

Understanding the Underworld of Business Identity Theft and Florida's Recent Efforts to Protect Against Fraudulent Business Filings

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Protecting one's personal identity has become a routine aspect of life in an ever increasing technologically driven world. We protect the confidentiality of our social security number. We protect the confidentiality of our credit card numbers. We protect access to our mobile devices that contain ever increasing amounts of our personal identity. But how do we protect our business identity? The identity of the limited liability company that holds title to our investment real estate. The identity of the professional service corporation that operates your law firm. Business identity theft is the impersonation of a business, or one of its owners, employees, or officers, with the intent to defraud or to make illicit gain to the detriment of the business.¹ The risk is real and the potential harm substantial, yet to the average person, even the average lawyer, it seems remote – until one becomes a victim of business identity theft.

A Real Story of Fraud

On January 27, 2017, Yves Naman became aware that he was a victim of business identity theft when he attempted to pay the \$22,000 property tax bill for a vacant residential lot located on a premier Miami Beach golf course that was owned by his Florida limited liability company – Namron Miami, LLC.² To Naman's surprise, the tax bill had already been paid, which immediately prompted his investigation.³ He soon discovered that three weeks earlier on January 6, 2017, a fraudulent amended annual report had been filed with the Florida Division of Corporations that changed the company's manager from the company's legal counsel to Albert W. Vorstman.⁴ The fraudulent amended annual report was filed with minimal effort via the online filing system available through the Florida Division of Corporations website at www.sunbiz.org. Interestingly, the company's address was not changed – only the manager's name. The company had one substantial asset – the unencumbered vacant residential lot. Further investigation revealed that on January 17, 2017, eleven days after the fraudulent amended annual report was filed, a \$550,000 mortgage lien was executed and immediately recorded placing a first priority lien on the residential lot.⁵ The mortgage lien was signed by Vorstman as manager of Namron Miami, LLC.⁶ This was not a do-it-yourself loan closed without the benefit of a closing and title agent. The loan originated from a private lender being handled by a professional mortgage consultant. The mortgage was prepared by an attorney. The mortgage was insured by an underwriter. The professionals involved in the closing process had regularly worked together before on other transactions.⁷

At first glance, it appears Vorstman was the fraudster, but he was not – at least not the real Vorstman. The individual that attended the mortgage closing on January 17, 2017 was not the real Vorstman, but an imposter armed with a fake identification and a story.⁸ The fake Vorstman was not an amateur. When questioned about his accent, he told the tale of his Russian great grandfather's immigration to the Caribbean.⁹ When questioned about the recent address change for Namron Miami, LLC, the fake Vorstman explained without a flinch that the previous owner was his brother-in-law, which was the reason the street address had not changed.¹⁰ The loan itself originated from what appeared a legitimate referral to the mortgage consultant.¹¹ Every step of the fraud was a planned process. When a private investigator was later engaged by Naman to investigate the fraud, the investigators' calls to the various parties involved in the closing created more alarm for fraud than the fake Vorstman ever did.¹²

The victims of the fraud were numerous: the real Vorstman, Naman, Namron Miami, LLC, the mortgage consultant, the private lenders, the closing agent, and the title underwriter. The victims describe the fraud as a nightmare, which resulted civil litigation to address the validity of the mortgage, and ultimately who will bear responsibility for the financial damage that has occurred.¹³ Disturbingly, that is not where this story of fraud ends.

The real Vorstman was not just any person – he was a credit worthy physician that was one of the principals of another company that owned a multi-million dollar prime waterfront parcel in the Florida Keys that was listed for sale.¹⁴ The real

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estate broker listing the Keys property had received calls from a prospective buyer that never showed for scheduled viewings, asking a multitude of detailed questions regarding the property, such as water frontage, building permits, site plans, and parcel identification number - the kind of information that would be relevant and necessary if the property were to be used as collateral for a loan.¹⁵ A few weeks later, Vortsman's real estate broker received calls from a mortgage broker claiming to be working with Vortsman to secure a loan against the property.¹⁶ The real Vortsman had never contacted or engaged a mortgage broker, but the fraudster was setting the stage to likely perpetrate the same fraud again - cash out a large loan on an otherwise unencumbered property.¹⁷

Fortunately, this fraud never occurred - presumably shut down when Naman discovered that his property taxes had been mysteriously paid by an unknown party, prompting him to contact the FBI and the Miami Beach Police Department regarding the fake Vortsman. One can only wonder if that second fraud would have happened if Naman had delayed his efforts to pay the property taxes by only a few weeks.

