

Real Estate Fraud How to Identify Risk and Avoid Becoming a Victim

Prepared For: Legal Education Society of Alberta

Real Estate for Legal Support Staff

Prepared By:

Jocelyn A. Frazer

The Law Society of Alberta

Calgary, Alberta

For Presentation In:

Edmonton – October 20, 2011

Calgary – October 25, 2011

Fraud in the context of real estate transactions continues to be a concern for law firms, financial institutions, and property owners. It is important for everyone working in a law office to understand how various frauds work, know what the so called “red flags” are, and know what to do when fraud is suspected. This understanding is key to protecting your firms' and your clients' interests.

The purpose of this paper is to identify the various types of fraud arising in real estate transactions, help to identify certain “red flags” that should prompt lawyers and their staff to raise questions and apply extra diligence in suspicious circumstances, and finally provide some practical tips on how to protect themselves and their clients from becoming victims or inadvertent dupes of sophisticated con artists.

Types of Real Estate Fraud

In the Real Estate context, the frauds that are a concern for Alberta law firms generally fall under one of three types: frauds targeting lawyers, frauds targeting lenders, and frauds against property owners.

Frauds Targeting Lawyers:

The estimated \$250,000,000,000.00 that passes through the trust accounts of Alberta lawyers each year has made them an appealing target of fraudsters. Fraudsters are creative, they are getting more sophisticated, and their fictitious scenarios can seem like legitimate legal matters.

- (a) Bad Cheque Frauds seem to be the most common fraud attempts at present. The traditional debt collection hoax where fraudsters contact lawyers asking for assistance in collecting a debt or spousal- support arrears have expanded into the area of real estate among others.
- (a) What happens: The fraudster contacts the lawyer, often by email but also by regular mail or direct phone contact. Asking for assistance in purchasing property, funds are often quickly forwarded to the lawyer who negotiates the instrument. The prospective buyer is often outside the jurisdiction, making client identification and verification difficult. It is only later, after funds have been paid out by the lawyer to either the client or some third party, that it will be discovered that the instrument it was a forgery and there is now a shortfall in the lawyers trust account. Fraudsters have contacted realtors asking for referrals to lawyers so that when contact with the lawyer is made, a known referral source is quoted, often giving the lawyer a false sense of comfort. Other frauds present as a request by a fraudster posing as an attorney from another jurisdiction requesting assistance on behalf of their client who wishes to purchase property in Alberta.

(b) Reported Examples: These bad cheques can come from any number of different sources. Below are only a few examples of what some lawyers have encountered:

- A payment from an ex-spouse on a spousal support collection under the terms of a collaborative family law agreement
- A payment from a debtor on a business debt collection
- A payment from an unrelated 3rd party corporation as a down payment on a real estate purchase transaction
- A loan advanced from a sham lender on a business loan or real estate transaction
- A payment on a real estate deal that ends up being aborted triggering a repayment of the deposit to the purchaser or some third party

In some of these schemes, lawyers have received the cash to close in the form of a cheque written on the account of a corporation in another jurisdiction. When the receiving lawyer does an initial search of the corporation it may appear valid, but enquiries directly to the company (using independent telephone numbers, **not** the ones provided on the cheque) have revealed that the cheques were forgeries.

(c) Red Flags:

- Contact is made by email may contain spelling or grammar errors mistakes. Although this may also take the form of a letter, fax or telephone call.
- The prospective client is unavailable to attend personally in the lawyers office. They may be offshore, are unknown to the lawyer's office
- The facts seem completely unusual or hard to believe
- Funds arrive quickly or unsolicited at the lawyers office
- Timing happens just prior to a long weekend when banks will be closed
- There is often a "rush" - some urgency on the part of the client to receive funds quickly

- (b) Stranded Traveler Scam: hackers have accessed the email contacts of a lawyer – then sent the message to all the lawyers contacts with a plea for money – the message may say that the lawyer is traveling in Europe, has been robbed and needs immediate funds. The hacker would intercept any reply and provide instructions for the transfer of funds, which are, of course, received by the fraudster and long gone before the fraud is detected. If you receive a request such as this from a client or lawyer, use independent means to verify the circumstances – call the individual directly using a number that you have on a file for them (not the one included in the email if there is one)

Frauds Targeting Lenders:

Otherwise known as mortgage fraud, this type of fraud is generally a material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan. There are two types of mortgage fraud: fraud for property and fraud for profit. Fraud for property usually involves the borrower as the perpetrator on a single loan. Fraud for profit often involves industry professionals. There are generally multiple loan transactions with several financial institutions involved.

In recent years, mortgage fraud has emerged as a serious issue. Published estimates indicate that mortgage fraud is costing lenders and insurers billions of dollars in losses in both Canada and the United States. In Alberta, mortgage fraud, together with investment scheme frauds, presently tops the list of concerns facing the Alberta Lawyers Insurance Association (“ALIA”), and the Law Society of Alberta Assurance Fund, and Law Society of Alberta conduct, and investigations departments.

Value Fraud

In a value fraud, the value of the property or income of the borrower is artificially overstated to deceive the mortgage lender. This may be done in one of several ways including:

“flips”, where one or more superficial transfers of title are used to rapidly increase the apparent value of a property. These are types most frequently encountered by the Law Society. Fraudsters in such schemes often do one or more of the following:

use “straw” buyers (persons paid to act on behalf of the fraudster and whose name and credit is used for title transfer mortgage application purposes);