



Real Estate Title Fraud

Incidents of real estate title fraud are increasing in Canada and homeowners and lenders are proving to be irresistible targets for fraud artists. The role of legal professionals and title insurance companies has become even more critical in the fight to detect and prevent title fraud.

Homeowners and lenders can protect themselves by obtaining a title insurance policy from Stewart Title. The coverage provided in residential title insurance policies helps protect both innocent homeowners and lenders who might otherwise face huge financial losses resulting from title fraud.

How does real estate fraud occur?

Real estate frauds take several forms, but a common denominator is that the fraudsters are sophisticated and thanks to modern technology, are armed with the appropriate documentation and necessary knowledge of the real estate process to enable them to perpetrate these major crimes.

The Basics

Legal ownership in property is evidenced by the title to the property being placed into your name. You obtain title when the vendor of the property signs transfer documents (a deed) transferring the ownership of the property to you. Once this occurs, the government land registration records will reflect you as the owner and anyone searching those records will also recognize you as the owner.

A Typical Example

1. A fraud artist steals the identity of the legitimate owner of the property.
2. The fraud artist sells the property to an unsuspecting purchaser who also obtains mortgage financing.
3. The unsuspecting purchaser either moves in or attempts to move into the property.
4. The legitimate owner is faced with defending his/her interest in the property, including evicting the unsuspecting purchaser, and having their title subject to any mortgages the unsuspecting purchaser has put on the title.

This is an example of a fraudulent transfer and mortgage, but other types of fraudulent transactions also occur:

Spousal Impersonation Fraud

This type of fraud can occur when one spouse mortgages a property for their own benefit using an accomplice to impersonate their spouse.

Fraud by Breach of Undertaking

Fraud, unfortunately, is not limited to rogue clients. Fraud can also occur by way of a lawyer's/notary's breach of an undertaking to pay off and obtain a discharge of a mortgage. That is, the vendor's lawyer or notary absconds with the funds intended to be used to pay off the vendor's pre-existing mortgage. Accordingly, while title to the property has been transferred into the name of the new purchaser, the property remains subject to the prior mortgage.

Thieves often target properties that are mortgage free and where owners have a good credit rating. This allows them to apply for a significant mortgage.



The Role of Title Insurance

Generally, the losses from these types of frauds are catastrophic with homeowners paying thousands of dollars in legal fees to defend their title, and lenders often losing the full amount of their mortgage. Title insurance can protect both homeowners and lenders against losses resulting from most forms of real estate title fraud.

Stewart Title paid a fraud claim to a lender valued at more than \$1 million.

Stewart Title's **Residential Gold Owner Policy** provides coverage against losses arising from fraud, forgery, duress, incapacity, or impersonation and forgery after the Policy Date of an instrument by which someone else claims an interest in or fraudulently places a mortgage on the owner's title.

Stewart Title's **Residential Gold Loan Policy** provides coverage against losses arising from the insured mortgage not having the expected priority and from the invalidity or unenforceability of the insured mortgage on title, as well as from forgery after the Policy Date of any assignment, release, discharge, postponement or modification of the insured mortgage.

Stewart Title's **Existing Homeowner Policy** is for those homeowners who already own their home and did not obtain the protection of title insurance when they first purchased their home. The policy date for the Existing Homeowner Policy is the date of registration of the original transfer document (deed) to the existing owner. Search requirements are minimal for this type of policy, and the policy lasts for as long as the homeowner owns his or her home.

Title insurance is purchased for a one-time premium and coverage is valid for the entire time the homeowner owns the home and the lender holds the mortgage.

For covered claims, Stewart Title pays the costs, legal fees and expenses related to having title restored to the insured. **Homeowners should contact their lawyer/notary** who can arrange to obtain a policy directly from Stewart Title.

Fraud accounted for nearly a third of all claims in terms of dollars paid out in 2008 at Stewart Title.

For further information regarding our coverage of real estate title fraud, please contact us.

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