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## Real estate fraud continues to grow

### Law Society releases report

*Crooks can easily access information* Perhaps the most significant development in the real estate field in the last decade has been the phenomenal growth in mortgage and real estate fraud. Published estimates show that fraud is costing lenders, insurers, governments and members of the public millions, if not billions, of dollars in losses across Canada and the United States.

In an effort to combat the increase in fraud, most industry stakeholders in recent years have altered their procedures to become more vigilant in detecting bogus transactions, inflated sale prices, phony employment letters, and questionable appraisals.

As part of its ongoing concern over fraud in the real estate industry, the Law Society of Upper Canada late last month released an information report on mortgage fraud that summarizes the issue, providing an overview of the mortgage process and how opportunities for fraud can occur.

It also details what the Law Society and its partners in the real estate and mortgage industry are doing to prevent and reduce fraud. In a highly unusual move for the Law Society, the report also makes several suggestions for improvement by other industry stakeholders.

The report, available online at [http://www.lsuc.on.ca/news/pdf/convmar05\\_mortgage\\_fraud.pdf](http://www.lsuc.on.ca/news/pdf/convmar05_mortgage_fraud.pdf), cites a number of interesting factors which contribute to the growth of mortgage fraud:

- The increasing anonymity and depersonalization of the process for buying a house. This includes the ability to obtain financing online without meeting a lender, the electronic transfer of funds and title deeds, and computer-based home appraisals.
- Easier access to vast amounts of information about properties and homeowners, due in large measure to the electronic land registry system.
- Increased competition in the mortgage industry and easy availability of financing.
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- Increased pressure to close a deal without due diligence. The report notes that consumers expect a real estate transaction to close quickly. Traditional safeguards, such as hiring a lawyer early in the process, are seen as a hindrance to the speed and cost-effectiveness of closing a deal, and are being bypassed.

In recent months and years, the Law Society has devoted significant manpower and resources to work with lenders, police forces, provincial and federal ministries and agencies, and mortgage broker and real estate organizations to develop ways to reduce and eliminate opportunities for mortgage fraud.

The Society's mortgage fraud team is currently investigating fraud allegations made against 72 lawyers, with an average of 75 property transaction complaints against each one. That works out to about 5,400 suspicious transactions - and those are just the ones the Society knows about.

The cost of fighting mortgage fraud is staggering. In 2003 and 2004, the Law Society spent a total of \$3 million on its mortgage fraud investigations. A further \$1 million was approved to fight fraud this year, and similar requests for funds are anticipated for the next two or three years.

Even worse, fraud-related real estate losses are expected to increase. In a press release last year, First Canadian Title, a title insurance company, said the value of fraud claims it received in January, 2004, alone, was 28 per cent of the value of all fraud claims made since the company began operations in 1991.

Ultimately, mortgage insurers and title insurers may have to recover their substantial losses through higher premiums. Innocent consumers also lose, but may have to absorb the losses themselves. Once victimized, consumers have to spend time, effort and legal fees to recover lost or stolen title to their homes resulting from identity fraud and value or "flip fraud" - also known as Oklahoma transactions.

The Law Society report suggests that all sectors of the real estate industry will have to work together to combat mortgage fraud. The members of one sector alone will not be able to reduce or eliminate the opportunities for fraud during the home-buying and financing process without the substantial cooperation of other industry stakeholders.

The report recommends higher standards, greater cooperation and increased vigilance among industry stakeholders, including lenders, mortgage brokers, real estate agents, and Teranet, the operator of the electronic land registry system.

In its most controversial recommendations, the report suggests that real estate agents may consider strengthening their code of conduct, and that access to the electronic land registry system might be restricted to lawyers and government to reduce the incidence of fraud.

With respect to legal services and legal fees, the report provides some excellent advice to homebuyers:

Consumers would be well advised to retain a lawyer as early in the process as possible. Purchasing a home will be the largest expenditure most people will ever make. It is important for consumers to understand the value that a lawyer's advice will provide at the time the offer to purchase is first contemplated and methods of financing considered.

The relatively modest cost for legal services, as compared to other costs that will be incurred to complete the transaction and having regard to the value of the house, is an important investment in the avoidance of fraud and other subsequent difficulties in the completion of the transaction. The small investment made in using a lawyer to protect consumers interests in the real estate transaction is money well spent.

