

Minister discusses changes to Land Titles Assurance fund

Earlier this year, LAWPRO was given the opportunity to interview Ted McMeekin, then Minister of Government Services, on changes to the land registration system for which his ministry is responsible. The following is the full text of the e-interview, and edited version of which appeared in the July 2009 edition of LAWPRO Magazine.

(Note: Mr. McMeekin was appointed Minister of Consumer Services as this publication went to press).

An important government focus over the past years has been in the area of protection from fraud: Your Ministry, the Law Society and LAWPRO have worked closely on some of these initiatives that are designed to enhance consumer protection and education on fraud.

What is your sense of how successful these initiatives have been?

As Minister of Government Services responsible for the land registration system, I am pleased to say that our Real Estate Fraud Action Plan has been very successful in protecting property owners from real estate fraud. The ministry has drawn on the expertise of a strong and diverse committee of representatives from the Law Society, LawPro, financial institutions, lawyers, surveyors, real estate professionals, title insurers and law enforcement agencies as members of the Real Estate Fraud Stakeholder Committee who helped us as we developed this comprehensive plan.

As part of the Real Estate Fraud Action Plan, our government has been able to address significant issues related to real estate fraud and help protect property owners with the passage of the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* (Bill 152). This legislation ensures that property owners do not lose their property as a result of the registration of a falsified mortgage, fraudulent sale or counterfeit Power of Attorney. We have improved the ability of the land registration system to rectify title in the event of fraud and introduced additional safeguards for suspending and revoking access to the electronic land registration system. In addition we raised existing fines for offences related to real estate fraud from \$1,000 to \$50,000.

Furthermore, the legislation transformed the Land Titles Assurance fund (LTAF) so that it is now more responsive to each individual case that comes before it. The Act now allows for an earlier payment process to homeowners and purchasers of residential properties by removing the requirement that those applicants must pursue the individuals who are primarily responsible for the loss, prior to being entitled to any compensation from the LTAF. In cases where an innocent homeowner has suffered a loss, title can be rectified and any loss compensated in a

timely fashion. I would encourage anyone looking for more information on the fund or related to this process to visit us on-line at www.ontario.ca .

Also, the Real Estate Fraud Action Plan ensures that only appropriate parties have access to register documents in the electronic land registration system. In this regard, we introduced a set of criteria based on three standards that are important in the development of an effective strategy against fraud. They are: identity; financial resources; and appropriate qualifications which must be met by those who wish to register documents in the system. Parties wishing to register are required to apply to the ministry for authorization to register in the electronic land registration system and are required to enter into a Registration Agreement. By requiring that all registrants meet these criteria, we can ensure that only appropriate parties register in the system and that victims have recourse where registrants have acted fraudulently.

As well, we have restricted the right to register most transfers of title to lawyers who meet the criteria, while allowing other documents, such as mortgages and related documents, to be registered by all others who meet the criteria. By restricting the ability to register transfers of title to lawyers, we can isolate one of the main documents involved in title fraud and provide consumers with additional protection. Also we have strengthened the standards surrounding the use of powers of attorney in registering real estate transactions.

Most importantly, we have worked hard to ensure innocent homeowners do not lose their homes because of someone else's illegal actions.

Can you talk about the changes that make it easier for consumers to access the Land Titles Assurance fund – how successful have these initiatives been, how many consumers have approached the fund, how much has it paid to those who have been defrauded of title etc?

The Land Titles Assurance fund is a compensation fund established under the *Land Titles Act* (LTA) that allows registered owners of land or holders of a registered interest in the land to make an application for compensation if they have suffered damages related to an error of the land registration system or in some circumstances, fraud.

In *The Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* (Bill 152) enacted in December 2006, the compensation provisions of the *Land Titles Act* were amended transforming the fund's compensation claims process to ensure that the fund is able to be more responsive to the victims of real estate fraud.

There are now two processes that apply to applications to the fund: the new, earlier payment process that applies to a prescribed class of persons who are registered

owners of land used for residential purposes (homeowners) and individuals who are purchasers, in good faith for valuable consideration of land for residential purposes, and the traditional fund process continues to apply in all other circumstances.

I am pleased to say that the backlog of claims to the fund that previously existed has been cleared and all files are current as a result of additional resources being applied to this important matter. A number of straightforward claims have been processed and compensation payments have been made within our new service standard.

Since October 19, 2006, the date of introduction of Bill 152:

- 34 claims related to fraud have been received by the Land Titles Assurance fund.
- 29 claims related to fraud have been paid and closed. The total amount paid is \$3,632,184. The 29 claims consist of some claims that were received prior to October 19 and other claims received subsequent to the October 19th date.
- In addition, 25 claims related to fraud have also been closed as a result of the claims being withdrawn, abandoned or denied. These claims also consist of claims received prior to and subsequent to October 19th.
- There are currently 23 claims of fraud before the Land Titles Assurance fund.

As well, as part of the overall streamlining of the Land Titles Assurance fund process and making the fund more user friendly, tribunal rules of procedure were developed and are available on our website at www.ontario.ca. An information document has also been created and is posted on the ministry website, to advise what losses may be covered by the fund, how to make an application, what claims qualify for compensation, examples of what would be required to establish fraud and prove the loss and what happens at an LTAF hearing. Some prior fund decisions of the tribunal are available for searching electronically and we continue to update this information.

