



THE LAWRENCES[®] LETTER

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

WINTER 2007

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

In this issue:

Title Fraud and Identity Theft 1

Corporate Minutes: Why They Matter 3

Life at Lawrences[®] 4

TITLE FRAUD AND IDENTITY THEFT

Have you sold or mortgaged your home without knowing it? *(continued from page 1)*



losses from title problems that may have already occurred. For example, if it is found that some portion of property encroaches on a right-of-way, the insurance compensates the owner for any financial loss in correcting the problem. Title insurance will also reimburse property owners for financial losses suffered through title fraud in the future, although it cannot prevent the fraud from happening. Title insurance is generally purchased through a lawyer, who can tell you whether your property qualifies for coverage.

Keep in mind, however, that title insurance is not the only option if you are concerned about title fraud. Subject to tax considerations, in some cases, family conveyancing may be a possible alternative by adding one or more family members' names on the title to your property. Another option is the registration of a no-dealings indicator on the title to your property. This is a legal restriction that prevents further transactions related to the property pending investigation. These two options could help prevent fraud from occurring, as they present additional barriers for the fraudster to overcome.

If you have questions about title insurance or your options to help deter or prevent fraudulent activity from occurring, please contact our office to speak to a member of our Real Estate Group.



Heather Picken is Lawrences' Managing Partner and heads Lawrences' Real Estate Group. She can be reached at 905-452-6891 or hpicken@lawrences.com.

Lessening the Chances

Take these simple steps to help prevent identity theft and title fraud:

- If you rent out your property:
 - Obtain as much information as possible from prospective tenants before renting property to them.
 - Request letters of reference and follow up with the writers.
 - Request cheques in lieu of cash payments.
 - Run credit checks on the prospective tenants.
 - Obtain photo identification.
- Obtain your own credit report: if it lists unfamiliar creditors, follow up with them.
- If you go on vacation, have someone pick up your mail while you are away. If you rent out property, ensure that no mail addressed to you is sent to that property.
- Shred all documents containing your name or signature before disposing of them.
- Contact our office to obtain a title search of your property, to ensure there are no unfamiliar encumbrances registered on title.
- Consider purchasing a title insurance policy.
- For more information on how to prevent identity theft, check out the Ontario Ministry of Government Services web site at:
http://www.gov.on.ca/MGS/en/ConsProt/S TEL02_045992.html

Title insurance is generally purchased through a lawyer, who can tell you whether your property qualifies for coverage.

Corporate Minutes: Why They Matter

William G. Sirdevan

The founder of a family business adds his new son-in-law to the company's board of directors. A small corporation seeks a substantial bank loan for a new acquisition. A growing company decides to pay out large, one-time bonuses, rather than large, annual raises, to its management team.

No matter the type of business or size of company, all Ontario and Canadian business corporations are legally obliged to keep and maintain records of their internal affairs and decisions, usually in a "minute book". A corporation's "annual minutes" must record the company's minimum annual internal activities. Any transaction outside of the corporation's ordinary course of business must be documented, either by minutes of a meeting or by a resolution signed by the corporation's directors or shareholders.

Such activities include:

- Declaration of dividends, bonuses or management salaries by the corporation's directors
- Directors' approval of the corporation's annual financial statements
- Presentation of these financial statements to the corporation's shareholders
- Election of directors for the next year
- Appointment of auditors or accountants for the corporation for the next year
- Appointment of officers for the corporation for the next year

The corporation must also document any changes in its shareholdings, directors, officers, registered office address or the residence address of any of its shareholders, directors or officers and file prescribed documents disclosing this information within prescribed time lines.

Why all the paperwork? What would happen if it were not completed? Let's look again at the three examples above.

What if other family members in the first example become disgruntled about the inclusion of the new son-in-law? Not having properly documented a corporation's decisions, arrangements, agreements and transactions may allow a disgruntled shareholder to claim that he or she never agreed to the course of action and the corporation was

therefore never properly authorized to undertake it.

In the second example, neglect of corporate record maintenance can cause major problems when a corporation attempts to borrow money or to sell shares or assets. Lenders and buyers usually require a legal opinion on the corporation and the authority of the individuals that purport to speak on its behalf. Without a properly maintained corporate record, the transaction may be delayed and additional expense incurred in attempting to bring current the corporation's records, if this is even possible. Sometimes, a formerly involved director or shareholder is unavailable, the paper trail cannot be repaired and the contemplated transaction founders for want of a proper legal opinion.