The week before the Society released the report, it announced that Toronto lawyer Kadir Baksh, 55, had been ruled guilty of professional misconduct and ordered disbarred. He was found to have participated in a 16 mortgage transactions, causing losses to Royal Bank, Toronto-Dominion Bank, Montreal Trust and North American Trust Company. Among other things, the allegations involve conflict of interest, misleading lenders about underlying property values, and being involved in the false inflating of sale prices.

Baksh is appealing his disbarment.

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# LAW SOCIETY OF UPPER CANADA

## MORTGAGE FRAUD March 24, 2005

### Report to Convocation

Purpose of Report: Information

#### MORTGAGE FRAUD

##### Introduction

1. Mortgage fraud has emerged as a serious issue in recent years and published estimates show it is costing lenders and insurers millions, if not billions of dollars, in losses in both Canada and the United States.

2. Several public reports on this issue agree that mortgage fraud needs to be addressed by all parties involved in the mortgage process.

3. Lawyers have a role to play in the mortgage process, but it should be recognized that the lawyer is only responsible for part of the transaction. In this context, anything the Law Society of Upper Canada or the legal profession is doing and will do to combat mortgage fraud will be helpful, but will not, without the substantial co-operation of others, necessarily reduce or eliminate the opportunities for fraud throughout the entire process.

4. Published reports list a number of factors that contribute to the emergence of this issue:

The anonymization or depersonalization of the process for buying house.

This includes access to lenders without the requirement of meeting anyone in person or having an established business relationship, the electronic transfer of funds and title documents, and appraisals of properties based on abstract computer models.

Easier access to vast amounts of information about properties and homeowners.

In 1999, Ontario introduced an electronic land registry system. Electronic access to the land registry system has made it easier to access information about registered real property. This has opened up an opportunity to commit new forms of mortgage and identity fraud.

The increased competitiveness of the mortgage industry and availability of financing.

Increased competition and the availability of more money and lenders have significantly reduced the barriers to borrowing money. In a 2001 White Paper, the Canadian Institute of Mortgage Brokers and Lenders (CIMBL), notes consumers have more choice about where they get their mortgage financing. The same report notes the lending community is becoming much larger and more aggressive about pursuing clients.

The increased pressure to close a deal without due diligence.

The increased competitiveness of the industry creates the expectation that consumers will be able to close a real estate deal quickly. Traditional safeguards, such as hiring a lawyer early in the process, are seen as a hindrance to the speed and cost effectiveness of closing a deal and are being bypassed. Consumers need to recognize that the price of legal services reflects standards of due diligence and that lawyers are required to meet these standards and protect the interests of their clients.

5. The Law Society of Upper Canada's Professional Regulation Committee is continuously reviewing its *Rules of Professional Conduct*, bylaws and regulations, to ensure that its standards address the changing dynamics within the mortgage process.

6. Where there are any allegations of lawyer involvement in transactions which are later found to be fraudulent, the Law Society investigates and discipline results where there is evidence to show that the lawyer contravened the *Rules of Professional Conduct*.

7. The Law Society takes the issue of mortgage fraud very seriously. It is important that lawyers understand the significance of this issue and the impact on the profession and the public.

8. The Law Society is working with lenders, financial institutions, police, provincial and federal ministries and agencies, mortgage broker and real estate organizations to develop ways to reduce and eliminate opportunities for mortgage fraud. The Law Society will raise specific issues with all parties involved in the real estate transaction; it will be identifying areas of concern and suggesting ways to increase due diligence in lending practices, safeguard title access and implement and uphold standards throughout the industry.

9. What follows is a summary of the issue and its scope, an overview of the mortgage process and current opportunities for fraud to occur, and information about what is being done and what still needs to be done to prevent and reduce fraud.

##### The Scope of the Problem

10. According to CIMBL, "recent experience in the U.S. has shown that fraud, ubiquitous within the mortgage insurance industry, is beginning to grow rapidly and create significant losses."

11. It is unknown how closely the Canadian experience mirrors the American situation. Published reports indicate mortgage fraud is on the increase in Canada and the losses suffered should cause everyone to be concerned. CIMBL notes the nature of mortgage fraud is ambiguous and statistics have not been consistently collected over time.

12. In the United States, published figures show fraud-related losses ranging between \$5 billion and \$30 billion annually in 1999-2000.

