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Title theft issue strikes emotional chord

Last week's Title Page column, in which I compared Ontario's proposed solution to the title theft problem with recent legislation in British Columbia, has produced a storm of reader reaction, most of it passionate.

About half of the many emails I received favour the B.C. solution, which allows ownership to remain with an innocent purchaser, and the other half support Ontario's proposal that would restore a stolen title to the owner who lost it.

Toronto lawyer Morris Sosnovitch says that the Ontario government is playing with fire if it proceeds with the solution it is proposing.

"I think that it is clear that the Ontario proposal of punishing innocent buyers is clearly the worse choice," he wrote.

"The flip side to a law which would restore title to an innocent owner who has been defrauded is that virtually no one will be able to say with certainty that they own their home. It does not matter how many years you have lived there and how much money you may have put into it, one day someone could knock on your door and tell you to leave.

"A home, which generally represents the largest monetary investment and always represents the largest emotional item which a person owns, is not comparable to a car or coin collection. The current system by which a buyer can rely on the accuracy of the Land Titles system to know that their deed is valid has to remain intact."

Ed Huth of Orangeville suggested that the solutions might differ depending on whether an innocent new owner was able to take possession of the home. "After all, possession is nine-tenths of the law," he wrote. If an innocent new owner shows up with a moving truck when the existing owner is still in possession, ownership should be restored to the original owner, Huth suggested.

From Midhurst, Ont., Erik J. Spek noted that the lenders are too trusting of the documents they receive in the mortgage application process. He wrote, "I guess if I was a fraudster, I would be quite happy with either the B.C. or Ontario approach."

Yvonne Powell was highly critical of the B.C. solution, which awards ownership to an innocent buyer over a long-time owner so that the public can have confidence in the land titles system. If that's the case, she wrote (quoting Charles Dickens), "the law is a (sic) ass."

Another reader, R.S. Tse, emailed to say, "Laws must protect 1) the innocent existing owner, and 2) the innocent buyer, and in that priority."

Bob Lyeo of Toronto was critical of the B.C. solution. "Justice," he wrote, "means that people do not lose their property due to crime if they don't have to, and they especially do not lose their property even if the legal system/government feel that it is easier that they do lose it."

"It seems inherently wrong," he added, "that a person should lose their previously lawfully owned property due to fraud. It seems even more twisted to me that a fraudulent transaction can be recognized as legal by a government (as it now is in B.C.)."

Wayne Whitehom mused that clever real estate lawyers should be able to complete a title search that would uncover "shallow" real estate frauds, and when they don't, they should be made liable for the innocent purchaser's loss.

Bob Skene agreed with this view. "In my opinion, the lawyer handling the transaction should be held responsible," he wrote, adding, "Let's see a higher fee for a house purchase but let's make certain the due diligence is full and complete."

My response to Whitehom and Skene is that real estate lawyers are generally aware of many indicators or "flags" of a fraudulent transaction. The Law Society is actively involved in educating real estate lawyers about fraud, but it's not usually possible for a purchaser's lawyer to detect if the seller, who has his or her own lawyer, is a fraudster using bogus ID.

At last count, there are about 105 lawyers being investigated by the Law Society for involvement in mortgage fraud, and nine more has been disbarred or suspended recently as a result of participation in mortgage frauds.

This compares to about 8,000 Ontario lawyers whose practice includes real estate law. It is important to note that many of the society's investigations may not result in any charges at all, and none of the 105 lawyers has yet been found guilty of any misconduct.

Rosemary Pauer, from Bramalea, agrees with the Ontario government proposal. "It seems to me," she wrote, "that the system which restores title to the original, wronged, owners is the best one. To lose one's home must be absolutely devastating... Homes involve more than dollars and cents. They contain lives, joys and sorrows and it is an emotional loss, not just financial."

Joyce Hubel agreed. "Thank God for Gerry Phillips and the Ontario government in this matter...Why should I have to hire lawyers to try to get some reimbursement for something that is mine?"

Civil libertarians might have a problem with an idea proposed by Charles Boanpong, who suggested that banks, real estate agents and lawyers retain fingerprints of the innocent owner and the innocent purchaser on file. "This," he wrote, "would serve as a deterrent to the title fraudster and protect the innocent owner and innocent buyer."

One final note from my colleague Alan Silverstein. Last week I wrote that there was no compensation fund for buyers of stolen cars. In fact, wrote Silverstein, there is a fund, maintained not by the government but by the car dealers themselves. Compensation through the Motor Vehicle Dealers Compensation Fund is limited to \$15,000 and is subject to other tight restrictions.

More information on the fund is available at <http://www.omvic.on.ca/compfund.htm>