



THE LAWRENCES[®]

LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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TITLE FRAUD AND IDENTITY THEFT

Have you sold or mortgaged your home without knowing it?

Heather M. Picken

Susan Lawrence of North York has owned her home for the past 30 years. Last summer she found that her identity had been stolen: the thief had transferred the title to her property to a third party and remortgaged her home for almost \$300,000. When the mortgage went unpaid, the mortgage company sued Lawrence for possession of her home and won, although the decision is under appeal.

You may have read about similar cases of title fraud and wondered how such a thing can happen. All too easily these days, if you have a paid-off mortgage or an investment property that you rent to others. Identity thieves can gain access to the title of your home, transfer it to a fictitious name, then remortgage it and disappear with the money. You find out only when the bank follows up on the unpaid mortgage.

In a recent precedent-setting case, *Household Realty Corporation Ltd. v. Liu*, 2005 CanLII 43402 (ON C.A.), the Ontario Court of Appeal ruled that even if a mortgage was obtained fraudulently, it was still a valid mortgage. This set the stage for a number of subsequent cases, each one resulting in hapless owners like Susan Lawrence, who lost properties that they had owned for years. Before this line of cases, the law favoured the innocent original property owner over the defrauded lender or purchaser.

In December 2006, the Ontario government responded by passing Bill 152, the *Consumer Protection and Service Modernization Act*, that gives broad discretion to the Director of Titles to rectify the effect of all fraudulent instruments on title, and to suspend or revoke access to the electronic land registration system. The legislation also raises the maximum penalty for real estate fraud convictions from \$1,000 to \$50,000. The provincial government is also urging that a national database of real estate fraud cases be created and that the federal government should classify the fraud as a separate offence under the federal Criminal Code.



However, the legislation does little to streamline the procedure for a victim of identity theft and title fraud to make a claim against the Ontario Land Titles Assurance Fund, which compensates victims of title fraud. Indeed, it may have made it even more difficult, as the victim must first demonstrate evidence of having undertaken "requisite due diligence as specified by the Director of Titles".

While our courts and government attempt to deal with the burgeoning problem of title fraud and identity theft, there are some things you can do to protect your property. One option to consider is to purchase title insurance. A title insurance policy requires a title opinion from a lawyer who has searched the title to a property, and a one-time fee that protects the property for as long as you own it. Unlike other types of insurance policies, which protect you only against events that may happen in the future, title insurance also protects you against

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