When removed from the real damage caused, the sophistication of the fraud is impressive. The fraudster knew property taxes would need to be paid for the financing to occur. Furthermore, the fraudster came out of pocket more than \$22,000 to facilitate the fraud before any fraudulent loan funds had been received. Private lending was selected over traditional lending since it would allow for a very quick closing timeline. A company owning vacant and unencumbered property was carefully selected. Vacant and unencumbered real estate was a critical component of the scam. Vacant property does not alert an appraiser or inspector visiting the property. Vortsman was critical for two reasons as well. He provided a credit-worthy individual to perpetrate the Vortsman fraud, and then provided the launching point for the second and larger fraud that almost occurred. The referral of the loan from what appeared a trustworthy source assured the various professionals involved in the closing process that regularly worked together. The fake Vortsman had the essential fraudulent identification and played the necessary part at closing like a seasoned actor. Finally, the laws of the State of Florida helped facilitate the fraud since at that time, changing the manager of Namron Miami, LLC without any change to the business address, did not trigger notification of any kind to the replaced manager or the principals of the company.

Policy Considerations For Business Filings

The Vortsman fraud raises a number of questions regarding how business filings are made and maintained in the State of Florida. Should any person be permitted to electronically file an annual report or business filing for a Florida business? Should a password protected login system be required, or at least offered as an option for the business owner? If a fraudulent filing is made, then how should the business owner be notified, and what avenues made available to swiftly correct the fraudulent filing?

In the 2018 legislative session, the legislature examined these issues and the current business filing laws in an effort to address and rectify the problems and potential exposure to business owners as revealed by

the Vortsman fraud.¹⁸ The initial consideration became one of public policy - is the government responsible for protecting the accuracy of business filings, or is that the responsibility of the business owner? Before HB 661, this burden was clearly on the business owner, and that has not changed.

The Florida Department of State, Division of Corporations, is a ministerial filing agency; as such, the Department must file and maintain the business filings received unless the Department determines that the record does not comply with the filing requirements prescribed by law.¹⁹ The Department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid.²⁰ Prior to HB 661, there was not a verification system in place via the www.sunbiz.org website for business entities to review filings before being filed. The only real deterrent at the time of the Vortsman fraud was a notification on the website,²¹ alerting filers of the criminal penalties for false or fraudulent filings.²²

At the time HB 661 was introduced, a companion senate bill²³ considered implementation of an optional login system that provided subscribing business owners the option of creating a password that must be inputted to initiate new business filings.²⁴ By contrast, HB 661 indirectly discourages fraudulent business filings by requiring the Department to send notification to businesses in certain situations and allowing businesses to correct false, misleading, or fraudulent information within fifteen (15) days at no cost, or within thirty (30) days for a fee. Ultimately, SB 610 was subsequently amended to mirror HB 661, thus continuing the current policy of placing ultimate responsibility of ensuring against fraudulent business filing on each business entity, rather than on the Department of State.

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Florida House Bill 661

HB 661 amends Chapters 605 (Florida Revised LLC Act), 607 (Florida Business Corporation Act), 617 (Corporations Not for Profit), and 620 (Partnership Laws) with analogous language addressing the process for correcting business records and required notifications that must be provided to business owners when business filings and changes are filed. The law was implemented effective July 1, 2018.²⁵

Correcting Business Records: A statement of correction may now be filed by a business owner in order to correct a filing that contains false, misleading, or fraudulent information. If filed within fifteen (15) days of notification, then there is no filing fee for submitting the statement of correction.²⁶

