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Fraud victims deserve quicker compensation

In the past few weeks, I have received dozens of letters, emails and faxes proposing solutions to what Justice Randall Echlin, in an Ontario court decision late last month, called "a serious mortgage fraud plague."

Virtually all of the suggestions propose some sort of security system to be added to each Ontario land title, or the registration of a "protective" mortgage so that fraudsters would not be able to deal with the property title.

I have politely responded to each suggestion saying that it would be either politically risky, too expensive, or unworkable. Here's why:

Some *Star* readers proposed registering a "protective" mortgage on title either as a line of credit in favour of their bank, or to themselves. I'm told that some bank employees have actually recommended this type of registration.

This is actually no protection at all. In a matter of minutes, sophisticated fraudsters could produce a forged paper discharge or a bogus authorization to register an electronic discharge. Another option for the crooks would be to obtain a payout statement from the lender and actually pay off the legitimate existing mortgage out of the proceeds of the bogus new mortgage.

Several dozen readers wrote to suggest that Ontario's property titles be linked to photographs, fingerprints, certified signatures, electronic PIN numbers or even retinal scans.

The first problem with this type of technology is that making a public record of one or more fingerprints or photographs of owners would have the civil libertarians, and many property owners, up in arms.

The resulting uproar might be similar to the objections raised earlier this year over the mandatory security thumb prints now required by the operators of the Law School Admission Test, used by most North American Law Schools to evaluate the likelihood of law school success. The prints are used to verify the identity of the people writing the tests.

Canadian test-takers have expressed concern that the thumb prints, obtained in Canada, are stored in the United States and available to the U.S. government under the Patriot Act. As well, having fingerprints or retinal scans of Ontario property owners on public record might well violate federal and provincial privacy laws.

The second problem with the technology is the huge cost of implementation. Ontario's 5.2 million properties might have as many as 10 million people authorized to sign for transferring or mortgaging the land. This number includes joint owners, powers-of-attorney holders and authorized signing officers of banks and corporations who might change on a daily basis.

Each of those 10 million people would have to appear in person in front of a government agent, prove their identity, have a photo taken, provide a fingerprint or retinal scan, and possibly receive a unique PIN number or password.

Then, every registered user of the Teranet land registration system would have to install the necessary hardware and software to have the system verify the security measures.

All of these complications remind me of the federal gun registry program. It was introduced in the mid-1990s at a projected cost of less than \$2 million. By the time Prime Minister Stephen Harper announced his plan to kill the registry during the last election campaign, those costs had soared to \$2 billion. About 200 government employees in Miramichi, N.B. work for the registry full-time.

Earlier this year, Public Safety Minister Stockwell Day said that the registry has not had a positive impact on gun crime.

Adding new security measures to Ontario's 5.2 million property titles could make the gun registry look like child's play. And such a program would impose huge roadblocks to the efficient and transparent use of the land registry system that we have today.

Last week, Kate Murray, Ontario's director of titles, spoke at an Ontario Bar Association seminar titled *A Viper in the House: Real Estate Fraud and You*. In her presentation, she provided some background on the extent of title fraud.

- There are about 2.2 million new deed or mortgage-related registrations every year in both the electronic and paper-based environments.
- There are 34 active claims to the Land Titles Assurance Fund, with new claims coming in at the rate of about 10 a year. The fund may pay out to discharge a bogus mortgage, or to compensate an innocent purchaser from a fraudster, but not the full legal costs involved.

Based on these figures, I speculate that if each of the 34 claims is successful and involves an estimated \$250,000, that translates to a potential total payout of \$8.5 million in public money to innocent victims of title fraud.

That number is actually fairly low compared with the \$130 million in registration fees received by the government each year, and more than \$1.1 billion in land transfer tax.

Statistically, the chances of any owner having his or her title stolen are relatively low, but that is no consolation at all for the actual victims.

The only protection a property owner can have from the legal and administrative costs of having a stolen title restored to him or her is to obtain existing owner title insurance. It's available through real estate lawyers, but not from regular home insurance companies.

While title insurance and the Land Titles Assurance Fund will provide compensation for most of the losses involved in a title theft, there is simply no way to prevent title theft.

Would it be worth the hassle and expense of introducing complicated and expensive security measures to stop 10 fraudulent transactions a year? I don't think so.

I'd rather see a significant improvement in the operation of the Land Titles Assurance Fund, so that property owners hurt by fraudulent transactions could be compensated more quickly and cheaply than they now are. Currently, the government is "studying" the problem. The next move is up to Government Services Minister Gerry Phillips.