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## Survey can thwart real estate fraud

I've often said a land survey is the most important document in a real estate transaction. Without one, the buyer of a new or resale home cannot accurately determine the exact dimensions and location of the house.

As well, reviewing a survey before closing helps avoid that rare time when the vendor doesn't have title to the house being sold (see *Title Page*, Nov. 5, 2005, <http://aaron.ca/columns/2005-11-05.htm>).

It never occurred to me, until this week, that a survey could have another use as a tool to prevent real estate fraud.

This unusual use for a land survey was revealed in a fax I received from Dan Moshinsky, a real estate lawyer in Thornhill.

His letter outlined a true fact situation, which occurred in his office in late October. The names have been changed as the case is now in the hands of the York Regional Police.

On Oct. 26, Tanya came into Moshinsky's office. She introduced herself as a mortgage broker and asked if she could bring two potential clients to the office that afternoon.

A while later, Tanya arrived with Oleg and Vasily in tow. They showed Moshinsky what they called a private offer meaning it had been prepared without the assistance of a real estate agent.

Oleg and Vasily spoke little English. Tanya did the translating.

The property being purchased was on a residential street not far from Moshinsky's law office. The offer was dated Sept. 27, 2005, and showed the purchase price was \$525,000 with a deposit of \$10,000.

The vendors were Frank and Maria, and the deposit was payable to their lawyer, Larry. Closing was scheduled for Nov. 3.

Due to the increased incidence of real estate fraud, lawyers have been instructed by lenders, title insurers and the Law Society to obtain copies of client identification for the file. As is his usual practice, Moshinsky asked his new clients Oleg and Vasily for their drivers' licences.

As he was photocopying them, Moshinsky noticed that the address on the cards was the same as the address of the property they were about to purchase.

Tanya explained that Oleg and Vasily were tenants looking to purchase the property from landlords Frank and Maria.

At this point, Moshinsky did something he does for every house purchase, even though the title insurance companies do not usually require it. He asked Tanya whether she was able to obtain a copy of the land survey from the seller.

Tanya said not to worry about a survey. It's an old house and they plan to build a new one. Moshinsky asked whether Larry, the other lawyer, had one in his file, and Tanya said no.

Moshinsky then discussed financing with his new clients, who explained through their translator that they had already arranged with the Bank of Nova Scotia to obtain a new mortgage for \$446,250.

The next day, Moshinsky completed his electronic title search. It revealed that the sellers, Frank and Maria, had purchased the property on Nov. 29, 2001. Although technically it was not part of his job to be a detective and track down a copy of the survey, Moshinsky sent a fax to Bruno, the lawyer who acted for the real Frank and Maria when they bought the property four years ago. He advised Bruno that he was acting on the purchase of the home and that Bruno's former clients no longer had a copy of the survey. Neither did their new lawyer, Larry.

Do you have a survey in your file? he asked Bruno in the fax.

A few minutes later, Moshinsky's phone rang. The call sounded like this:

Mr. Moshinsky please.

Speaking.

My name is Frank. My lawyer tells me you're trying to sell my property.

Well, I have an offer for the property in front of me.

My property is not for sale, and I did not sign any offers.

Well, someone did. You better come in and take a look at what I have.

Frank arrived at Moshinsky's office within five minutes.

Moshinsky wasted no time in comparing Frank's signature to what was supposed to be his signature on the offer selling the property. There was no similarity.

Frank called the York Regional Police, who have now opened a new real estate fraud file. The phony purchase deal is, of course, dead.

It appears that a couple posing as Frank and Maria had intended to "sell" the property to Oleg and Vasily, and the four of them would split the proceeds of the forged Scotiabank mortgage.

Moshinsky was in the process of applying on-line for a title insurance policy for the transaction when he uncovered the attempted fraud.

He later reported to a representative of the title insurer why he wouldn't be needing the policy, and heard himself being called a hero for foiling the scam.

The reason the fraudsters could not obtain a copy of the land survey is that most surveys are not publicly available.

Copies of the title deeds can easily be obtained because the registry system is accessible to the public, but copies of land surveys if they exist are only in the files of legitimate parties: the owners, the lenders, and the lawyers.

When a survey is missing from a transaction, many real estate lawyers will make a phone call or send a fax to the last lawyer on title to see if there is a survey in the old file. Usually we do this only because we want the document.

Now there is another reason to go hunting for the land survey. The fact that it is missing, combined with a change of lawyers by the registered owner, can be a badge of fraud a sign that the deal is not what it appears to be.

If a survey is missing from your transaction, find out why.

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