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Beware the 'Oklahoma' swindle

Buyer rebate scam is not legal

Last month in this column, I wrote about the "Oklahoma" swindle, a scam where the purchase price of a house is artificially inflated by a device like a kickback of the deposit, or a non-existent down payment.

I told about Star reader Mike Westward who e-mailed me to ask if it was acceptable to sell his \$250,000 house for \$270,000 and give the buyer a \$20,000 rebate on closing. An agent he was dealing with told Westward it was a "common practice" and a "creative way of getting around the down payment."

Under the Oklahoma scheme, the bank is not shown the rebate portion of the paperwork and it advances a high-ratio mortgage for more than the \$250,000 the house is really worth, in the belief that the property sold for \$270,000.

My advice to Westward was there was nothing wrong with the inflated purchase price idea if the purchaser's mortgage lender is aware of the whole truth. If not, I wrote in the column, it is fraud.

After the column appeared, I received a follow-up e-mail from Westward. "My agent read your column," he wrote, "and agreed 100 per cent. It's the other agent that seems unfazed."

I spoke to Westward after I received the e-mail, and asked what he meant by "unfazed." His comment about the agent was that "she didn't see anything wrong. If they (the banks) don't know (about the fraud) that's their problem."

She told Westward that "a lot of people are doing it."

That's when I decided to check with the Ontario Real Estate Association, the body that represents the interests of agents and brokers, and handles their education program. I felt vindicated in my judgment that the Oklahoma remains illegal when I found a page on the OREA Web site (<http://www.orea.com>) entitled Mortgage Fraud Doesn't Pay.

"Apart from the criminal conduct of being a party to obtaining credit by fraud, real estate professionals should also be aware of their ethical duties," the Web page warns. It quotes from the Code of Ethics of the Real Estate Council of Ontario, the governing body for Ontario real estate agents.

Section 10 warns that a member must not make any statement or participate in the creation of any document or statement that the member knows, or ought to know, is misleading.

OREA warns its members, "It's not worth risking a jail sentence and/or the loss of your professional licence. If the seller is going to give the buyer some rebate or credit, simply put it in the offer -- in big bold print on page one. Then make certain that the lenders and everyone else involved are aware of it."

RECO then cites two interesting cases of Ontario "Oklahoma's" that wound up in our court system. In *Greenglass v. Rusonik*, Taurus Developments agreed to sell 42 acres in Innisfil Township to Erik de la Count for \$640,000. On closing, the Purchaser was credited with making deposits of \$10,000 plus an additional \$340,000 by uncertified cheques.

These were not deposited and were to be returned to the buyer on closing as a "commission."

The true sale price was really \$300,000, but a private mortgage lender gave a \$300,000 first mortgage believing the sale price was \$640,000. No one told the lender that the "commission" was \$350,000, and that the land was purchased three years earlier for \$168,000.

At trial in 1981, the private mortgage lender won damages of \$300,000 against his own lawyer, who then successfully sued the lawyers for the vendor, Taurus Developments.

The decisions were upheld on appeal in 1983, with both courts finding that the lender had been the victim of a fraud by the borrower and the borrower's lawyers, and the negligence of his own lawyer in failing to verify the non-existent \$350,000 down payment.

The other case cited by OREA is *Kaufman v. Lotz*, a 1995 decision of the Small Claims Court in Stratford. Audrey and Burnet Kaufman had a house worth \$109,000 but concocted a deal with their real estate agent to sell it to a third party for \$119,000 to make it appear that their equity was bigger than it really was.

At the same time, the third party sold the Kaufmans his own home for \$144,900.

Both prices were inflated so the Kaufmans could obtain high-ratio CMHC Mortgage financing without any real down payment. When CMHC appraised the house the Kaufmans were buying, they realized the value was inflated and cut back on the amount of financing. The Kaufmans were forced to get a second mortgage to close the deals, and then sued the agent, Brad Lotz, and their lawyers for damages.

The strange theory of their case was that they suffered financially, due to their own failed attempt to defraud CMHC by inflating the sale price of the two properties.

The court found that although Lotz was the architect of the fraud, the Kaufmans were willing participants in an illegal and immoral scheme to defraud CMHC and the mortgage lender, or both.

At trial, Audrey Kaufman had testified that the purchase agreement was a "fake" one with an "inflated purchase price" for the purpose of getting the higher mortgage amount.

Not surprisingly, the court tossed out the Kaufmans' claim and awarded double costs against them. The legal rule is that a party must come to court with "clean hands" and the Kaufmans did not qualify.

Perhaps Canada's biggest "Oklahoma" scam was the purchase by Greymac Credit Corporation of 26 Toronto apartment complexes containing about 11,000 units on Nov. 4, 1982. The purchase price was \$270 million.

On the same day, Greymac resold the properties to Kilderkin Investments Limited for \$312.5 million, and Kilderkin immediately flipped them to 50 numbered companies for \$500 million.

Greymac Trust and Crown Trust ended up financing the overpriced buildings based on the \$500 million price, and were left holding mortgages unsupported by the true value of the properties.

Numerous criminal charges were eventually laid against the major participants in the venture and the trust companies were wound up by provincial regulators.

In today's real estate market, there may still be agents like the one who wanted to sell Mike Westward's property, who think it is acceptable to structure a no-money-down deal by

inflating the purchase price.

Apparently the message that mortgage fraud is illegal is still not getting through to every single agent.

The fact is that agents and purchasers who participate in Oklahoma schemes could wind up in jail. No real estate deal is worth a criminal record.

Before I leave the subject, I want to pass on one of the many interesting e-mails I received on the topic of mortgage fraud.

This one was from Rob and Ann Ewan. It reads, "Your article on the "Oklahoma swindle" was interesting. You didn't explain why it's called that, and we were wondering if you could tell us why it got its name."

Despite my best efforts, I was unable to track down the derivation of the term Oklahoma. Can any readers help?

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