

What can solicitors do to reduce MORTGAGE FRAUD?

By MATTHEW BRANSGROVE



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New editions of titles, several caveats on the title, variations in names or identities, a desire for an 'urgent' settlement: these should all ring alarm bells, alerting you to the possibility of fraudulent dealing.

ALTHOUGH THERE HAS BEEN A great deal of press about identity theft, where the victim is totally unrelated to the fraudster, the bulk of instances of mortgage fraud involve a friend or relative with convenient access to the certificate of title and/or the property. There are many actions which lenders can (and are best placed to) take to prevent fraud, but there is also much that can be done by solicitors for the lender and the borrower.

The fraudsters

Fraudsters need at least some knowledge of conveyancing practice to attempt a fraud. The more knowledge they have, the more sophisticated the fraud will be. Likely contenders include persons who

have worked for finance brokers, property developers, solicitors, licensed conveyancers, real-estate agents and registration agents. A key element in spotting fraud is to understand that fraudsters can emulate normal conveyancing behavior. A practitioner should not draw comfort from the apparent normality of a transaction. A chat on the telephone with a paralegal who uses all the correct terminology and knows all the correct procedures is no guarantee a transaction is bona fide.

Another area, where fraud is not expected, but is frequent, is within families. A solicitor acting for a borrower should not let their guard down just because they have identified one of the mortgagors satisfactorily. For example, drug addicts are often more than happy to steal from members of their family, feeling less apprehension in doing so than from a stranger. Family members also have inside knowledge of where the certificate of title or birth certificates are kept, or when their relatives are overseas, and, importantly, often have the ability to intercept mail.

Your most powerful tools in detecting fraud

The three most powerful tools in detecting fraud are:

- title searches
- solicitor searches
- driver's licences and passports.

Study title searches

A title search can tell you many things. An unencumbered title is particularly inviting to fraudsters as they only need to dupe the incoming mortgagee – not the outgoing mortgagee as well. An unencumbered property is rare, because the bulk of mortgages are refinances or purchases, so it prompts a closer look. The edition date on the search will tell you when the last transaction on the property

was. If that date was when your borrower turned seven, then you are dealing with John junior and not John senior.

The words "This edition issued pursuant to s.111 *Real Property Act 1900*" should wave a red flag. It means the Registrar General was satisfied the previous edition lost, mislaid or destroyed. The real owner may have the old edition under their bed while the replacement application was made by the fraudster.

Several caveats, especially ones which only go to the interest of one of two or more registered proprietors, are an indication something may be afoot. This is because caveats often indicate last-resort borrowing. People in desperate straits often borrow without their co-proprietor's permission and then forge their co-proprietor's signature to increase those borrowings.

Solicitor searches – verify whom you are dealing with

You can trust other solicitors, but the question is, are you dealing with another solicitor? One problem is that many practices create their letterhead using word processors and these are easily forged. Also, the name on the letterhead may look familiar, but is it the real McCoy? The matter may be put to rest by comparing the contact details on the letterhead with those on the Law Society's 'Find a lawyer' online database (www.lawsociety.com.au/Search).¹

Driver's licences and passports

If you are acting for a borrower, insist on sighting their original driver's licence or passport. They are hard to forge and both have a photo. Credit cards or Medicare cards are of limited use. A fraudster may have access to the registered proprietors wallet as well as their certificate of title. Although there are stories of perfectly forged licences and passports, your fraudster probably does not have access

ILLUSTRATION: SIMON BOSCH



AUSTRALIA
PASSPORT

Driver's Licence
New South Wales, Australia
JOHN ALFRED CITIZEN
22 EASY ST
DIMPLETOWN 2779

Licence No.
12345678
Licence Class
C
Date of Birth
06FEB1964

DONOR A
Conditions



Licence Expires
06 AUG 2001

Card Number
1100001101

Medicare

4130 76543 2

1 JEFF CITIZEN

VALID TO 01/2010



to them. More likely they will try to fob you off with a relative's passport or driver's licence. In this regard beware of names which are not quite identical to the title search. For example, "George Frederick Jones" on the driver's licence and "Frederick Jones" on the title search. In this case you should search the original transfer and compare it to the dates and signature on the driver's licence.

