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## Property 'flips' land lawyer in hot water

Mortgage fraud is in the news again. The Law Society of Upper Canada has filed misconduct charges against Brampton lawyer Vishnu Rajendra (Joey) Poonai over his alleged involvement in a series of real estate frauds involving \$5.6 million.

The case became public in May when the law society took the unusual step of asking a hearing panel for an interim order suspending Poonai's right to practise law until the outcome of a discipline hearing against him.

The suspension request was eventually placed on hold after Poonai provided the society with his undertaking not to be involved in, or counsel other lawyers to be involved in, real estate transactions in which properties are "flipped," and not to act for more than one party on any transaction.

In the materials before the hearing panel, law society investigators filed a summary of 23 residential real estate transactions that took place in the Toronto area between 1997 and 2003.

According to the summary, each of the 23 files involved a quick resale or "flip" of a house. In a typical transaction, Poonai represented the first purchaser from a legitimate vendor for a reasonable market price. On the same day, the first purchaser resold the property to a second purchaser "for a significantly greater value than the original purchase."

Poonai also acted for the second purchaser and for the bank on the mortgage financing transaction for the second purchaser.

Law society documents allege that the mortgagee was presented only with the second agreement of purchase and sale and advanced funds based on the higher (but inflated) purchase price not knowing of the flip.

The mortgage money was used to complete the original, legitimate purchase at the lower price, and the difference between the amount of the first purchase and the mortgage on the flip, known as the "bump," was used for other purposes.

None of the society's allegations against Poonai has been proven before a discipline panel. Poonai has retained Toronto lawyers Edward Greenspan and Todd White to represent him on the misconduct charges.

Society investigations showed that Poonai would transfer the bulk of the bump to third parties who appear unrelated to the transaction.

A chart attached to the society's documents filed before the hearing panel provides a vivid illustration of the flips.

On Feb. 7, a property on Ashley St. was sold for \$80,000 and again for \$288,000 on the same day. Another property on Clyde St. was sold for \$115,000 and flipped for \$493,000 also on Feb. 7.

The average price increases between the first and second transactions varied between 11 and 1,350 per cent, according to society calculations.

Throughout the late 1990s, a series of suspicious transactions took place on streets like Ashdale Ave., Weston Rd., Woodbine Ave., Queen St. E., Jones Ave., and Coxwell Ave.

Typical of these was a house on Gerrard St. E., which sold twice on April 7 for \$133,000 and then for \$233,000.

In each case, the mortgage financing was based on the higher purchase price, leaving a significant surplus that found its way into the hands of unrelated parties. In most transactions, the second purchaser defaulted on the mortgage, leaving the bank holding security worth less, and sometimes much less, than the value of its mortgage.

Law society investigator Stephen McClymont filed a 50-page affidavit for the hearing panel, alleging that the flip frauds involved nominal profits of more than \$5.6 million.

A statement from Canada Mortgage and Housing Corp., which underwrote mortgages on 14 of the investigated properties, revealed it has paid out more than \$1.2 million in losses, ranging from \$37,000 to \$118,000.

McClymont's affidavit detailed 41 Poonai transactions that are under investigation, following complaints from the Bank of Montreal and Toronto-Dominion Bank. Losses were also reported by Royal Bank and CIBC.

Law society investigators are taking mortgage fraud very seriously lately, and have formed a mortgage fraud team to specialize in investigating lawyers who are involved in property flips, including two lawyers who assisted Poonai in the suspicious transactions.

In July, the society announced that Francis Peter Yungwirth of Timmins had been found guilty of misconduct and suspended for one year. A panel found that he had acted on nine "flip-type" real estate transactions where the real purchase price was misrepresented to the mortgage lenders.

Yungwirth is appealing the decision.

It is to be hoped that the incidence of mortgage fraud will soon decline, with the advent of tighter underwriting requirements, better appraisal techniques, and greater awareness by banks, mortgage brokers and lawyers of the consequences of a fraudulent transaction.

(Although I am an elected director of the law society, I have not been involved in the Poonai or Yungwirth investigations or hearings.)