

# **“Lex and the City”**

## **Property Owners Beware Real Estate Fraud!**

**By Michael G. Cochrane**

As if Canadians didn't have enough on their plates looking after their families and their jobs and their busy lives, here is something new for property owners to worry about – real estate fraud. Some recent court decisions have raised the alarm among the legal profession and the public about the growing trend of this billion dollar problem emerging across North America.

How does real estate fraud happen? A number of different ways, but primarily through what are known as “value frauds” and “identity frauds.” A value fraud can occur when a potential purchaser with a criminal motive offers to buy a property for, say, \$350,000 from a legitimate property vendor. After coming to terms, but before closing, the criminal sells the property again to another crook for \$500,000. Of course, the property is not worth \$500,000, but the bank/lender does not know that, so they advance the mortgage proceeds which are, in part, used to pay off vendor number one. After a few months of making mortgage payments, the criminal duo abandon the property. When the bank moves to collect on its mortgage, it realizes that it advanced more money than the property was really worth. Score one for the criminals and zero for banks.

The second type of fraud is called identity fraud and it occurs when the criminals simply forge their way onto title to your home. In some cases, they have tapped into the electronic registry system and have simply taken your name off the property and put their name on. They then go to the bank and get a mortgage and, again, disappear with those mortgage proceeds. A few months later, you get a notice from a mortgage company asking about payments that have been missed. They threaten to sell the property and wave around a mortgage that, lo and behold, is actually registered on title to your home.

Identity fraud has even gone so far as to include criminals creating fake law firms and faking or stealing legitimate identification of real people. In one shocking case in Ontario, they faked a Power of Attorney to sell an elderly man's property to innocent buyers who had obtained a legitimate mortgage. Both the innocent buyers and the innocent mortgage company were left out in the cold. Score one for the criminals and zero for the buyers and the banks.

This problem has become so prevalent that alerts have been sent out to lawyers along with checklists to keep us alive to some of the patterns to these frauds. Lawyers are now asking clients to produce photo identification. Real

estate lawyers are scrutinizing transactions, for example when a client wants to purchase on an “all cash” basis but is subsequently placing a mortgage on the property. Lawyers are also being told to keep their eyes peeled for clients who jump from lawyer to lawyer on real estate transactions and where there is no real estate agent involved. The list of clues to discovering a fraudster is some three pages long, but that has not stopped these rip off artists from slipping through the system.

What can be done? Unfortunately not much other than to be aware of situations that can be tempting for criminals. Elderly people seem to be victimized because they are vulnerable and often have a lot of equity in their home. Lawyers are recommending title insurance, whereby an insurance policy is purchased, often for less than \$500, to indemnify the property owner against any mischief with his or her title.

The Ontario Government has recognized the problem and has proposed new legislation that would protect the title to property that has been victimized by these fraudsters. Lawyers are well aware of the problem and are doing what they can to ensure that their clients are not exploited, but there is no substitute for Canadian property owners keeping a watchful eye on the very title to their property.

Just one more thing to worry about, but well worth a little time and effort.

***Michael Cochrane is a Toronto lawyer who is a partner with Ricketts, Harris LLP. He is the author of several books, including Surviving Your Divorce, published by Wiley & Sons. He is the host of ROBTV's “Strictly Legal”, which airs Thursdays at 8:30 p.m. Eastern time and 5:30 p.m. Pacific time. Mr. Cochrane can be reached at his e-mail [mcochrane@rickettsharris.com](mailto:mcochrane@rickettsharris.com) or visit his website at [www.michaelcochrane.ca](http://www.michaelcochrane.ca). Mr. Cochrane welcomes your questions and comments or suggestions for future columns in Luxe. “Lex and the City” is the copyright of Michael Cochrane.***