

# 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 an edited version of that e-interview. The full text is available at [www.practicepro.ca/mcmeekin](http://www.practicepro.ca/mcmeekin). (Note: Mr. McMeekin was appointed Minister of Consumer Services as this publication went to press).*

**Over the past years your Ministry, the Law Society and LAWPRO have worked closely on initiatives that are designed to enhance consumer protection and education on fraud prevention. How successful do you feel these initiatives have been?**

I am pleased to say that our Real Estate Fraud Action Plan has been very successful in protecting property owners from real estate fraud. ... As part of (this 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](http://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.

### **How many consumers have approached the fund, and how much has it paid out?**

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 which 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 19<sup>th</sup> 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 19<sup>th</sup>;
- 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](http://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.

### **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?**

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.

### **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. What has happened or will be happening with respect to this order and the ministry's requirements of lenders?**

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.

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.