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Title Fraud
by Harry Thorsteinson

These days, maybe the more apt questions are “who is the owner of my house?” or “who has placed a mortgage on my property?” Title fraud is a relatively new problem, although not entirely new. It seems to have become much more severe in recent times as the system of land registration in Ontario has shifted from that of “hands on” (submit actual documents for registration at a land registry office) to that of “electronic” registration where documents are now registered electronically or by computer. All land registry offices in the Province are converting to this new system and the total conversion is almost complete. A downside of this improvement in the land registration system is the increase in frauds and it seems that such electronic registration of documents has made it easier for the fraud artists to operate. Be prepared to show photo identification to your lawyer when you are next involved in a real estate transaction since mortgage lenders will no longer advance funds without proper photo ID and the Law Society of Upper Canada demands that all lawyers obtain such identification in each and every transaction.

The types of fraud fall into two general categories. First the fraudster will claim to be you, falsify your signature and obtain a mortgage against your property. Once funds are advanced, the criminal usually deposits sufficient funds into an account to cover a number of mortgage payments and then takes off with the balance of the mortgage funds. When the funds in the bank run dry, this new “fraudulent” mortgage is in arrears and the true owner gets a demand letter from the bank. This will be the first time the true owner becomes aware of the situation and the fraudster is long gone. The second type of scam involves actually conveying title (forged signature of course) to another person and that person then mortgages or actually sells the property to an innocent buyer.

One of the big problems with these frauds is determining the victim. Is it the duped bank, the true owner or the innocent buyer? It may seem obvious that it wouldn't be the innocent owner, but there are recent horror stories where what seems obvious and fair isn't necessarily the case – when a thief breaks into my home and robs me, I'm innocent as well and yet I'm out of pocket whatever has been stolen. Innocent victims have been successful in defending themselves and claiming compensation, but to date such processes have been very involved and expensive.

There is relief in sight. Title insurance companies have arrived in Canada, having been a fixture of the real estate world in the United States for many years. In essence, these companies issue insurance policies such that when, and if, problems arise with one's title to property the insurance company will come to the rescue. These policies are now common in Ontario (and throughout Canada) and actually replace the traditional lawyer's certification of title. These policies will also protect against the frauds outlined in this article. Virtually all purchasers of real estate now obtain such a policy upon payment of a modest one time premium. These companies will also issue policies to people who purchased their home years ago before title insurance was available.

The other protection comes from the Government of Ontario. Sweeping new consumer protection reforms were passed into law in December, 2006 and a key component of this legislation addresses real estate fraud. Under this new legislation ownership of property cannot be lost as a result of fraudulent conveyancing. Although this is good news, it still may be wise to discuss with your lawyer the advisability of obtaining title insurance even though your property was purchased years ago.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

Rodger Gordon rgordon@lbwlawyers.com
Harry Thorsteinson hthorsteinson@lbwlawyers.com
Gary Black gblack@lbwlawyers.com
David L. Edwards dedwards@lbwlawyers.com

Robert Welch rwelch@lbwlawyers.com
R. Bruce Smith bsmith@lbwlawyers.com
Del C. Daignault ddaignault@lbwlawyers.com
Michael A. Mann mmann@lbwlawyers.com

Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340