13. In Canada, conservative estimates published back in 2001 suggest that total exposure to the industry, including both conventional and insured loans, was around \$300 million. This was almost quadruple the exposure in 1999 and 2000, when exposure was estimated at \$73 million and \$75 million.

14. Fraud-related losses in Canada are expected to increase. In a 2004 press release, First Canadian Title, a title insurance company, said the value of fraud claims it received in January 2004 alone was 28 per cent of the value of all fraud claims made since the company started operating in 1991.

##### Why So Much Fraud and Why Now?

15. "The buying, selling and management of real estate in Canada is big business," according to Statistics Canada. "At the end of 2003, individuals and unincorporated businesses held more than \$1.6 trillion in residential structures and land about 1/3 of all assets held by individuals. Some 271,000 people were employed in real estate and leasing."

16. The Canadian Real Estate Association's Web site notes that the value of national MLS (Multiple Listing Service) sales was \$8.8 billion in January 2005 alone.

17. The business climate for selling and buying homes is faster, easier, more impersonal and more competitive than ever before. This contributes to the current

opportunities for fraud.

18. In the contemporary real estate market, if you can't quickly obtain a mortgage loan or if you can't sell your home quickly enough then it's easy for you to take your business to someone who will expedite the process for you.

19. In 2001, CIMBL observed: "As in the United States, the level of complexity within the Canadian mortgage industry has increased over time. The number of lenders in the marketplace, and the differentiation of mortgage products and delivery channels has [led] to increased competition for new business, increased [mortgage] approval rates and reduced application-processing time. For example, it is not always standard practice to meet borrowers face-to-face due to e-mail and faxed applications."

20. The result is an increasingly impersonal real estate market that generates a large volume of work, processes applications as quickly as possible, and allows for the relatively quick exchange of property and large amounts of money much of it done electronically. Taken together, all of these factors combine to provide a rich target for fraudsters.

21. In this type of transaction, numerous parties are involved many never know or actually meet each other in person. Without due diligence throughout the process, it is easy for fraudsters to pass themselves off and to take advantage of the lack of oversight.

22. As well, the housing market has been extremely hot for many years and the situation does not appear to be easing up. Buyers and sellers are constantly pressured to make important and expensive decisions at the drop of a hat in order to take advantage of an opportunity to make money or buy a dream home.

23. The money lending business is increasingly competitive. If a lender turns you down, there are numerous mortgage brokers, private investors and others who are more than willing to step in. Years ago, it was common for clients to approach their bank or trust company with whom they had a longstanding business relationship to get a mortgage. Today, clients do not have to rely on the institution where they bank. In fact, nowadays lenders take many shapes and forms and are often willing to undercut their competitors, whether on price, conditions of lending or due diligence. Consumers are likely to go with whoever offers the best deal.

24. Changing technologies and lenders business strategies have made it possible for people to make online applications that do not require anyone to witness key signatures. It is common now for a purchaser to apply for a mortgage at a lending institution where the purchaser does not already have an account. Lenders are increasingly receiving documents and mortgage applications from brokers, real estate agents, and lawyers who may be unfamiliar to them.

25. Whereas lenders once knew the clients who walked through their office doors, today a lot of mortgage applications are received from offsite representatives of the lenders. Mortgage representatives may have a hands-off relationship with the lenders they represent to say nothing of the relationship between the lenders and clients of their offsite representatives. In some cases, lenders do not have contracts with mortgage brokers or representatives that would require front-end verification of identity and application information.

26. The impersonal nature of the relationships at the beginning of the process raises identification issues at the end of the process. For example, in some cases, by the time a lawyer obtains a purchaser's identification, some form of identity fraud has already been perpetrated.

27. If a lawyer is able to determine the use of a false ID before mortgage funds are advanced, then the lawyer must since the lawyer is retained by the lender inform the lender about the false ID, which should prevent a mortgage transaction from going through. However, all too frequently fraudsters are presenting lawyers with credible identification.

28. The pressure to close a deal, based on tight timeframes, does not facilitate a thorough scrutiny of all aspects of the deal or allow ample opportunity to reopen a deal. To protect against mortgage fraud, due diligence must be practised by all parties at every stage of the process. That said, the lawyer only has access to certain information and the lawyer's due diligence may not uncover a fraud that has occurred at the front end of the transaction.

29. If identity fraud has already occurred, it is that much more difficult for someone at the end of the process to detect it. In the 1996 case, *Yamada v. Mock*, the court found that the law requires the lawyer to ask for identification. At the same time, the court recognized that a lawyer should not be "expected to act as guarantor" that the person submitting identification is not an imposter.