Watch out for elderly clients who claim they have neither a passport nor a driver's licence. Just because someone is elderly does not mean they are above impersonating another person for money. The usual scenario is the real registered proprietor is in a retirement home and their child, niece, nephew or grandchild enlists the assistance of an older friend as an imposter. To satisfy yourself, you may need to be creative – on occasion I have asked to see wedding photos (where one spouse was able to produce photo identification but the other was not).

Beware of urgency

Most frauds are carried out in a rush, to increase the chances of success. If a settlement is urgent, ask why it is urgent. Then follow up and verify what you have been told. If there is a notice to complete on another property, ask to see the notice. Call the solicitor who issued it. The fraudster might be pushing for a quick settle-

ment because they are worried your correspondence will be received by the real registered proprietor. Increase the chances of this by sending letters to the security address by express post.

Case study of a mortgagee solicitor who broke all the rules

The fraudster was a clerk at a suburban law firm acting for the registered proprietor. The registered proprietor bought the land unencumbered as an investment property. The fraudster intercepted the certificate of title when it came back from the LPI. The fraudster approached a short-term finance lender. The lender's valuer inspected the vacant property after the fraudster gave access using a copy of the keys collected on settlement. A large city firm acted for the lender. The fraudster used phony numbers and a fake letterhead to purport to be a solicitor acting for the borrower. The lender's solicitor did not:

- verify the identity and contact details of the solicitor by using the Law Society's online database;
- use extra care when the title search revealed the land was unencumbered;
- use extra care when the title search revealed the latest certificate of title was issued in accordance with s.111 of the *Real Property Act*; or
- check the edition number of the certificate of title proffered at settlement.

Because the security was unencum-

bered, the settlement took place at the city firm's office. Had it been encumbered, the city firm's registration agents would have spotted the difference in the edition number.



Case study of a mortgagor solicitor who witnessed only one signature

The loan was a 'low-doc' one, not covered by the consumer credit code. These loans are particularly dangerous because the lender has not performed due diligence in verifying the borrower has a job, clear credit, and so forth. Lenders usually insist on independent legal advice. This puts the onus of positively identifying a borrower onto the borrower's solicitor. The security was owned by a drug-addict-

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ed fraudster in his 30s (in the proportion of one per cent) and his father in his 80s (in the proportion of 99 per cent).

On the day of the appointment, only the fraudster showed up. He said he would take the papers to his father to sign because his father was too sick to travel. The solicitor poured cold water on that.

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The fraudster then said, “Sign me up so I can go back to work and I will get my father to come in later”. The solicitor agreed to this and witnessed the fraudster’s signature. He then asked a paralegal to put the security documents back on file until the father came in. Two weeks passed and, while the solicitor was on leave, the fraudster came back and asked for the mortgage documents. He said he would take them to his father’s solicitor for witnessing as his father was too ill to come into the city. The paralegal consulted a junior solicitor who gave authority for this course of action.

The fraudster forged his father’s signature and returned the documents. Opposite each of the forged signatures was the genuine signature of the solicitor purportedly witnessing both the genuine and forged signatures. A paralegal sent the documents to the lender and the loan settled.

The future

There are worrying trends overseas where identity theft is being used to transfer properties using forged discharges and then remortgage them for higher amounts, all without the real owner being any the wiser. For an insight into this practice, see www.lawpro.ca/LawPRO/LawPROmagazine3_2_Jun2004.pdf. □

ENDNOTE

1. In some circumstances Law Society member details are not published on the website. Contact the Law Society’s Registry (registry@lawsofnsw.asn.au) if you are unable to find the solicitor for whom you are searching. □

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