

“Title theft” myth persists

But mongers of “protection” against it have slightly improved their mislabeled product

Two years ago, William Maffucci, a real-estate lawyer with Semanoff Ormsby Greenberg & Torchia, LLC, exposed on these pages the myth of “title theft” — i.e., the concept that a criminal could “steal” a house by simply forging the owner’s name on a deed, then “drain the equity” in the house by defrauding a mortgage lender into loaning money against the house, and thus force the actual owner to repay the loan or lose the home through foreclosure [[Read the original article here](#)].

Since then, other commentators have joined Maffucci in debunking the myth of “title theft.”

Smart Business spoke with Maffucci to find out how — if at all — the providers of “title lock” protection have reacted.

DO SERVICES PROVIDING “TITLE LOCK” PROTECTION STILL CLAIM THAT “TITLE THEFT” IS REAL?

Yes. The industry has grown over the past two years, and the false advertising seems to have intensified. This is baffling, because the legal principles are not in dispute. Surely companies with multi-million-dollar yearly advertising budgets can afford lawyers to screen out the misrepresentations with which advertisements about “title theft” are replete.

Although the advertisements are as bad as ever, the chorus of complaints about them has resulted in a subtle but important change. It’s not reflected in the video or radio ads, but you can sometimes spot it in the written advertisements: Under some circumstances, the ‘title lock’ services will pay for the legal fees necessary to clear title if, after purchasing a subscription, the subscriber’s title is forged.

Two years ago the leading provider of ‘title lock’ services did not cover the legal fees necessary to clear title of a forgery that occurred to a subscriber. The service would

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record a statement to warn third parties about relying upon the forged title, and it would take a few other actions to try to prevent the forger from compounding the owner’s problems. But the subscriber would still have to find and pay for a lawyer to clean up the title. Now, it seems, all of the ‘title lock’ providers will cover a subscriber’s legal fees — at least if the subscriber purchases a long-term plan.

IF “TITLE THEFT” IS A MYTH, HOW DIFFICULT COULD IT BE FOR A LAWYER TO CLEAR THE TITLE?

Sometimes very difficult. And often prohibitively expensive. The lawyer must first locate and confirm the identity of the forger, who may or may not be the named grantee. After drafting the complaint, the lawyer must find a way to serve the defendant(s). Forgers and their accomplices have many ways to frustrate those steps, so a lawyer must often seek court permission to accomplish them through alternative procedures. And proving that a signature has been forged isn’t easy. It usually requires retaining a forensic handwriting analyst.

DOES THE POSSIBILITY OF HAVING LEGAL FEES COVERED WARRANT THE EXPENSE OF A “TITLE LOCK” SUBSCRIPTION?

Legal-fee coverage would certainly change the cost-benefit calculus.

Without it, the service is little more than a glorified title-monitoring service. But note: Some homeowners already have insurance against title forgery, and most of them don’t even know it.

This highlights yet another misrepresentation in the ‘title lock’ advertisements: that traditional title insurance — i.e., the insurance that homeowners obtain by paying a one-time premium when they buy their homes — never protects them from subsequent forgeries. That statement was true historically, because for most of its history title insurance covered only title defects that were in place as of the time of the closing. And it’s still true for owners who acquire the traditional, basic form of title insurance. Now, however, in most states, homeowners have the option of buying an ‘enhanced’ policy of homeowners’ insurance that protects them from many specified post-closing events. Forgery is one of them. And the coverage would include the expense of the insured’s legal coverage.

Although the ‘enhanced’ homeowners’ policy is more expensive, it’s part of the one-time, up-front premium. And it largely precludes the need for the services that ‘title lock’ advertisers provide. ●