30. Value fraud is made possible in part because there are no established processes for ordering and reviewing appraisals. In some cases, fraudsters misrepresent the purchase price of a house with confidence, knowing the mortgage loan is less than 50 per cent of the value of the house and therefore only a cursory appraisal will be done, if any at all.

31. These days, appraisals, if done, usually rely on computer modeling. Basically, someone sits down at a computer and checks to see the selling prices of houses in a neighborhood. If the price of the house is in line with neighborhood home values, further inquiries are not deemed necessary. If there have been a number of flip deals, it is easy to artificially inflate the value of homes in a neighborhood. In this case, there are no warning signs that a house is selling for a price higher than its market value and further checks are not typically done.

32. Recent changes to the technology for gaining access to Ontario's land registry system have presented another avenue for fraud. Ontario is the first jurisdiction in the world to provide electronic registration of land-related documents. In addition, the land registry system and its information can be accessed remotely by computers.

33. Lawyers and other industry professionals must register with the company that created the online registry, Teranet, to obtain special encrypted diskettes that allow access to the land registry system. The system has an electronic audit trail that identifies transaction activity leading back to the user and his or her registered diskette. Both lawyers and non-lawyers can have access to diskettes.

34. Lost, sold, or stolen diskettes provide keys for fraudsters to access the electronic system. Once they have access to the system, fraudsters can perform any number of phony title transfers or fraudulent mortgage discharges. They can then present these fraudulent documents to lawyers and lenders, asking for a mortgage on a property that the fraudster appears to own. The ability to search addresses electronically and obtain title documents facilitates fraudsters obtaining credible information to assist them perpetrating a fraud by stealing the home on paper.

#### Types of Fraud

35. Fraudulent transactions often share common elements. Most common types of fraud include identity fraud and value fraud.

#### Identity Fraud

36. A consumer purchases a home. A fraudster in the neighborhood takes down the street number and accesses the electronic registration system and finds who is listed as holding title to the property, along with the details of any mortgage arrangements. The fraudster has obtained a diskette that allows access to the electronic registration system. The fraudster transfers the title and pays the registration fee and the applicable land transfer tax. Now the fraudster has title to someone else's home.

37. Just as easily, the fraudster gets rid of the mortgage registered on title by electronically creating and registering a discharge of the mortgage indicating that the mortgage has been paid off.

38. The fraudster goes to a lender and asks for a mortgage worth only half of the home's value – \$100,000. Since his request for a mortgage loan is only half of the home's worth, the lender forgoes an appraisal of the house.

39. The lender asks the fraudster's lawyer to obtain the purchaser's driving license. The lawyer finds that it is indeed the license of the person he is dealing with the same person whose name is registered on title, which is showing free of any encumbrances (such as a mortgage) on the home.

40. Seven days later, the lender gives the lawyer of the fraudster who knows nothing about the fraud – \$100,000. The unsuspecting lawyer completes the mortgage work and releases the mortgage funds to his client, the fraudster. Within months, the fraudster stops paying the mortgage. Now the lender is wondering what is happening and contacts the original homeowner. The unwitting lawyer, in the meantime, will be investigated.

41. There are many variations of identity fraud.

42. The fraudster, for example, may have faked employment records. When the lender calls to check references, the caller is re-routed to the fraudster's cell phone or a "phone boiler room," owned by the fraudster, where many persons answer phones for many non-existent employers. The people who answer the phone verify the fraudster is an employee and confirm salary information.

43. In yet another example, the fraudster might pose as a lawyer representing a fictitious purchaser. The lender releases mortgage funds and instead of directing the funds to the fictitious purchaser and non-existent vendor, the fraudster reroutes them into an offshore personal bank account.

44. The electronic nature of the real estate business contributes to the ability to engage in identity fraud, because increasingly no signatures are required just access to a computer and a Teranet access disk.

#### Value Fraud

45. In these types of schemes, the true value of the property is artificially inflated to deceive the mortgage lender. This is accomplished in one of two ways, either through "flip" deals or misrepresentations of the original purchase price. For example, a fraudster offers to buy a home from a consumer for \$200,000. An Offer to Purchase is signed.

