Land Title Fraud
SDS Law Firm · Tuesday, May 21st, 2013

Sold! But Who Owned Your House When It Was Sold?
Although not quite an epidemic, there have been a disturbing number of cases of land title fraud in Ontario. You should be aware of this crime as it could easily happen to you. The frightening fact is that the law does not protect you.

A Simple Scam Targets Homeowners

So, what is title fraud? It starts with Identity Theft so the criminal can pass himself or herself off as you, the registered homeowner, using publicly available information. Here is how a recent fraud was carried out; The fraud artist drove through an upscale neighbourhood, noting addresses. He ran them through Ontario’s Land Registry, which told him who owned the house and details of their mortgage. Next he purchased legal forms from a stationary store and filled them in as if he had just bought the home. Where the form asked for a lawyer’s signature he forged one that he randomly picked out of the phone book. He also forged the homeowner’s signature. At a land title registry office he presented this forgery, paid the land transfer tax and the registration fee, and assumed legal title over the home. A mortgage is then taken out on the home based on these documents, and the fraud artist disappears with the cash. Now the nightmare begins for the legitimate (former) homeowner. If the property has been ‘sold’, the new homeowners are also in for a traumatic time. Ontario law recognizes the transaction as valid where the purchaser is unaware of the scam. An Ontario Court of Appeal decision last fall ruled that a forged power of attorney could be used to create a valid mortgage. The court ruled that once the mortgage was registered, it was binding on the innocent person even though they had no knowledge of the matter.

So, What Can You Do?

You may receive financial compensation for the loss of your home, but this would entail legal fees and an application to Ontario’s Land Titles Assurance Fund, which could take several years because they are backlogged.

Title Insurance
In the meantime, you may want to look into title insurance, but even that may not save you now. Because of the Ontario Court of Appeal decision many insurance companies are refusing to claim because the mortgage is valid, even if the title was forged. Title Insurance is an insurance policy covering the condition of ownership of property at the time the policy is issued and is used to provide protection for a buyer against losses or damages suffered as a result of title problems. Title insurance involves a simple one-time premium and is obtained prior to closing a purchase for the benefit of the buyer. Often, title problems arise because of outstanding liens on title, zoning or building bylaw violations, errors in land descriptions, building encroachments, or improper fence placement. One of the main attractions of title insurance for Ontario consumers is that in the event an unexpected title problem crops up after closing, whether or not it arises out of a mistake made by the purchaser’s lawyer, the homeowner does not have to get involved in lengthy and expensive litigation against his or her own lawyer. Title insurance does not replace the role of the lawyer. It simply provides an added level of protection for the buyer.

**Proposed Ontario Legislation**

Innocent homeowners who discover fraudsters have illegally taken out a mortgage or second mortgage against their property and vanished with the cash will no longer be responsible for paying off the debt under new legislation the Ontario government plans to introduce later this fall. It will ensure that mortgages, transfers, powers of attorney and other instruments obtained falsely will be nullified. However, the new rules also will not help innocent people who purchase a house from a fraudster, turn over the purchase price and then discover they have given the money to a thief who disappears. Additionally, until the new rules are proclaimed as law, current homeowners remain vulnerable.

**How We Can Help**

If you currently own a home and don’t have a title insurance policy and want the added protection of title insurance, call Helen Elliott, who is a Wills and Estates Planner.

**If you are considering buying a home, call Angelo DeMichele who practices exclusively in the area of Real Estate law. We will be pleased to assist you in protecting your home against the kinds of problems noted above.**

The comments in this newsletter are of a general nature and are not designed to replace the need for professional advice in specific situations. If you have questions about this bulletin, we would be pleased to assist you.

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