

## Legislation Text

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October 20, 2010

### **To The President and Members of The Council of the City of Philadelphia:**

For the following reasons, I am returning herewith to your Honorable Body Bill No. 100487, which was passed by Council at its session on September 30, 2010, without my signature.

I commend Council for its commitment to reducing the incidence of fraudulent real estate transactions. The idea that by filing a fraudulent deed someone can claim ownership of someone else's property is extremely troubling. Moreover, the crime is not one that is easily undone. It involves lawyers, court costs and countless hours to untangle a title. I know that many citizens have reached out to Council for assistance in this process and I appreciate the hard work by you and your staffs in providing help to citizens in clearing title to their homes.

Fraudulent real estate transactions are not unique to Philadelphia. This crime is committed all across the country, particularly in urban areas that feature large numbers of vacant or neglected properties. One particularly troubling aspect of fraudulent house sales is the perception that the government is complicit in the crime, because fraudulent deed filings often support the crime of fraudulent property sales. Use of the recording system as part of the fraud makes attractive the idea that a solution to this crime can be found in how the Department of Records performs its duties. For that reason, I understand Council's desire to combat this problem by amending the laws governing the recording of deeds.

The Department of Records takes the problem of fraudulent deeds very seriously and has implemented a number of policies to help reduce fraud. The primary tool in addressing fraud is community education about title insurance. The Department has created a number of informational sheets and also posted helpful material on its website where it can be conveniently accessed.

Since 2004, the Department has sent a letter to the record property owner each time a deed or mortgage is recorded against the property. If the recording was done without the owner's knowledge, this letter will alert them to that fact. To date, almost one million letters have been sent to property owners. The Department of Records also captures a photograph and signature for deeds presented in person. Pursuant to legislation passed in 2008, the Department reviews a number of items upon presentation of a deed, including names of the record owner and grantor, and available supporting documentation. Discrepancies are noted, and sent to the District Attorney's Office for review.

At the request of the Department, a Fraudulent Conveyance Task Force has been initiated to address property fraud, including members of the Records Department, the Philadelphia Bar Association, the District Attorney's Office, and attorneys from the title insurance industry and various non-profit organizations.

The Department of Records and my Administration take the crime of house theft seriously. I reject the allegation that by not fully supporting this legislation, my Administration does not care about combating this crime. In my view, however, rather than contributing to a reduction in house theft in any meaningful way, the bill would not significantly impact fraudulent sales. Moreover, I believe the bill would have unintended consequences for innocent purchasers of property lawfully sold to them. Lastly, I am advised, the bill cannot be lawfully enforced.

Bill 100487 would require the Department of Records to reject certain deeds presented for recording where the grantor and record owner names do not match, or where certain supporting documentation is missing. Those seeking to commit fraud, however, merely need to ensure that names match, or that sufficient fraudulent supporting documentation is provided, in order to avoid the document rejection requirements of the bill.

Moreover, there are many legitimate reasons why the name of the seller on a deed that is being recorded may not match the name of the owner on the deed of record. For example, someone may use a formal name, such as Robert, in one transaction, and a less formal name, such as Bob, in another transaction. A woman legitimately selling a house may use her married name in the transaction when title in a previous transaction had been in her maiden name. When the home buyer who does not have title insurance (the law only applies to transactions not involving insurance, lawyers and the like) tries to record his or her legitimate deed with mismatched names of the seller, he or she would not be permitted to do so under this bill. Once the deed is rejected, the new purchaser may have little recourse, as the seller has already received payment and may not be available to “fix” the mismatched names. The legitimate buyer, where there has been no fraud at all, would be left in limbo.

Lastly, the City Solicitor has advised me that under the requirements of state law, which define the minimum documentation requirements necessary to record a deed, the Department of Records cannot, even when told to do so by ordinance, reject deeds under the circumstances called for under the bill. In fact, the Department of Records currently is under an order of mandamus arising out of the case *Pennsylvania Land Title Association v. City of Philadelphia*, No. 3127, January Term 1997, which requires that the Department of Records ensure that any new document presented to the Department meeting state law requirements is recorded. For these reasons, the City Solicitor has opined that the Records Department cannot lawfully implement the deed rejection measures called for in Bill No. 100487.

Accordingly, I am returning the bill to you without my signature.

I am certainly willing to continue to work with Council, as well as the District Attorney’s Office, to try to reduce the incidence of fraudulent house sales. We must take a multi-faceted, multi-agency approach that includes education on the issue of fraud and the importance of obtaining title insurance. With the Police Department and District Attorney’s Office, we need to ensure that the perpetrators of this crime are investigated and prosecuted. The time is also ripe to take a fresh look at the state laws which govern recording, as well as the laws and standards for notaries and I am inviting state representatives and Council to work with our existing Task Force to explore changes to state law that will help prevent this type of fraud. I look forward to working with you on these issues.

Respectfully,  
Michael A. Nutter,  
Mayor