In the third example, not maintaining a corporation's records creates significant problems if the Canada Revenue Agency ("the CRA") audits the corporation. Such an audit will include a review of the Corporation's minute book to verify how monies have been removed from the corporation by way of dividend, bonus, management salary or otherwise, as may be disclosed in tax returns of the corporation and its shareholders filed with the CRA. Although the tax returns may reflect the occurrence of certain transactions, if they have not been documented in the minute book, as far as the CRA is concerned they have not occurred. Without proper documentation, the CRA may reassess a corporation, resulting in the corporation having to pay more tax.

And we can't ignore the fact that by not keeping complete and current records, a corporation and its directors are violating the law. They could face significant fines as a result.

To minimize the possibility of these problems arising, the ongoing maintenance of a corporation's records, including the preparation of "annual minutes", is best done by a corporate lawyer, who will advise on ongoing legal compliance and retain a copy of the corporate minute books. The directors and shareholders of the business can then focus their attention on successfully growing the enterprise.



Bill is a partner and chairman of Lawrences' Business Law Group. He has over 15 years' experience advising clients on corporate and business structuring, reorganizations and succession planning. Bill can be reached at 905 452 6871 or

wsirdevan@lawrences.com.

Neglect of corporate record maintenance can cause major problems when a corporation attempts to borrow money or to sell shares or assets.

Life at Lawrences®

Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

Down on the Farm



Very little about Ontario agricultural law will now escape the eye of litigator **John O'Kane**. The Lieutenant Governor of Ontario has appointed him to not only the Board of Negotiation under the *Environmental Protection Act*, but also as the vice-chair of the Agriculture Food and Rural Affairs Appeal Tribunal (AFRAAT).

The Board of Negotiation oversees farmers' claims about contaminants on their lands. AFRAAT deals with appeals under various agricultural Acts, acts as a licence review board for agricultural suppliers, and also hears complaints and applications under the *Agriculture Employees Protection Act* and appeals under the *Food Safety and Quality Act*. John's extensive experience in administrative law and in advising the agriculture industry earned him the appointment.

Big Brothers, Big Sisters, Big Plans



As business law partner **Bill Sirdevan** takes on the presidency of Big Brothers, Big Sisters of Peel, the agency has ambitious plans. It currently serves over 1,000 families, but has a waiting list of 300 more. The volunteer board plans to grow the agency so that it can take on 100 more families each year over the next three years. Bill, who has

served on the board for about five years, believes that the organization and its 2,000 volunteers bring great benefit to the community: "People all around us are facing great challenges and the need is growing all the time."

Back to School



Heather Picken has just completed a rewarding six-year provincial government appointment to the Board of Governors of Sheridan College Institute of Technology and Advanced Learning. During her term on the Board, Heather served as Chair of the Finance and Property Committee and Vice-Chair of the Board of Governors and the Executive Committee. She was instrumental in helping the College develop and implement a new plan for Sheridan's Brampton Davis Campus, with its niche programming curriculum of advanced manufacturing, health and justice studies.

On the Jury



Litigation partner **Ed Upenieks** has found himself on the jury for once! Ed recently completed a term as chair of the Ontario Trillium Foundation's Halton-Peel Grant Review Team. Ed's appointment was made by the Ontario Minister of Culture. The Foundation awards grants to charitable and not-for-profit organizations to fund

organizations and projects in arts and culture, the environment, human and social services, and sports and recreation. The Grant Review Team is responsible for recommending funding of approximately \$9 million across the Halton-Peel catchment area, enriching life in our community.

Down on the Farm

Big Brothers, Big Sisters, Big Plans

Back to School

On the Jury

THE LAWRENCES® LETTER

The Lawrences® Letter is a free newsletter offered by Lawrence, Lawrence, Stevenson LLP. If you have colleagues who would be interested in receiving the newsletter, please have them send their contact information to newsletter@lawrences.com.

If you do not wish to continue receiving the newsletter, please send an e-mail to newsletter@lawrences.com with the word 'unsubscribe' in the subject line.

The information in this newsletter is not, nor is it intended to be, legal advice. You should consult a lawyer for specific advice about your own situation. Use of this newsletter does not create a solicitor/client relationship between Lawrence, Lawrence, Stevenson LLP and the reader.

Lawrence, Lawrence, Stevenson LLP
43 Queen Street West
Brampton, ON L6Y 1L9

T: 905 451 3040
F: 905 451 5058
E: info@lawrences.com

www.lawrences.com