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New type of property fraud is shocking

Sophisticated scam almost worked

Hydro clerk and lawyer foil crooks

Lawyers attending a recent real estate law seminar at the Law Society of Upper Canada heard for the first time about a new type of property fraud. I have frequently written in this space about various types of title and mortgage fraud, including identity fraud and inflated-value or "Oklahoma" fraud.

But Toronto lawyer Neil Smiley, of Fasken Martineau DuMoulin, shocked me and the 500 lawyers at the Law Society seminar by revealing the details of a property fraud, which happened to one of his clients. In this sophisticated scheme, the fraudsters did not have to alter or steal the title to the property. What they did was steal the corporation that owned it.

Although Smiley did not reveal the names of the parties or the location of the property, he did provide a thorough explanation of how the crooks operated. I've simplified it somewhat for clarity, but in essence here's how it works:

We'll call the property and the vacant building on it Blackacre, and its owner Titleco Ltd. Titleco's in-house, staff lawyer is Smith, and the outside lawyer who handled the creation of Titleco and the purchase of the property is Adams.

Freddie Fraudster picks Blackacre as his target, and creates phony corporate records plus a minute book and seal for Titleco. The phony minute book appears to show that lawyer Adams, who was its only director and officer, has resigned and appointed Freddie Frauster as its chief officer and director.

Freddie has notified the Ministry of Consumer and Business Services that control of the company has changed, and the government records now show him in control of Titleco. The minute book contains a freshly minted but bogus share certificate showing Freddie as sole owner of all the shares in Titleco. All of this, of course, is a sham. Titleco's Smith and Adams don't know a thing about Freddie or the fraudulent minute book.

Now that Freddie's company "owns" Blackacre, he arranges a sale of the vacant property. The sale could be an arm's length deal to a real purchaser who thinks he is getting a good title from the real owner, Titleco. Or it could be a sale to a confederate who will dupe a mortgage company into advancing funds on the phony purchase.

At this point, Titleco's outside lawyer, Adams, gets a call from the local utility company asking where they should send the "final" utility bill, since the purchaser is opening a new account. Adams calls Smith, and alarm bells start ringing in Smith's office. They both know Adams is the sole director of Titleco, and for sure he didn't sell the property to anyone. Smith realizes someone else is about to sell Blackacre without his knowledge.

Smith springs into action. He registers a "protective mortgage" against the property so that no one will be able to sell it without dealing with the mortgage. He finds out who Freddie's lawyer is and has Adams call to alert him to the fraud about to take place. Adams tells him who is really in control of Titleco and Blackacre, and cautions him not to close the transaction.

In the following days and weeks, Smith finds out that Freddie's lawyer had the phony Titleco corporate minute book in his possession. He thought it was genuine and that the transaction was perfectly legitimate.

He also finds out that Freddie's lawyer knows about the protective mortgage and already has a discharge of it in his hands, apparently prepared by yet another lawyer who is unaware of being duped.

The discharge appears to be signed by the mortgagee but, of course, it, too, is forged just like the minute book and share certificate.

Smith registers a caution on title to prevent further dealing with Blackacre without his consent. He also calls the police.

Because of the intense activity by Smith to alert everybody involved about the fraud that was about to take place, the phony sale of Blackacre never takes place.

Later, the police tell Smith that the same day he found out about the would-be sale of the Blackacre building, a similar deal took place on another property where registrations were completed and funds advanced.

At the Law Society seminar, Neil Smiley told the lawyers present that the level of sophistication and the extent to which the criminal element will go is quite shocking. The protective mortgage he registered was no match for the crooks involved, since they simply produced a discharge of it for their unsuspecting lawyer.

In the final analysis, Smiley credits the clerk at the local hydro office for saving the day. He is too modest his own fast and thorough legal work translated the tip into action, which saved the day or at least that day.

Lawyers are constantly on the alert for title fraud and identity fraud. Now we have to be on the alert for corporate records fraud as well.