

# LawPRO Alert

ATTENTION

April 29, 2015

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## **[LAWPRO Alert #2] Risky VTB mortgage transactions in Collingwood and Barrie**

LAWPRO is warning Ontario real estate lawyers to be on the alert for risky vendor takeback mortgage transactions, some of which may be closing this week. There is a significant potential claims risk for lawyers involved in these transactions.

On April 24 we sent a LAWPRO Alert email to lawyers in the Barrie and Collingwood regions about an individual who was involved in several transactions involving vendor take back (VTB) mortgages on properties in Barrie and Collingwood. We had learned about these transactions thanks to calls from lawyers and an email warning sent by one of the county law associations.

We are now aware of six transactions involving this individual, and in one case a Kitchener lawyer was acting for one of the parties. As none of these transactions were completed (for various reasons – see below), we are concerned that lawyers outside the Barrie and Collingwood area may be approached to act for the vendor, purchaser or lender on one of these transactions. The following paragraphs describe these transactions and problematic aspects of them.

Three of the deals came to lawyers through real estate agents they were familiar with, and in all cases agreements of purchase and sale had already been signed when the deal came to the lawyer. It is clear that the complex mortgage commitment provisions were not explained to or understood by the vendor and/or lenders on some of the transactions.

This individual was reluctant to provide ID to one lawyer, and has provided only a cell number to the real estate agents and lawyers he was dealing with on two of the other deals. Web searches turn up information that in the past he was involved in a problematic transaction involving a VTB mortgage and other debt disputes. We understand there are four websites with different business names that connect back to this individual.

This individual is posing as a custom home builder looking to buy a property through a numbered Ontario company. In some cases he is using his real name, in other cases he is using minor spelling variations on his real name, and in one case he used his middle name as his last name. He provided an up-to-date minute book for a numbered company that was in good standing to one lawyer. In other cases the numbered company involved was not in good standing (this terminated these deals). The agreements of purchase and sale on two of the deals were not properly signed on behalf of the corporate entity (this terminated at least one deal). The numbered companies on two of the deals had an address that is a UPS facility on Collingwood St. in Collingwood. In two of the transactions the real estate agent involved was acting for both seller and buyer. The deposit had not yet been paid on two of the deals. In three cases the properties were unencumbered. One was a condo and two others were vacant lots. The individual says his previous lawyer is not available as “he has just retired” or “was on vacation.” In two

cases there was a push for a quick closing so he “could commence building.”

These deals are structured in a convoluted way to allow this individual, as buyer, to receive a large portion of the proceeds of the first mortgage. The following comments explain how these deals are structured (the figures provided are for illustration): The property sells for \$400,000, made up of \$150,000 cash and a vendor take back mortgage in the amount of \$250,000. A first mortgage (which may be characterized as a construction mortgage) for \$300,000 from a real lender is arranged. This individual will collect this amount when the deal closes, but only turns \$150,000 over to the seller as the rest of the purchase price is covered by a vendor take back second mortgage. This leaves the buyer with an over-mortgaged property and the seller with \$150,000 in cash plus a VTB for \$250,000, which is then insufficiently secured against the property (because it is second in priority to the \$300,000 first mortgage). This is very risky for the seller – and the lawyer acting for the seller – as the seller might not get paid the balance owing in the event this individual stops paying the first mortgage forcing a sale, as has happened in a similar past VTB mortgage transaction involving him that is reported in the press.

LAWPRO encourages Ontario lawyers to be on the alert for real estate deals involving this individual or scenario, as it is not clear that the vendor and new first mortgagee understand all the details of the transaction, and the volume of activity of the individual concerned. The lawyers acting on the above transactions have terminated their retainers or refused to act so it is possible that other lawyers will be targeted.

If you are acting on a transaction that you believe involves this individual or a similar scenario, please call LAWPRO at 1-800-410-1013 (416-598-5899) and ask to speak with Rosanne Manson or Mitch Goldberg. We can help you determine if the transaction is legitimate or not. If it turns out to be a fraud and there is a potential claim ([click to report a claim](#)), we will work with you to prevent the fraud and minimize potential claims costs.

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