46. The fraudster then arranges for another purchaser (Purchaser Two) to purchase the same property at a purchase price of \$400,000. A lawyer is retained to act for both the fraudster and Purchaser Two in the second transaction. Purchaser Two then applies to a bank for a high ratio mortgage (95 % of \$400,000) and the bank approves Purchaser Two for a mortgage of \$380,000. Both transactions close on the same day.

47. The fraudster and Purchaser Two instruct the lawyer to change the deed delivered by the original owner to show the higher consideration of \$400,000. On closing, a portion of the mortgage proceeds is used to complete the first transaction and the balance or excess is paid to the fraudster and/or Purchaser Two.

48. After closing the fraudster and/or Purchaser Two may reside in the property for a period of time and make the mortgage payments. At a certain point, Purchaser Two or the fraudster stop making the mortgage payments. The bank sells the property under power of sale and the bank is unable to realize the full amount owing on the mortgage because it has over-advanced approximately \$190,000.

49. A variant of the value fraud is a misrepresentation of a home's purchase price, indicating a higher purchase price than the actual purchase price. For example, a purchaser agrees to buy a house for \$200,000. The purchaser applies to the lender for a \$150,000 mortgage. On the closing day, the vendor gives the purchaser a credit of \$50,000 against the purchase price because of substantial renovations to be made to the home. The purchaser does not tell the lender about this credit, however, and the lender advances the full \$150,000 mortgage for the home.

50. Even if all lawyer involvement in mortgage fraud whether as dupes or otherwise ended today, the potential for mortgage fraud would remain so long as opportunities for fraud exist elsewhere in the mortgage lending process. Increasingly, lawyers are less involved in the entire real estate transaction and those perpetrating fraud are able to do so before a lawyer is involved.

51. Those looking to commit fraud would probably rather not have any lawyers involved simply because lawyers can act as a check at the back end of the process.

#### The Consequences of Fraud

52. Who loses in these frauds? All of us do.

53. Certainly lenders and insurers bear the brunt of the financial losses, but the losses of mortgage insurers and title insurers may typically be recovered from consumers in the form of increased mortgage insurance premiums. Consumers also lose when they have to spend time, effort, and legal fees to recover lost title to their homes.

54. And of course there is a non-monetary impact of fraud: real estate fraud reflects negatively on everyone involved in the real estate industry. It damages the professional credibility and reputations of mortgage industry professionals, realtors and lawyers who do not participate in the fraud or condone fraudulent activity. That's why lawyers are working with others in the system to make people aware of ways to prevent fraudulent activity and to investigate allegations of fraud.

55. Consumers should remember that the lawyer is there to protect their interest in a situation that will often be the largest purchase of one's life. Given the size of the transaction and the relative increase in cost, consumers will get good value from a lawyer to advise on the transaction and perform due diligence. This kind of investment can eliminate or at least reduce the financial and emotional strain on the homeowner should something go wrong.

#### The Regulatory Role of the Law Society

56. The Law Society's mandate is to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct and by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law. The *Law Society Act* authorizes the Law Society to educate and license Ontario's lawyers and regulate their conduct and competence.

#### Rules of Professional Conduct Applicable to Mortgage Fraud

57. Lawyers are required to conduct themselves according to the *Rules of Professional Conduct* and applicable laws including the *Law Society Act*, its regulations and by-laws.

Several Rules of Professional Conduct apply to various aspects of mortgage fraud. The following rules can easily be accessed on the Law Society's Web site at: [www.lsuc.on.ca/services/RulesProfCondpage\\_en.jsp](http://www.lsuc.on.ca/services/RulesProfCondpage_en.jsp). They are:

#### Relationship to Clients

Subrule 2.02(5): Dishonesty, Fraud, etc. by client

Subrules 2.03(1)-(5): Confidentiality

Subrules 2.04(6)-(10): Joint Retainers

Rule 2.09: Withdrawal from Representation

#### Relationship to Students, Employees and Others

Subrules 5.01(7) and (8): Electronic Registration of Title Documents

#### Relationship to the Society and Other Lawyers

Subrule 6.01(3): Duty to Report Misconduct Rule 6.09: Errors and Omissions

58. The role of the real estate lawyer in the real estate transaction is to protect the interests of the client in the transaction. Lawyers are required to comply with the *Rules of Professional Conduct*. When a lawyer is retained to act for a client in a transaction, the lawyer is required to take steps to protect the interests of the client. Although there is an expense to retaining a lawyer, there are enormous benefits to having a lawyer involved in a real estate transaction.

