Criminal Law

Understanding and Protecting Yourself from Becoming a Victim of Fraud

Kimberly Woods

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The purpose of this paper is to make others aware of an epidemic that is sweeping our nation. Fraud has become a vast problem in the United States of America. It is a crime that can be defined as a false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another with the intent to commit a crime. Fraud is commonly referred to a number of offenses that involve dishonesty or “fraudulent acts”. In other words, the intent to deceive a person or entity by another for monetary or personal gain.

The most common type of Fraud is Identity Theft. According to the experts in article entitled noidentitytheft.com, there are more than 15 million Americans that were victims of this crime which cost approximately $50 billion (2016). Identity theft schemes are getting more manipulating. Problems that can arise from identity theft are bigger than just the loss of money. They can affect the victim’s ability to obtain a job, rent an apartment, buy insurance, or get a mortgage, or get a car loan. When a criminal steals someone’s identity and commits crimes using that person’s name, address and/or social security number it can result in the victim being arrested and criminal charges being filed. But that’s only if the offender is caught. For businesses, the loss can be devastating and can even result in the closing of the business. Every unauthorized transaction results in a forced refund from the business. When the victims contact the banks to report the fraud, the bank launches an investigating and the funds are removed from the merchant’s account without warning, and the money is returned to the victim's account. This leaves the merchant with unpaid for merchandise. Our first order of defense should be becoming knowledgeable about how these criminals think and gather personal information to commit these crimes, it would be beneficial in order to be one step ahead of the offenders. During research, I’ve found that criminals listen and watch as vulnerable unaware customers give their credit card or debit card information to make a purchase. The offender uses this information to make purchases in stores and online. We also fall prey when we receive an application for pre-approved credit cards in the mail and we do not discard them properly by shredding them immediately. Criminals often time complete these applications and have credit card(s) mailed to a different address that is accessible to them. It would also be helpful if we used an alternate location, such as a post office box, to receive our personal mail, this will eliminate the opportunity for predators to going through our home mailboxes. It has even believed that people are going through trash bins looking for information they may use to open accounts. With unauthorized credit cards, criminals will take the maximum amount of cash from the credit cards or max them out completely, leaving the victim wondering where the charges originated from. Offenders also find creative ways to hack into personal and business accounts and steal funds. Most times victims are unaware until their bank notifies them because of insufficient funds in their accounts. Some banks quickly refund the money back to your account and other banks wait until their customers file police reports to verify that the claims are legitimate. It’s helpful to limit what you share online and use strong passwords and not common ones when paying your accounts online. Also, check your credit report often to verify there aren’t any new accounts being added in your name. Lastly, set up alerts. Technical savvy banks and credit cards now for their customers to set up real-time text, email or mobile app alerts, which are a useful tool for savvy consumers. You can request to be notified any time there is a transaction of more than $0 on your account, says Alan Brill, senior managing director in the Cyber Security and Investigations practice at Kroll, a company that helps organizations prevent and respond to cybersecurity risks.

There is no question that criminals have found consumer identity theft to be easy, little to no-risk, and lucrative. With a combination of low jeopardy and large profits makes it so attractive to criminals that the U.S. Department of Justice has reported that identity theft has become the #1 for-profit crime in the United States. This crime has evolved far beyond a crime of opportunity by narrow-minded thieves and people with drug habits; it is now a preferred criminal activity that is an enormous business and growing every year. Criminals range from street gangs to drug cartel to organized crime groups who have actively embraced identity theft and cyber-crime as key money-making enterprises.

It’s extremely hard for investigators to find these criminals and prove a case of fraud. Unfortunately, most identity theft cases do not end in arrest. Most times, law enforcement is overworked and understaffed and their attention is needed to focus on major crimes. It takes time to follow up on clues which may lead to a dead end. Even if a criminal is apprehended, it is still cumbersome to prove that they committed the crime. One reason is that most often the criminals live and operate outside the United States of America. Another reason is that sometimes it takes more than a year for a victim to realize that their identity has been stolen. These reasons make it harder to catch who actually have committed the crime and even harder to prove that the individual is guilty of the crime. But when they are caught, they will be charged with fraud which can either be a felony or misdemeanor offense.

Congress realized that this Fraud was taking over our Country and needed to do something quickly to help fight for the innocent victims. In 1998, Congress passed the Identity Theft Assumption Deterrence Act. This act prohibits “knowingly transferring or using without lawful authority any mean of identification of another person with the intent to commit or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law." 18 U.S.C. § 1028(a)(7). This law achieves a number of things, including allowing restitution for victims, increased the penalties for the offender and in addition, this act closed legal loopholes that previously made it a crime to produce or possess false identity documents but not to steal another person’s information.

Fraud convictions bring with them the possibility of incarceration, jail or prison sentence. Though sentences differ widely, a misdemeanor conviction can lead to up to a year in a local jail, while a felony conviction can lead to multiple years in prison. Research shows that Federal charges can lead to 10 years or more in federal prison, if convicted.

A court can also impose a probation sentence if you're convicted of a fraud crime. Probation allows you to serve your sentence without having to go to jail or prison, but it is not a “get out of jail free” sentence either. Probation puts a limit on your freedom and to most of us, which is significant. Probation typically lasts 12 months or more, and while on probation, you must obey specific conditions the court imposes. These conditions often require you to report to a probation officer, take random drug tests, find or maintain a job, and of course, not commit any future crimes.

Fines for fraud convictions are common, and like incarceration sentences, they can differ significantly depending on the circumstances of the case. Research shows that fines for misdemeanor violations can cost up to a few thousand dollars or less, while felony convictions can bring fines of well over $10,000. A person convicted of fraud will have to pay money to the victims, compensating them for any loss, great or small, suffered. Court orders for compensation are known as restitution. It is also possible for the courts to impose restitution payments must be made in addition to any fines.

When a victim realizes that their identity has been violated there are necessary steps that they should take. The first step should be notifying the creditor or bank that you are a victim of identity theft. Secondly, you should contact one of the three National Credit Reporting Agencies and place an alert by calling either Equifax, Experian, or TransUnion. Ask them to place a fraud alert on your account. This will help other businesses become aware that your account has been violated. If you place the alert with one agency, they will notify the other two for you. It is also imperative to notify authorities that you’ve been violated. It is imperative that you also check your credit report to ensure that no other unpaid accounts are showing negatively on your credit history. It may also be wise to place a credit freeze on your accounts. Lastly, send all of your creditors a copy of your Identity theft report. This will verify that your account has actually been violated and the business can take the necessary precautions to ensure that no new charges are placed.

In conclusion, overcoming identity theft is hard, but it is possible. Making minor changes in your lives can prove to be beneficial. You must train ourselves to be attentive and take the extra time and steps to secure your identity. After each transaction, place your credit cards and debit cards back into a secure location before leaving the store. Also, be vigilant and notice your surroundings when entering your pin numbers to make a purchase or select credit and sign for purchases instead. When paying bills on your computer be selective about what you share on the internet. Lastly, make it a habit to check your credit report annually. A lot can be learned about protecting ourselves from becoming a victim fraud.

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