



Bob Aaron bob@aaron.ca

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## Arranging a mortgage? Bring some photo I.D.

Increasing fraud prompts officials to demand proof

### *Courts refuse to void mortgages obtained illegally*

The next time you're in a lawyer's office signing documents for a purchase, sale or mortgage, don't be surprised if you have to produce photo identification.

It's not that lawyers are looking for more work to do far from it.

The reason is the increasing amount of identity theft and real estate fraud has put lawyers and lending institutions on a heightened alert. In fact, a number of banks and trust companies now refuse to advance funds unless the lawyer provides them with copies of the borrower's photo I.D.

Lawyers were reminded of the importance of identity checks with the recent publication of the case of Chomley v. Chomley.

Just before Joanne and Sonny Chomley separated in 1999, Sonny arranged a bank loan with Royal Bank on the matrimonial home.

When he visited the bank to sign the mortgage documents, he was accompanied by a woman who impersonated his wife Joanne.

Without having to provide identification of any kind, they both signed the mortgage document, which was promptly registered on title. Sonny was soon on his way with the \$40,000 proceeds of the loan.

It wasn't long before Joanne found out about the scam. She reported the matter to the police, and eventually Sonny was charged with fraud. He pleaded guilty and was sentenced to jail for more than a year.

Two years ago, Joanne sued her now-estranged husband, Royal Bank, and First American Title, which bought the mortgage from the bank. She wanted the court to void the bogus mortgage on her house. Her claim was based on Ontario's Family Law Act, which prohibits one spouse from selling or mortgaging the matrimonial home without the consent of the other.

The case came to trial in September. Joanne's lawyer, Peter Bernd Wenglowksi, argued that the mortgage was invalid without her own signature. Opposing them, the bank and its title insurer argued that the mortgage was valid against the husband only.

Justice Donald Taliano agreed with the bank, recognizing that Joanne and the bank were both victims of Sonny's fraud. He decided that although what Sonny did was prohibited by law, the mortgage was valid. Since the bank had advanced \$40,000 without knowledge of the forgery, its mortgage served to act as a charge against the house, but only against the husband's interest.

Today, each half of the house is worth between \$45,000 and \$55,000. Joanne owns her half free and clear of the Royal mortgage, but Sonny's half is now subject to the \$40,000 mortgage.

The court decision effectively means that if Sonny does not make his support payments to Joanne in future, his half of the house cannot be used to secure any default in payments because that mortgage is now held by the title insurer.

The Chomley decision is reminiscent of a 1996 Ontario court case, in which an imposter posed as Saeko Yamada, the wife of borrower Say Van Nguyen, to sign a mortgage.

The real Yamada never received the proceeds of the \$70,000 mortgage, and no identification was asked for by the lawyer at the time of signing the document.

When the private lender Martin Mock sued his lawyer over the worthless mortgage, the lawyer argued there was no duty to verify ID because there were no "red flags" in the behaviour of the borrower.

The court found otherwise. Justice Gerald Day cited a 1989 bulletin of the Law Society that urged lawyers to verify the identity of the person signing documents in their offices. The lawyer got hit with paying out the Mock mortgage.

An interesting facet of the Chomley case is the fact the mortgage and loan documents were signed in the bank branch in front of an employee who was, according to the judge, "fairly new to the job of approving loan applications."

In my experience, most borrowers who sign mortgage documents in banks do not receive a full, unbiased explanation of the nature and effect of what they are signing. Often, they do not realize that a secured line of credit is actually registered as a charge or mortgage against their home.

For the cost of a consultation with an independent real estate lawyer which the bank will often pay for mortgage documents should be reviewed and explained outside the bank. Mortgage documents should never be signed in a bank branch.

And don't be surprised or offended if your lawyer asks for ID.