



PRACTICE TIPS: Recognizing Fraud in Real Estate Transactions

Real estate fraud can occur in a number of different ways. The following is a list of some possible indicators of fraud in residential real estate transactions.¹ The presence of one or more of these indicators in a transaction does not necessarily mean that a fraud is occurring or has occurred in the transaction. This list is not intended to replace the lawyer's professional judgment. Whether a fraud is being committed in the course of a real estate transaction will depend upon the circumstances of the individual matter or transaction.

Recent Property Purchase

- The client has recently purchased a property on an all cash basis and is subsequently placing a mortgage on the property.
- The client has a copy of his or her Transfer/Deed but does not have any other documents relating to the property (purchase documents or a survey).
- The client does not retain the same lawyer who acted in the purchase transaction to act in the mortgage transaction and the client instructs the new lawyer not to contact the former lawyer;
- The search of title indicates recent transfers of the property at higher prices and the same lawyer acted on each of the transfers;

The Agreement of Purchase and Sale

- The agreement of purchase and sale contains no hand written amendments;
- The agreement of purchase and sale contains an amendment which provides for a reduction in the purchase price or a payment to the vendor after closing;
- The vendor in the transaction acknowledges receipt of deposit monies that are not required pursuant to the agreement of purchase and sale;
- The deposit is paid to the vendor directly rather than to the lawyer in trust or to the real estate agent;
- There is no real estate agent involved in the transaction;
- A real estate agent is listed in the agreement but the lawyer does not receive any communication from the agent (e.g. payment of commission);

The Transaction(s)

- ❑ The client does not have fire insurance on the home;
- ❑ The utility companies are unaware of the vendor owning the home;
- ❑ The client needs to close the transaction very quickly;
- ❑ The client is a new client and promises to refer more transactions to the lawyer;
- ❑ The client arranges the mortgage through a broker and the brokerage fee is unusually high;
- ❑ The client is prepared to pay higher legal fees than normal for the lawyer's services;
- ❑ The purchase price is much higher than the purchase price of recent transfers of the same property;
- ❑ There are large and unusual adjustments in the Statement of Adjustments (e.g. large credit for renovations);
- ❑ The statement of adjustments does not reflect the terms of the agreement of purchase and sale and any amendment thereto.
- ❑ The title indicates a pattern of mortgages being registered and discharged shortly afterwards;
- ❑ All of the funds required to close the transaction come from the institutional lender;
- ❑ The name of the client in the identification produced by the client does not match the name of the client in other documents in the transaction;

Mortgage Proceeds

- ❑ There is a surplus of mortgage proceeds after the closing of the transaction that are to be paid to the borrower or to a third party;
- ❑ The client directs part of the mortgage proceeds to third parties (eg. off-shore recipients, currency exchange);
- ❑ The client instructs the lawyer that it is unnecessary to prepare written directions authorizing the payment of funds to third parties;
- ❑ The mortgage is a cashback mortgage and the cashback is the full amount of the equity in the property;
- ❑ The client directs the lawyer to rebate a portion of the mortgage surplus to the vendor;

Client is a Facilitator

- ❑ A new client (facilitator) refers a number of real estate files to the lawyer and the client although not a party to the transaction controls the transaction (eg. gives instructions to the lawyer, arranges for the parties to the transaction to sign documents etc.) and directs the parties in the transaction;
- ❑ The client does not have a personal cheque for the client's pre-authorized debit plan but provides a blank "counter cheque";
- ❑ The lawyer is instructed to pay the excess mortgage proceeds to the facilitator even though the facilitator does not appear to have an interest in the transaction;

Flip Transaction

- ❑ The vendor acquires the property the same day that it is being sold for a higher purchase price (flip transaction);
- ❑ The lawyer is asked to act for both the purchaser and the vendor in the flip transaction;
- ❑ A bank loans money on the strength of the consideration contained in the flip agreement;
- ❑ The client instructs the lawyer not to disclose to the lender that the transaction is a flip or that the lender is lending money on the higher consideration;
- ❑ The Land Transfer Tax affidavit shows the higher consideration. The Transfer/Deed of Land signed by the original vendor containing a lower consideration is manually altered prior to closing to match the consideration set out in the Land Transfer Tax affidavit;

Multiple Transactions

- ❑ A new client begins referring a number of real estate files to the lawyer and the same parties (purchasers and vendors) are involved over and over in transactions;
- ❑ The client indicates that he or she is in the business of renovating homes;
- ❑ The same real estate agency appears regularly on the agreements of purchase and sale;
- ❑ The mortgages arranged in these transactions are usually high ratio mortgages with mortgage insurance;
- ❑ The lawyer is instructed to use the excess mortgage proceeds for the purchase of another property;

Corporations

- ❑ The original minute books for the company are not available or incomplete;
- ❑ The minute books contain irregularities such as the lack of the “pink-stamped” articles of incorporation.

¹ Some of the items contained in this list of possible indicators were adapted from the following sources: LAWPRO, “The Many Faces of Fraud”, June 2004; Law Society of Upper Canada CLE program, Real Estate Fraud: Protecting Your Practice From the Brazen New Breed of Fraudster, January 26, 2004.