#### Mortgage Fraud Investigations

59. Consistent with trends seen in the broader mortgage industry, the Law Society has been working on an increasing number of investigations related to mortgage fraud.

60. Currently the Law Society is investigating allegations of mortgage fraud made against 72 lawyers. There are nearly 36,000 lawyers in Ontario today.

61. Mortgage fraud investigations are time-consuming, due in part to the complex nature of the mortgage process itself. Each mortgage fraud investigation involves, on average, the cataloguing, copying, reviewing and analyzing of 75 property deals. This is time-consuming: an investigation of a single property transaction takes as much time and effort as a typical non-mortgage fraud investigation. When all of the review and expert opinion is taken into account, an investigation of one member in connection with allegations of mortgage fraud is roughly the equivalent of doing 20 non-mortgage fraud investigations.

62. Mortgage fraud investigations are lengthy and expensive. Often they do not conclude with a settlement either complete or partial because few admissions are made and cases are vigorously defended.

63. Recognizing the importance of protecting the public and accounting for the additional time required to investigate these cases, the Law Society has increased its funding for these types of cases over the past few years. In fact, 15 per cent of the \$10 million Professional Regulation budget was allocated solely to investigating and prosecuting mortgage fraud in both 2003 and 2004.

64. The Law Society also created a special mortgage fraud team in its Investigations Department to concentrate on complaints of alleged mortgage and real estate fraud involving lawyers.

65. In addition, another \$1 million was approved to fight fraud in 2005. The additional funds are being used primarily to hire additional investigators and prosecutors, and commission expert reports.

66. Similar requests for additional funding are anticipated for the next two or three years. Such requests will depend on the number of investigations undertaken and prosecuted before hearing panels, and the jurisprudence developed by the panels.

67. The Law Society has every intention to remain vigilant and dogged in the investigation of allegations of fraud and prosecution of lawyers who have participated.

#### Reducing Mortgage Fraud Requires Industry Wide Commitment and Participation

68. Since mortgage fraud is an industry-wide problem, the solution requires the participation of all professional groups and institutions involved in the contemporary real estate transaction. To be effective, a great deal of work needs to be done around prevention, education and due diligence at all points in the process.

69. Fraud can happen at any step of the transaction. Everyone involved in the process is responsible for trying to limit the incidence of fraud. That is why the Law Society of Upper Canada is participating in a working group that formed recently to address the issue of mortgage fraud. The working group includes representatives from the lending community, title insurers, mortgage insurers, provincial ministries, law enforcement agencies and others.

70. In June 2004, LawPRO, an insurance company for lawyers that is a subsidiary of the Law Society, published a special edition of its monthly magazine entitled "The Many Faces of Fraud." In it, Kate Murray, Director of Titles for Ontario's land registration system, said the existence of the working group reflects recognition that a collective effort is needed to fight fraud.

71. "We are working on many fronts," Murray is quoted as saying. "What reforms, for example, might be needed to existing regulatory and legislative frameworks that deal with the reporting, monitoring and action on real estate fraud allegations. How do we best share information among committee members and organizations? What do we need to do to educate all participants in a real estate transaction from realtors and financiers to lawyers, regulators and government about the issue and how do we best deliver these educational initiatives?"

72. Individually, organizations are also taking action:

The Canadian Institute of Mortgage Brokers and Lenders (CIMBL) is preparing a best practices guide on fraud avoidance. Currently being revised, the guide is intended to outline minimum standards of care and due diligence required for mortgage loan acceptance and applications. The guide is intended for use by all mortgage professionals involved in the sourcing and underwriting of mortgage loan applications and approvals including brokers, insurers, underwriters, and business development officers.

The Canadian Mortgage and Housing Corporation (CMHC) provides insurance to mortgage lenders and practical resources for buying a home. In conjunction with CIMBL, the CMHC held fraud awareness sessions across Canada on behalf of the industry in 1999-2000. These sessions targeted lenders and brokers in particular, although there are plans in place to hold regular fraud awareness sessions in the future. CMHC intends to expand the scope, range, and potential audience of these sessions.

"The entire mortgage industry lender, insurer, agent, broker, lawyer needs to act together to address this problem," says Marie Dyck, Senior Advisor Fraud for CMHC's Insurance Servicing Division. "Fraud will always target the weakest link: So if only one of us implements anti-fraud controls, fraud will simply move to another segment of the industry where the controls are weakest." The CMHC also wishes to provide training sessions at various police colleges on preventing mortgage fraud.

