

2024 Elder Property and Notary Fraud Protection Act

Current Situation: It is entirely too easy to steal real property in Florida. Fraudulent transfers of real property disproportionately impact elderly persons who may possess mortgage free real property attractive to criminals but whose ability to protect themselves may increasingly become impaired due to age related infirmities. Florida's notary laws largely insulate notaries from criminal prosecution for malfeasance. Additionally, the Florida Legislature enacted online notarization and anti-fraud protection requirements which became effective January 1, 2022. These anti-fraud protections were not required for in person notarization. The result incentivizes criminals to use in person notarization because it is less regulated. Criminal courts are unable to restore real property to victims of fraud. The restoration of real property must be sought in civil court which can result in an undue hardship on elderly victims on fixed incomes whose primary assets may have been the stolen real property and who, as a result of the fraud, may not be able to afford legal representation.

Why Change is Necessary: Under F.S. 117.105 false or fraudulent notarization is a third degree felony. F.S. 117.107(9) specifies, however, that the notarization of a signature by a person who does not appear before a notary in person or online is a civil infraction. The subsection further specifies that only if the notary does so with the intent to defraud is the notary guilty of violating s. 117.105. This creates a conflict between s. 117.105 and s.117.107 as to the interpretation/criminalization of a false notarization. Section 117.107 specifies prohibited acts but contains no penalty for any of the prohibited acts, except as specified in 117.105. Law enforcement and prosecutors' ability to investigate and establish intent to defraud is challenged by the laxity of the in person notary laws in requiring printed names of persons whose signatures are being notarized, record keeping of the addresses of persons whose signatures are being notarized, and fees charged. Under F.S. 28.47, property appraisers do not have the authority to reject a fraudulent deed even when the homeowner has informed them that the deed purporting transfer ownership of his or her property is fraudulent. A property can be sold and resold before law enforcement is able to conclude an investigation or a civil action can be brought and concluded even under the new expedited civil cause of action.

Proposed Solution: Amend F.S. 117.105 to create a higher penalty for the false or fraudulent notarization of real estate transactions and other transfers of real property. Clarify that the false notarization of the signature of a person not appearing before the notary in person or online is a felony and not a civil infraction regardless of the intent to defraud. Provide requirement that the names of all signatories, including witnesses, be printed. Amend F.S. 117.107 to criminalize the prohibited acts as misdemeanor crimes absent an intent to defraud. Create a requirement that notaries maintain and retain online journals of in person notarizations to record the names and addresses of persons whose signatures are being notarized and fees charged consistent with the record keeping by online notaries. Provide access to these online journals by the Department of

State and law enforcement and others pursuant to court order. Amend F.S. 28.47 to provide authority to the property appraiser to refuse to update the owner of record on the county's tax rolls if the property appraiser receives notice from the property owner or clerk of the circuit court and reasonably determines the recorded deed is fraudulent. The property appraiser would make notation on its records, however, that a possible conveyance has been recorded.

Fiscal Impact: It is anticipated that any fiscal impact will be minor.