

Real Estate Fraud!

Janet M. Leppard
Sales Representative, Coldwell Banker First Ottawa

Market success: 13,783 residential homes were sold in the Ottawa area in 2006, setting a new record over the previous high in 2004. The condominium market continued to grow and drive sales while residential sales stayed consistent with 2005.

Real Estate Fraud: the lucrative market, a large range of financing options, and easier access to information about properties and homeowners are among some of the factors that have led to the growing severity of real estate fraud.

Fraud is defined as misrepresentation of material fact(s) with knowledge and the intent to deceive to the detriment of another. The following figures from Genworth Financial provide a searing perspective:

❖ 1999:	\$73	Million
❖ 2000	\$75	Million
❖ 2001	\$300	Million
❖ 2006	\$1.2	Billion (estimated)
❖ 2010	+\$10	Billion (estimate if fraud continues unchecked)

Fraud can be grouped into two broad categories: fraud for shelter and fraud for profit. Fraud for shelter involves an individual home-buyer who misrepresents some fact (e.g. income) in order to purchase a home.

Fraud for profit, on the other hand, is characterized by sophisticated and sometimes complex schemes, no intent to pay a mortgage, inflated property value (frequently), multiple falsified documents and fast closings. A third party will be involved and receive monies for the fraudulent transaction. Third parties can include fraudulent vendors, borrowers, lenders, realtors, appraisers and lawyers.

Title fraud is the type of fraud for profit that most often hurts individual homeowners. The most common forms of title fraud involve the use of stolen identities or forged documents to transfer a registered owner's title without the registered owner's knowledge. The fraudster then obtains a mortgage on the property and, once the funds are advanced on the mortgage, he or she disappears.

Tombstoning and *dumpster-diving* are two of the most popular forms of identity theft. *Tombstoning* involves searching obituaries to find an individual who died as a child and who would now be the fraudster's current age. *Dumpster-diving* is exactly what it sounds: going through trash in order to locate documents that can be used to forge a new identity.

Awareness, legislation and title insurance are all ways to arm ourselves against fraudulent real estate activity.

Awareness/Prevention of Identity Theft

- ❖ Always store personal information, including your birth certificate, Social Insurance Number card, bank account numbers and credit card details, in a secure place that others cannot access.
- ❖ Never carry your birth certificate or SIN card in your wallet.
- ❖ Shred documents such as credit card statements before you discard them. (A small shredder can be purchased for under \$50.00 from Staples or Costco).
- ❖ Never reply to spam or e-mails that ask for banking information, credit card details, passwords or other sensitive information involving property you own.

Legislation

Bill 152, the Consumer Protection and Service Modernization Act 2006, received third reading on December 12th, 2006 and Royal Assent on December 20th, 2006. The new law ensures that ownership of a property cannot be lost as the result of the registration of a falsified mortgage, fraudulent sale or a counterfeit power of attorney.

It also implements a streamlined and expedited Land Titles Assurance Fund process for victims of fraud so that registered title will be restored to them and a decision on compensation will be made within 90 days, instead of the two to three years required for decisions in past.

Existing fines for real estate fraud have been raised from \$1,000 to \$50,000, and access to the electronic land registration system by lawyers and others can now be suspended without notice in the case of suspected fraudulent activities.

Under the new law, banks and other lenders who do not exercise the requisite due diligence in registering mortgages are no longer eligible to make claims against the assurance fund. Also, title insurers who insure mortgage lenders and homeowners against fraud are now prohibited from making claims against the fund after they have made payouts to their insured.

Title Insurance

While title insurance protects against a variety of title defects, this article focuses only on those associated with title fraud. All title insurance is purchased through a lawyer. Three different policy types are available as outlined below. Only the highlights are presented. It is important to consult your lawyer for details.

- ❖ *Lender Coverage* applies in situations where an existing homeowner obtains new financing such as establishing a new mortgage or a line of credit. This type of policy covers the mortgage lender. A one-time charge of approximately \$115.00 applies.
- ❖ *Insurance Coverage* applies at the time of purchasing a home. This type of policy applies to both title fraud and other title defects. A one-time charge, dependant upon purchase price, applies.
- ❖ *Owner Express Coverage* applies to situations where the homeowner currently owns the home and is not establishing a mortgage or line of credit. A one-time charge of approximately \$200.00 applies.

At a recent sales conference, the president of a major real estate company advised that, in his view, identity theft poses the greatest danger with respect to title fraud. It seems that we have evolved from a "chicken in every pot" during the Great Depression to a "shredder in every household" in the 21st century. If you don't have one, buy one now – don't give dumpster-divers a shred of a chance!

Sources for this article include: Ottawa Real Estate Board (OREB); Ontario Real Estate Association (OREA); The Law Society of Upper Canada; the Ministry of Government Service; Government of Ontario; The Lawyers' Professional Indemnity Company; and the Real Estate Council of Ontario (RECO) fraud education seminar offered through Genworth Financial.