Required Notification: After a record is filed, the Department will now provide email notification of the filing to the electronic mail address on file with the Department, or the Department shall send a copy of the document to the address of the business or its authorized agent.²⁷ Additionally, if a revision is made to either the business mailing address or the electronic mail address on file, then the Department must send notice to both the new address (mail or electronic mail) and the old address (mail or electronic mail).²⁸

Shortfalls of HB 661

While HB 661 makes substantial strides to curb fraudulent filings, it does not resolve all problems. HB 661 does not implement a mandatory or optional secure business filing service, or a process to allow business owners to review records pre-filing, and to reject a filing if elected by the business owners. Additionally, businesses that have recently moved or changed their listed email address and have not yet updated their records with the Division remain vulnerable. Furthermore, the window for correcting false or fraudulent filings is time-limited. Businesses may be able to file new documents to replace fraudulent documents after the correction window; however, this could lead to complications as the fraudster might receive notice of the new filings.

In sum, HB 661 makes substantial improvements to the notification process; however, it does not solve the problems presented by the Vortsman fraud. Even if notification is received by the business owner, the burden is still on that owner to review and take necessary steps in the event of a fraudulent filing. Whether the revised notification procedures are enough to prevent the Vortsman fraud is yet to be seen. However, if the changes implemented by HB 661 are to be successful, then business owners must be educated and aware of the risk and the necessity that they monitor their business filings. With almost certainty, business identity theft will be a continuing issue and problem that will require constant monitoring and update of Florida's laws governing business filing. Lawyers play a unique role in educating their clients on these issues and the solutions to be implemented as future problems arise.



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Endnotes

- 1 BusinessIDTheft.org, "What is Business Identity Theft?"; <http://www.businessidtheft.org/Education/WhyBusinessIDTheft/tabid/85/Default.aspx> (last visited October 15, 2018).
- 2 See Verified Complaint ¶23, *Namron Miami, LLC v. Edward J. Bohne, et. al.*, Circuit Civil Case No. 2017-006465-CA-01 (Miami-Dade County); see also Samantha Joseph, "How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk," *FLA. BUS. R. ONLINE*, available at: <https://www.law.com/dailybusinessreview/almID/1202782932347/How-a-New-Kind-of-Fraud-Puts-South-Florida-Real-Estate-Owners-Lenders-at-Risk/?slreturn=20170306184827> (last visited October 15, 2018).
- 3 *Id.*
- 4 See Verified Complaint ¶15, *Namron Miami, LLC v. Edward J. Bohne, et. al.*, Circuit Civil Case No. 2017-006465-CA-01 (Miami-Dade County).
- 5 *Id.* at Verified Complaint ¶17-18.
- 6 *Id.*
- 7 Samantha Joseph, "How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk" (2017).
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 See *Namron Miami, LLC v. Edward J. Bohne, et. al.*, Circuit Civil Case No. 2017-006465-CA-01 (Miami-Dade County).
- 14 Samantha Joseph, "How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk" (2017).
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 See Fla. House Bill 661 (2018), Final Bill Analysis (March 23, 2018 at 11:06:34 AM).
- 19 See Fla. Stat. § 605.0206(1) (2018).
- 20 See Fla. Stat. § 605.0210(5) (2018).
- 21 See <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/instructions/> (last visited October 15, 2018).
- 22 See Fla. Stat. § 831.06 (2017).
- 23 Florida Senate Bill 610 (2018).
- 24 As an example, Colorado and Louisiana have implemented optional password protection for business filings. See <https://www.sos.state.co.us/pubs/business/ProtectYourBusiness/secureFiling.html> (last visited October 15, 2018); <https://geauxbiz.sos.la.gov/staticResource/staticPage/8> (last visited October 15, 2018).
- 25 Ch. 2018-58, Laws of Florida.
- 26 See Fla. Stats. §§ 605.0209; 607.0124; 617.0124; 620.1207; 620.81054 (2018).
- 27 See Fla. Stats. §§ 605.0210; 607.0125; 617.0125; 620.1206; 620.8105 (2018).
- 28 *Id.*