,000	1,540
105,000	903	134,000	1,063	163,000	1,224	192,000	1,385	300,000	1,983
106,000	908	135,000	1,069	164,000	1,230	193,000	1,390	400,000	2,537
107,000	914	136,000	1,074	165,000	1,235	194,000	1,396	500,000	3,091
108,000	919	137,000	1,080	166,000	1,241	195,000	1,401	600,000	3,645
109,000	925	138,000	1,086	167,000	1,246	196,000	1,407	700,000	4,199
110,000	930	139,000	1,091	168,000	1,252	197,000	1,412	800,000	4,753
111,000	936	140,000	1,097	169,000	1,257	198,000	1,418	900,000	5,307
112,000	941	141,000	1,102	170,000	1,263	199,000	1,423	1,000,000	5,861
113,000	947	142,000	1,108	171,000	1,268	200,000	1,429	2,000,000	10,421
114,000	953	143,000	1,113	172,000	1,274	201,000	1,435	3,000,000	14,981
115,000	958	144,000	1,119	173,000	1,279	202,000	1,440	4,000,000	19,541
116,000	964	145,000	1,124	174,000	1,285	203,000	1,446	5,000,000	24,101
117,000	969	146,000	1,130	175,000	1,291	204,000	1,451	6,000,000	27,861
118,000	975	147,000	1,135	176,000	1,296	205,000	1,457	7,000,000	31,621
119,000	980	148,000	1,141	177,000	1,302	206,000	1,462	8,000,000	35,381
120,000	986	149,000	1,146	178,000	1,307	207,000	1,468	9,000,000	39,141
121,000	991	150,000	1,152	179,000	1,313	208,000	1,473	10,000,000	42,901
122,000	997	151,000	1,158	180,000	1,318	209,000	1,479	11,000,000	46,661
123,000	1,002	152,000	1,163	181,000	1,324	210,000	1,484	12,000,000	50,421
124,000	1,008	153,000	1,169	182,000	1,329	211,000	1,490	13,000,000	54,181
125,000	1,014	154,000	1,174	183,000	1,335	212,000	1,495	14,000,000	57,941
126,000	1,019	155,000	1,180	184,000	1,340	213,000	1,501	15,000,000	61,701
127,000	1,025	156,000	1,185	185,000	1,346	214,000	1,507	20,000,000	75,051
128,000	1,030	157,000	1,191	186,000	1,351	215,000	1,512	25,000,000	88,401
129,000	1,036	158,000	1,196	187,000	1,357	216,000	1,518	30,000,000	96,401

Rates in Texas are set by the Texas Department of Insurance. For More Information, go to TDI's Website: [www.tdi.texas.gov/title/index.html](http://www.tdi.texas.gov/title/index.html)

Great care has been taken to make these tables correct though there is no warranty of complete accuracy

5/1/2013