The Ministry of Consumer and Business Services published a paper in 2004 by its Director of Titles, Kate Murray, entitled: "Fighting Real Estate Fraud: What Actions Can the Land Registration System Take When There is An Alleged Fraud?" This paper includes options for people who believe they have been the victim of a fraud related to tampering with the electronic land registration system.

"When an allegation of fraud is brought to the attention of the Land Registrar, the office conducts an investigation of the records and is required to contact the Director of Titles Office for an evaluation of what action may be taken by the land registry system," Murray writes. "While this investigation is being conducted, the Land Registrar will usually place a No Dealings Indicator [NDI] on an automated parcel or withdraw the paper parcel from circulation. The NDI will generally be removed once the investigation is complete and it is determined what steps, if any, the land registration system will take."

The Land Title Assurance Fund, a fund of last resort, is established under the *Land Titles Act*. It is to be used when claimants have exhausted all other avenues to receive compensation from those responsible for their loss through fraud. The fund compensates persons who were wrongfully deprived of land by means of the registration system or through an error or omission of the registration system, or by some other person being registered as owner through fraud.

Teranet created Ontario's electronic land registry system. It announced in November 2003 a new product called Real Estate Data Exchange. The program is a kind of central index of key information on disciplinary, enforcement, and certain legal actions taken by regulators that oversee the mortgage, real estate, legal and financial services industries. Subscribers to the service can use the index to perform checks on individuals and companies with whom they currently or plan to do business. The idea is to make it easier to perform the due diligence required to reduce exposure to fraud.

The Real Estate Council of Ontario (RECO) is the regulatory body through which real estate salespeople and brokers are registered. It is stepping up its educational efforts and investigative/reporting activities as well.

Through its newsletters and other publications, RECO is educating consumers about what to expect in a real estate transaction. It is also informing consumers about services available to check out the credentials of their real estate agent or broker.

In September 2004, RECO published its quarterly newsletter, *For the RECOrd*, which includes the article, "Mortgage Fraud: Targeting a Growing Problem." The article points out that the Ontario Ministry of Finance is currently reviewing the Mortgage Brokers Act.

"It is crucial to address mortgage fraud in the laws that govern real estate brokers and salespersons to protect the integrity of the real estate industry," the article states. "For that reason, the new REBBA (Real Estate Business Brokers Act) will include regulations on this critical issue. At the end of the day, a stronger regulatory framework will make it possible for RECO to prosecute mortgage fraud cases in the Provincial courts."

Currently, RECO has no jurisdiction to prosecute under the Criminal Code: if an investigation determines a RECO member has participated in mortgage fraud, the member is referred to the Registrar of REBBA and/or the police.

RECO is empowered by REBBA the legislation governing Ontario's real estate industry to investigate criminal offences that are related to the actions of agents or brokers. RECO publishes the names and particulars of people who have breached the law. The public can do a real-time, online search of RECO's 39,000-member database to verify the identity of someone holding themselves out to be a real estate agent or a broker.

## The Legal Community is Working to Prevent Fraud

73. LawPRO is increasing scrutiny of applications for TitlePLUS [title insurance] coverage. In June 2004, the insurer issued a special report entitled "The Many Faces of Fraud," to which the Law Society contributed two articles. The issue contains practice tips and warning signs of fraud, including how to spot identity fraud, value fraud, and corporate fraud. The 30-page feature report follows up on a "Special Report on Fraud" issued in mid-2001.

74. In its "Special Report on Fraud," LawPRO President and CEO Michelle Strom wrote: "In mid-2001, LawPRO raised an issue that was causing some concern in the legal and financial communities. The issue was fraud. Our response was the Special Report on Fraud, a publication that provided insights into how fraudsters work, and was aimed at helping lawyers avoid becoming victims of fraudsters. It is still one of our most requested risk management tools. Three years later, fraud is more prevalent, more complex, and often more sophisticated than first envisaged."

