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Don't be insulted if lawyer asks for ID

This case will show you why.

Last week, I received a strange telephone call from the client of another real estate lawyer.

He explained he was in the process of buying a house and had just come back from his lawyer's office. He was upset because his lawyer had asked him for photo identification even though he had used the same lawyer on previous occasions. The caller wanted to know why his lawyer wanted ID, and if this was a common practice in the real estate bar.

The answer to the last question, I told the caller, was yes and no - some lawyers always ask for identification and some do not, but all of us should.

The reason goes back to a court case that was decided in Toronto four years ago. Martin Mock, a Toronto mortgage investor, asked his lawyer to represent him in lending money by way of a \$70,000 third mortgage on a local property on Geoffrey St.

The lawyer also represented Say Van Nguyen, who advised him that his wife, Saeko Yamada, was the registered owner of the house. The couple had used the lawyer on a number of previous transactions that all proceeded without incident. At no time on any of the previous occasions or on the Geoffrey St. mortgage deal did the lawyer ever ask the couple for identification.

Unfortunately for the lender Mock, however, the woman who signed the name of Saeko Yamada was an impostor, posing as the spouse of Nguyen. As a result, the Geoffrey St. mortgage was a forgery, and none of the mortgage proceeds actually went to the real Yamada.

Eventually, Mock sued his lawyer for the \$70,000 balance of the worthless mortgage. The issue was whether the lawyer took reasonable steps to protect the lender's interest in the transaction.

In his defence, the lawyer argued that it was above the call of duty to ask the impostor for identification. He believed that Nguyen and the impostor were honest and respectable people, and there were no "red flags" to indicate that Nguyen was a criminal.

Two lawyer experts testified at the trial about the common practice among real estate lawyers at the time the transaction occurred in 1989. Craig Carter, a respected real estate lawyer, told Mr. Justice Gerald Day that solicitors have a duty to assist in preventing fraud by verifying the identity of the parties in every transaction, especially where the lawyer is acting on both sides - that is, for the lender and borrower.

Lawyer Garth Manning also testified at trial, and supported the lender's position. It is not the practice in Ontario, he testified, to presume that a person is who they say they are. In fact, just before the transaction took place, the Law Society had issued a warning to lawyers titled "Who Really Signed?"

The bulletin advised that it was imperative for lawyers to confirm the identity of persons signing documents in the lawyer's office. Should a solicitor always anticipate that the person before him or her signing documents with major financial consequences may be an impostor?

Justice Day's answer was an emphatic yes. The judge said that the lawyer must take reasonable steps to protect the interest of the client he or she is serving. While checking identification will not prevent fraud, it will act as a considerable deterrent.

In Yamada vs. Mock, the court awarded mortgage lender Mock \$70,000 in principal plus a similar amount in accumulated interest. The unlucky lawyer and his insurance company got hit with the tab.

So the next time your lawyer asks you for identification, think of Say Van Nguyen and remember that it only takes a moment, but it's well worth it to deter fraud in real estate transactions.