

Fighting fraud: organizations collaborate

If there's one thing all parties concerned about real estate fraud agree on, it's that there is no silver bullet with which to fight fraud. Instead, it will take a multi-faceted effort on the part of all players in the mix – lawyers, lenders, real estate agents, mortgage insurers, industry associations and provincial ministries and agencies – to address the problem.

To this end, the Ministry of Consumer and Business Services (MCBS), Teranet Enterprises Inc., and LAWPRO, have joined together on a committee to examine how to work together in dealing with and preventing fraud. This committee consists of representatives from the lending and legal communities, title insurers, mortgage insurers, provincial ministries, law enforcement agencies and others.

The committee's existence is a first, acknowledges Kate Murray, Director of Titles for Ontario's land registration system of MCBS and one of the key committee organizers, and reflects a recognition that a collective effort is needed to combat fraud.

"We are working on many fronts: What reforms, for example, might be needed to existing regulatory and legislative frameworks that deal with the reporting, monitoring and action on real estate fraud allegations. How do we best share information among committee members and organizations? What do we need to do to educate all participants in a real estate transaction – from realtors and financiers to lawyers, regulators and government – about the issue and how do we best deliver these educational initiatives?"

Individually, organizations are also taking action. The Canadian Institute of Mortgage Lenders and Brokers (CIMBL) for example, has issued a revised draft of its best practices document – a standard of practice guide that is aimed specifically at mortgage originators, both independents and those still working within financial institutions.

"In the late 1990s, the independent mortgage originator channel accounted for about 10 per cent of mortgages; today, this channel accounts for more than 25 per cent of all mortgages," reports Mark Webb, CIMBL's Senior Director of Professional Affairs. And with the incidence of fraud on the rise, lenders, insurers and brokers recognize the need to set a practice standard for this source of business. "The mortgage community is concerned about the deals they are seeing and the losses they are experiencing. Fraud is no longer just a cost of doing business – its scope is such that action needs to be taken."

The new standards suggested in CIMBL's "Origination Standards for Fraud Avoidance" document significantly raise the bar when it comes to the mortgage originator, requiring documentation, identification and investigation. The document reflects a new set of higher expectations that, Webb believes, are an inevitable

outcome of fraud. "The lenders, insurers and brokers all have an increased awareness of the need to raise expectations – of themselves, of lawyers and all other parties to a mortgage transaction." Similarly, he points out, there are signs that the Office of the Superintendent of Financial Institutions, which oversees the financial sector, is likely to tighten the standards to which the lenders are held accountable. "I think we're going to see stricter standards all around."

CIMBL and the Canadian Mortgage and Housing Corporation (CMHC) are working individually to train lenders and brokers on the issue of fraud, adds Marie Dyck, Senior Advisor – Fraud for CMHC's Insurance Servicing Division.

"The entire mortgage industry – lender, insurer, agent, broker, lawyer – need to act together to address this problem. Fraud will always target the weakest link: So if only one of us implements anti-fraud controls, fraud will simply move to another segment of the industry where the controls are weakest."

For its part, the Real Estate Council of Ontario (RECO) – the regulatory body through which real estate salespeople and brokers are registered – is stepping up its member- and consumer-oriented educational efforts, as well as its investigative/reporting activities.

RECO currently publishes the names and disciplinary proceedings of those who are subject to internal disciplinary action by the Council as a result of violations of RECO's Code of Ethics. RECO will publish the particulars of revocation proceedings and the names of those who have breached the Real Estate and Business Brokers Act (REBBA), the legislation governing the real estate industry in Ontario. A new newsletter to be launched this fall will focus on fraud as part of the Council's effort to raise agent and broker knowledge of mortgage fraud.

RECO also aims to better educate consumers about what to expect in a real estate transaction, and to inform consumers about the services already available to help them check out their real estate agent or broker.

The RECO Web site, for example, lets anyone do a real-time search of its 39,000-member database – enabling any member of the public to verify the identity and credentials of individuals who hold themselves out to be licensed real estate professionals. Plans are to highlight this service to the public, as well as enlist consumers in helping spot fraud by educating them about the details of a real estate transaction.