75. LawPRO issued further information about fraud in its December 2004 publication, "Practising law in an e-world." The issue includes information about electronic land registration and practice tips on protecting law firms and employees from becoming dupes or engaging in fraud. Similar tips are available from the practicePRO booklet, *Managing the Finances of your Firm*, available at

[www.practicepro.ca/practice/Managing\\_Finances\\_booklet.pdf](http://www.practicepro.ca/practice/Managing_Finances_booklet.pdf)

76. The Law Society of Upper Canada published a special nine-page reference section on real estate fraud in the July/August 2004 edition of the *Ontario Lawyers Gazette*, a publication distributed to each one of its nearly 36,000 members. The section includes a "Notice to the Profession on Fraud" that identifies the types of frauds and practice tips for fighting fraud. This includes a checklist of possible indicators of fraud in residential real estate transactions, as well as applicable *Rules of Professional Conduct* that can assist lawyers manage risk and practise competently.

77. An online resource centre concerning mortgage fraud is available on the Law Society's web site at [www.lsuc.on.ca/services\\_en.jsp](http://www.lsuc.on.ca/services_en.jsp). The Law Society's practice management staff are also available to provide assistance to lawyers who may have ethical questions about the topic and can be contacted at 416-947-3315, or toll-free at 1-800-668-7380, ext. 3315.

78. The Law Society has held two CLE programs on how to prevent mortgage fraud "Fighting Real Estate Fraud," on October 19, 2004, and a teleseminar, called "Protecting your Practice from the Brazen New Breed of Fraudster," held on January 26, 2004.

79. The topic will also be addressed during another Law Society CLE event, "The Second Annual Real estate Law Summit," to be held at the Law Society April 6 and 7, 2005.

80. The Law Society is also going to present a fraud program for Crown attorneys and police officers at the Ontario Police College in Aylmer.

### What Needs to be Done Now

81. Lawyers already have stringent rules in place as part of their professional rules of conduct. These rules are being looked to by other professions so that they may strengthen their own codes of conduct.

82. Even though lawyers have the most stringent standards, the Law Society is engaged in a review process to identify what further changes may be made to the *Rules of Professional Conduct* so as to further minimize the potential for fraud.

83. The Law Society will also continue its educational efforts with lawyers to raise the profile of fraud related issues and educate lawyers with respect to the latest developments and changes in the marketplace.

84. The Law Society believes it is important that the other parties increase their efforts as well. For example:

Lenders can help in the fight against fraud by ensuring that safeguards and standards are put in place during the lending process so that due diligence is enhanced and practised.

Lenders can also assist by reporting fraud and their losses promptly so that authorities can investigate and others in the process are aware of what is taking place and the consequences. With this knowledge, other parties in the process can take necessary steps to try and prevent further fraud from taking place.

Greater cooperation by lenders with other authorities and investigative bodies will help hold people accountable for fraudulent activities and in turn deter future frauds.

Mortgage brokers play a key role in matching clients with lenders. Therefore, it is critical that they know who their clients are and be able to verify their identities before money changes hands.

Consultations to amend the *Mortgage Brokers Act* have been completed and we understand that changes to the provincial legislation are imminent. It is expected that changes being considered would:

- o increase the scope of application of the Act,
- o strengthen the regulation of mortgage brokers; and
- o facilitate the strengthening of standards applicable to mortgage brokering activities.

Real estate agents may also consider strengthening their code of conduct. As well, real estate agents have also identified that they would like changes to their provincial legislation to increase their enforcement authority.

There needs to be increased vigilance and due diligence with respect to the operations of the land registry system so as to facilitate the tracking of suspicious transactions and usage. Consideration may also be necessary to restrict access to the electronic registration system to lawyers and government officials so as to reduce the incidence of fraud.

Consumers should be concerned about recommendations of advisors whereby the person(s) making the recommendation have some form of invested interest in the transaction thereby potentially compromising the subsequent advice.

Consumers would be well advised to retain a lawyer as early in the process as possible. Purchasing a home will be the largest expenditure most people will ever make. It is important for consumers to understand the value that a lawyer's advice will provide at the time the offer to purchase is first contemplated and methods of financing considered. The relatively modest cost for legal services, as compared to other costs that will be incurred to complete the transaction and having regard to the value of the house, is an important investment in the avoidance of fraud and other subsequent difficulties in the completion of the transaction. The small investment made in using a lawyer to protect consumers interests in the real estate transaction is money well spent.

85. As a regulatory body, the Law Society is doing everything it can to help identify and implement industry wide standards that will assist in the avoidance of fraud. The Law Society believes that all institutions and professions need to adopt cohesive and complementary standards of conduct that will minimize the opportunities for fraud.