Another area of interest is powers of attorney – as some frauds have been perpetrated with fraudulent powers of attorney. Is the government contemplating changes to the form and execution of a power of attorney that would make this process more credible and objective? Is there any news in this area that might be of interest to lawyers?

The ministry has implemented new standards regarding the use of a power of attorney in real estate transactions. As part of the Real Estate Fraud Action Plan, a lawyer is required to review the power of attorney with his or her client and make a law statement related to authority for the use of the power of attorney when an individual has granted a power of attorney and a document is being signed under the authority of that power of attorney.

Additional statements that do not involve a lawyer have also been added for the use of other powers of attorney.

With respect to the second part of your question, the legislation that governs forms and execution of powers of attorney lies within the Ministry of Attorney General.

What other initiatives, if any, is the Ministry contemplating to further strengthen its fraud protection commitment?

As well as the work happening within this ministry on the Real Estate Fraud Action Plan, there is work happening in other ministries to educate consumers on the important issue of fraud protection.

The Ministry of Small Business and Consumer Services (MSBCS) manages significant legislative and policy-related initiatives involving fraud prevention in Ontario. This includes legislation, information and public education on a range of issues from identity theft and credit awareness, to payday lending and real estate fraud prevention.

As part of this anti-fraud initiative, the government has implemented a new application process for those wanting to be eligible to access the electronic registration system.

Can you talk about how successful this process has been in registering lawyers?

As I have said, the ministry implemented changes to ensure that the appropriate parties have access to the electronic land registration system for the purpose of registering in the land registration system. The new set of criteria introduced has to be met by those wishing to register documents through the electronic land registration system.

The authorization process was rolled out in two phases, the first phase required Account Holders who are lawyers, law firms and other companies that employed lawyers who wish to register documents to submit their application for authorization.

The second phase of the sign-up process was all other Account Holders applying for the authorization. Both phases were successfully completed as of September 30, 2008.

An important aspect of the new rules surrounding access to electronic registration is that only lawyers will be able to effect transfers. Mortgages

currently are treated differently from transfers – what was the rationale for this, and is the government contemplating any change in this area?

As I noted earlier, transfers are one of the main documents involved in title fraud. By restricting the ability to register most transfers of title to lawyers, who are part of a self-governing body with a legislative framework that deals with integrity and practice standards for members, we can further secure the system, isolate documents and provide consumers with additional protection. In implementing these requirements, most transfer of title documents require two different lawyers to sign for completeness, one for the transferor and one for the transferee. These requirements do not apply to other types of interests.

There are no plans to change these registration requirements.

The second phase of this process was to unfold sometime in 2008 – with non-lawyers who want to have registration rights being required to register. Can you update us on the status of this process and any other information that might be of interest to lawyers?

As I stated previously, the second phase of the sign-up process was all other Account Holders applying for the authorization.

I am pleased to say that both phases were successfully completed as of September 30, 2008, with no disruptions to service.

Heightened due diligence on the part of all parties in a real estate transaction appears to be one of the tenets of the government's anti-fraud campaign. Order ODOT 2007-02 issued by the director of titles required that lenders would be required to demonstrate they had exercised due diligence in mortgage transactions if they wanted to pursue a claim to the Land Titles Assurance fund.

Can you provide an update on what has happened or will be happening with respect to this order and the ministry's requirements of lenders? Is there any information related to this that lawyers should be aware of?

The director of titles issued an order specifying the requisite level of due diligence required to be eligible for compensation from the Land Titles Assurance fund. Financial Institutions must demonstrate that reasonable steps have been taken to verify identification and to verify the transaction to be eligible for compensation from the fund. These steps may include an in-person meeting with the borrower within a reasonable time prior to closing or performing an onsite appraisal or visit to verify the transaction.

As I have said, my ministry has worked closely with industry representatives through the Real Estate Fraud Stakeholder Committee throughout the introduction of the Real Estate Fraud Action Plan. The roles and responsibilities of all parties involved and the need to practice due diligence was included in our discussions.

I have been advised and I am pleased to report that at a recent Real Estate Fraud Stakeholders Committee meeting, it was acknowledged that the work of that committee and the initiatives undertaken have been instrumental in addressing fraud.

We will continue to work with this committee to develop effective strategies and approaches to combat real estate fraud and to increase the security related to the processing of documents obtained for mortgage purposes.

Are there other areas of fraud prevention your ministry is working on apart from real estate fraud?

As I have said earlier, the government has been very active in the area of educating consumers on the important issue of fraud protection which includes protecting one's identity and preventing identity theft.

As well the Ministry of Government Services also has a role to play in protecting personal information, via the Office of the Chief Information and Privacy Officer, which concerns itself with information management and privacy protection – both of which are important in helping to prevent possible identify theft.

The *Freedom of Information and Protection of Privacy Act* requires ministries to protect personal information by limiting how it may be collected, used and disclosed, and requiring appropriate security protections.

The privacy and security directives, policies and procedures implemented by the Ontario government provide clear direction on how ministries should manage information and information technology in order to protect personal and sensitive information.

All new programs and changes to existing programs must undergo a privacy impact assessment to ensure adequate protection is built into the design of systems and operations.