"The key message we want to get out is that registrants who participate in mortgage fraud not only face the prospect of being charged criminally but could lose their registration," says Prendergast. "We also recognize that no one organization alone

can solve this problem. We know from experience that fraud often happens when many players in the mix are complicit. There is no single solution that will work for each of us.

To address the problem, the many organizations that have a stake in this issue – lenders, lawyers, insurers, agencies such as ours and others – have to work together to fight fraud.”

Law Society initiatives: CLE, training, resources

The Law Society of Upper Canada is developing a range of informational resources for lawyers, and is working with other organizations as part of a collaborative approach being taken to deal with and help prevent mortgage fraud.

In addition to the guidance available to lawyers through the Law Society's Practice Advisory department, the Law Society is developing reference materials and continuing legal education (CLE) programs to help lawyers involved in real estate transactions avoid becoming the tool or dupe of unscrupulous clients.

The Law Society is currently developing CLE programs on the topic of fraud that will be presented in Fall 2004. The Law Society previously presented a CLE program titled “Real Estate Fraud: Protecting Your Practice from the Brazen New Breed of Fraudster” on January 26, 2004. Materials from the program are currently available on the Law Society's e-Transactions site at: <http://ecom.lsuc.on.ca> or by calling the Law Society's Member Resource Centre at 416-947-3315 or toll-free at 1-800-668-7380, ext.3315.

The Law Society is also working with other organizations as part of a multi-faceted approach to dealing with and preventing fraud.

“All institutions, lenders and regulatory bodies touched by this issue must work together to attack the problem and to develop safeguards against future occurrences,” says Zeynep Onen, Director of Professional Regulation for the Law Society.

In April 2002, the Law Society created a special mortgage fraud team in its Investigations department to concentrate its full-time focus on complaints of alleged mortgage and real estate fraud involving lawyers. In the course of its work, Law Society staff have developed expertise on the issue which has been shared with various lending institutions and regulatory bodies.

“The Law Society has presented seminars to share the learning coming out of our investigations,” notes Onen. “Our hope is that together we can develop methods that will help better identify possible fraudulent transactions before they are completed.”

The Law Society is currently coordinating additional workshops, and will include seminars for Crown Attorneys and police officers.

Online reference materials for lawyers will include:

- Fact scenarios, which will provide examples of how frauds may occur in the context of a mortgage transaction, including identity fraud.
- A list of potential fraud indicators.
- Useful practice tips.
- References to the *Rules of Professional Conduct*, including some of the lawyer's ethical obligations when acting in a transaction where a client may be engaged in a fraud.
- Questions and answers (Qs and As), which are being developed based on a sample of the questions received from lawyers by the Law Society's Practice Advisory department and from the experience gained by the Law Society during its investigation of mortgage fraud-related disciplinary matters.

These reference materials will be available on the Law Society's Web site at: www.lsuc.on.ca/services_en.jsp. The online materials will be supplemented with links to additional resources available on the Web sites of other partners in the fight against fraud, such as the Ministry of Consumer and Business Services, LAWPRO and the Canadian Institute of Mortgage Lenders and Brokers. The Law Society is also publishing information and promoting the online resources in a special section of its July/August 2004 issue of the Ontario Lawyers Gazette. In addition, the Law Society's Practice Advisory department is available to provide assistance to lawyers with ethical questions on the topic and can be contacted at 416-947-3315, or toll-free at 1-800-668-7380, ext. 3315.

For continuing updates and resources related to this issue, visit the Law Society's Web site at: www.lsuc.on.ca.

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TitlePLUS fraud measures

The increased attention being paid to fraud has prompted LAWPRO to increase its scrutiny of applications for TitlePLUS coverage.

This additional fact-checking will happen automatically and in an automated fashion to all TitlePLUS applications submitted

over the Web. The application system now will run a number of fraud prevention checks which may increase by a few seconds the time it takes to obtain a pre-approval on a TitlePLUS application; in some instances, the application may trigger the need for a manual review by one of the TitlePLUS underwriters. Additional anti-fraud measures are being contemplated.