

# Bringing Civil Actions Against Notarios

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*A Broader Perspective*<sup>SM</sup>

\* The views of the author do not necessarily reflect the views of Bryan Cave LLP, or any other attorney at Bryan Cave LLP.

# Notario Fraud: What You Can Do About It

- Report it to law enforcement
- Report it to your state bar association
- Consider Filing a civil lawsuit



# Notario Fraud: What You Can Do About It

- Consider Filing a civil lawsuit.
  - Possible benefits:
    - A civil suit empowers the immigrant to seek justice on his own behalf.
    - A civil suit could lead to recovering the money lost by the immigrant.
    - A civil suit could lead to an injunction barring the notario from future fraudulent conduct.
    - A civil suit could, in some jurisdictions, lead to the payment of punitive damages and attorneys fees.



# Civil Complaint Considerations

- Thinking about Your Action:
  - Evaluating Your Client
  - Which Defendant(s) to Name?
    - Ability to Satisfy Judgment?
    - Assets?
  - Standing concerns?
  - Injury?
  - What Facts Need to be Developed?
  - State versus Federal Court
  - Jury Versus Bench Trial?
  - Talk to your client about what they want to get out of the litigation!



# Civil Complaint Considerations

## What legal theories can I allege?

- In most states there are several theories of recovery for notario fraud:
  1. The state's consumer protection statute
  2. Negligent misrepresentation
  3. Common law fraud
  4. Breach of contract
  5. The unauthorized practice of law
  6. A notario or legal consultant specific statute



# Civil Complaint Considerations

## 1. State consumer protection statutes

- Almost every state has a consumer protection statute that is modeled, to some degree, on the Federal Trade Commission Act.
- The statutes are referred to under a variety of names. E.g., the Maryland Consumer Protection Act (“MCPA”), the D.C. Consumer Protection Procedures Act (“DCCPA”), the Virginia Consumer Protection Act (“VCPA”).



# Civil Complaint Considerations

## 1. State consumer protection statutes

- Although almost every state's statute provides consumers with a right of action, the statutes do differ in a number of respects often including (1) the elements you need to prove, (2) types of damages you can recover, (3) standing required, etc.



# Civil Complaint Considerations

## 1. State consumer protection statutes

- In general, however, the elements to bring a deception case under a state consumer protection act are:
  1. A material representation that is likely to mislead,
  2. Plaintiff acted reasonably under the circumstances,
  3. Plaintiff was damaged.





# Civil Complaint Considerations

## 1. State consumer protection statutes

- What is generally *not* required: proof of the defendant's intent.
- What is *not* a defense: a literally true statement if a reasonable consumer could have interpreted the statement differently.
- How the “reasonableness” of the plaintiff is judged: If a representation is directed at a particular group, reasonableness is examined from the perspective of that group.



# Civil Complaint Considerations

## 1. State consumer protection statutes

- Many, but not all, state statutes allow the consumer to recover:
  - Damages
  - Punitive damages (or treble damages)
  - Attorneys fees
  - Injunctions



# Civil Complaint Considerations

## 2. Negligent Misrepresentation

- In many states, negligent misrepresentation consists of
  1. A representation made in the course of business,
  2. Which is false,
  3. **Defendant did not exercise reasonable care or competence in obtaining the information or making the statement,**
  4. **Plaintiff relied on the representation.**
  5. Plaintiff injured.
- Recovery is often limited to damages.



# Civil Complaint Considerations

## 3. Common law fraud

- In many states, fraud consists of
  1. A material representation
  2. Falsity.
  3. **Defendant knew representation was false.**
  4. **Defendant intended plaintiff would rely upon it.**
  5. **Plaintiff acted in reliance.**
  6. Plaintiff injured.
- Plaintiff may be able to recover:
  - Damages
  - Punitive damages
  - Injunction
  - Attorneys fees



# Civil Complaint Considerations

## 4. Breach of contract

- In many states, breach of contract consists of
  1. Valid contract
  2. Defendant breached
  3. Plaintiff performed necessary obligations
  4. Damages
- Plaintiff may be able to recover:
  - Damages
  - Any other remedies provided by contract
- Considerations:
  - Contracts are often fraudulently induced.
  - Economic loss doctrine may force you to elect between contract and tort.



# Civil Complaint Considerations

## 5. UPL

- Considerations...



# Civil Complaint Considerations

## 6. State notario / legal consultant statutes

- More than **16 states** have passed statutes that are intended to make it easier to bring suit against notarios / legal consultants. These include (but this is not a complete list):
  - Arizona, California, Colorado, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Washington.



# Civil Complaint Considerations

## 6. State notario / legal consultant statutes

- The statutes differ by state. An example:
  - Maryland Immigration Consultant Act (“MICA”)
    - Prohibits immigration consultants from:
      - » Providing legal services or representing that they have credentials to provide legal services.
      - » Legal services include providing forms to an individual, completing forms on behalf of an individual, filing forms on behalf of an individual, advising an individual to file forms, etc
    - Requires immigration consultants to:
      - » Provide a written contract.
      - » Notify immigrant in writing that they are not an attorney.
    - Penalties:
      - » Recovery of fees paid and possible treble damages
      - » Reasonable attorneys fees (up to \$2,000 or 1/3 of damages)






# Recent Case Study

- *Flores v. Ramirez* (Fairfax County Circuit Court)
  - Ramirez told Spanish-speaking immigrants that he was an abogado
  - Flores paid Ramirez \$4,000 to post bond for his friend
  - Ramirez never paid the bond
  - Filed claims for:
    - Violation of the Virginia Consumer Protection Act
    - Unauthorized Practice of Law
    - Fraud
  - Related criminal charges for three other victims
  - Settled in January for Money Judgment and Injunction




# Recent Case Study

- *Flores v. Ramirez*
  - Complaint Exhibits



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