



Bob Aaron bob@aaron.ca

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## In 2006, title fraud top real estate story

Looking back on 2006, there can be no doubt that the real estate story of the year was title fraud. No other issue in this field seemed to fascinate and horrify the public as the victims' plight.

It was bad enough that organized criminals had begun to steal the titles of innocent homeowners in increasing numbers, but the problem became much worse with an unfortunate decision of the Ontario Court of Appeal in late 2005.

In the case of Household Realty v. Chan and Liu, the appeal court ruled that a fraudulently signed mortgage was valid and enforceable against an innocent homeowner in a case where a wife signed her husband's name using a forged power of attorney.

That decision turned 100 years of legal precedent upside down, and paved the way for the nightmares faced by innocent victims of title fraud in 2006. Based on the Household decision, Susan Lawrence, Paul Reviczky, Elizabeth Shepherd, Tisha Vo and others faced eviction from their homes when they discovered that fraudsters had stolen their identity and their titles, and sold the homes to innocent buyers.

The mortgages those buyers gave to their banks were valid against the defrauded owners, and the lenders were beginning eviction proceedings.

After a series of front-page articles on title fraud appeared in the *Toronto Star* and a private member's bill was introduced in the Ontario legislature by MPP Joe Tascona, Government Services Minister Gerry Phillips was prodded into introducing Bill 152 in October. The legislation was designed to reverse the court ruling in the Household case, but only for future cases.

Sailing through the legislature and committee hearings in just two months, the Consumer Protection and Service Modernization Act, 2006 received third reading on Dec. 12 and Royal Assent on Dec. 20.

The new law ensures that ownership of a property cannot be lost as the result of the registration of a falsified mortgage, fraudulent sale or a counterfeit power of attorney. It also implements a streamlined and expedited Land Titles Assurance Fund process for victims of fraud so that registered title will be restored to them and a decision on compensation will be made within 90 days, instead of the two to three years that fund decisions required in the past.

The government plans to hear applications to the fund within 60 days of a claim being submitted, and make a decision on payment within 30 days after that.

Although the law is not retroactive, the government has also indicated that it will speed up the compensation process for victims whose claims were in progress before Bill 152 was introduced in October.

Existing fines for real estate fraud have been raised from \$1,000 to \$50,000, and access to the electronic land registration system by lawyers and others can now be suspended without notice in the case of suspected fraudulent activities.

Under the new law, banks and other lenders who do not exercise the "requisite due diligence" in registering mortgages are no longer eligible to make claims against the assurance fund. Also, title insurers who insure mortgage lenders and homeowners against fraud are now prohibited from making claims against the fund after they have made payouts to their insured.

The result of these two new prohibitions may be greater investigation of borrowers by banks, a possible end to mortgage arranging over the Internet without the applicant meeting a live person, and the possibility of higher title insurance premiums as the insurers can no longer recover their losses from the public purse.

Before, the Land Titles Assurance Fund was a fund of last resort. Under the new law, there is no longer any requirement that a victim must be unable to recover compensation through other means such as suing the fraudster in order to be entitled to compensation from the Assurance Fund.

Although not part of the official announcement at the time of Royal Assent, it is believed that the rules governing registration of a power of attorney may soon be tightened. It is possible that a requirement will be introduced so that a power of attorney can only be used if a lawyer certifies that all procedural formalities have been followed and that the person giving the power is the one who actually signed the document.

Another possible change to the land registration system would be to restrict the registration of deeds and land transfers to lawyers only.

In his presentation to the Standing Committee on Social Policy, Law Society CEO Malcolm Heins stated, "When it comes to effecting (property) transfers, those should only be done by a government employee or a lawyer, someone whom the Law Society regulates. When it comes to putting mortgages on properties, it would be our view that those should only be registered by lawyers, a government official or a licensed financial institution."

Following passage of the legislation, Government Services Minister Gerry Phillips said, "Bill 152 guarantees further strong protections against real estate fraud so no property owners will lose their home as a result of real estate fraud."

Let's hope he's right.