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October 28, 2006

## Title fraud bill faces troubled future

Homeowners still at risk

***Doesn't provide reasonable costs*** Government Services Minister Gerry Phillips has introduced a bill that is intended to ensure that ownership of a property cannot be lost as a result of the registration of a falsified mortgage, fraudulent sale or forged power of attorney.

Under the cumbersome moniker of Ministry of Government Services Consumer Protection and Service Modernization Act, Bill 152 amends 53 pieces of legislation, including the Land Registration Reform Act and the Land Titles Act as they affect property owners.

Here's a scenario explaining how the new legislation will work:

Tony is a tenant in a house owned by Owen Owner an absentee landlord. Tony Tenant obtains a fake Ontario driver's licence and Social Insurance card in Owen Owner's name from the same source that my dog Benjy used to obtain his own Ontario driver's licence.

Tony calls his local real estate agent, and lists the house for sale.

No sign is placed on the front lawn at Tony's request.

The agent shows a number of buyers through "Tony's" house and eventually Peter Purchaser agrees in writing to buy the house from Tony Tenant, who is masquerading as Owen Owner.

Peter Purchaser has a good job and excellent credit and easily gets a mortgage for 75 per cent of the \$300,000 purchase price from the bank.

Peter and Tony (alias Owen Owner) retain lawyers for the transaction.

Both lawyers practise only real estate law and are familiar with the antics of title fraudsters.

On closing, both lawyers check their client's ID cards and find nothing amiss.

Tony's ID, of course, is a high quality fake. The deal closes after the bill becomes effective.

The two lawyers have unknowingly participated in the registration of a fraudulent deed.

Shortly after closing, the real Owen Owner returns to Toronto and finds Peter Purchaser living in the home, claiming he owns it. Peter has spent \$75,000 on a down payment and \$50,000 in renovations.

This scenario is not far-fetched. It has actually happened.

Under Bill 152, the deed to Peter Purchaser is cancelled and the real Owen Owner gets his title back. So far so good for Owen Owner.

Peter Purchaser, of course, is in trouble. He, too, is an innocent victim of the scam.

Willingly or not, Peter moves out and applies for compensation to the Land Titles Assurance Fund.

Judging from its past practice, it could take the fund two or three years and tens of thousands of dollars in legal fees to get his down payment back.

He may well have to absorb the legal fees he spends in the process, along with his renovation costs.

Meantime, Tony, the fraudster, disappears. Peter Purchaser, having lost the house, stops paying the mortgage.

Owen Owner moves back into the house.

He reads Bill 152 and finds out to his horror that even though he owns the house again, the mortgage that Peter Purchaser gave to the bank is valid even though the deed to Peter was forged.

Owen can't understand what good it is to get his house back if the mortgage on it which he didn't sign is valid. Of course, he refuses to make payments on it.

It isn't long before the bank delivers an eviction order to Owen, claiming that its valid mortgage is in arrears. Owen then receives a notice that the bank is selling the house under its "power of sale" in the mortgage.

Peter Purchaser is also in trouble with the bank. Since he signed the mortgage promising to repay \$225,000 plus interest, and since he understandably stopped making payments, the bank also sues Peter Purchaser for repayment even though he no longer owns the house.

**The bank is not interested in waiting for Peter or the Assurance Fund to pay out its mortgage, so it evicts Owen Owner and sells the house.**

**The bank is afraid it won't qualify for compensation because Bill 152 says it had to demonstrate "due diligence" with respect to its mortgage, and in fact it took Peter Purchaser's application over the Internet and never met him.**

**Now Owen Owner who had his title stolen and then restored goes to the fund to get compensation for losing his house a second time once to the innocent purchaser who was himself a victim of Tony, and a second time to the bank.**

**But it gets even worse, and the net spreads even wider. Owen and Peter are not the only victims of the fraudster.**

**Two lawyers were involved in the transaction between Tony, alias Owen Owner the seller, and Peter Purchaser, the buyer.**

**Both are licensed to access the Teranet land registration system which includes the government's database for searching titles and registering deeds and mortgages.**

**Although they are innocent of any wrongdoing and both checked their client's identity cards, they both unwittingly participated in the registration of the fraudulent deed.**

**Bill 152 allows the director of land registration to suspend immediately the Teranet access rights of any lawyer who has submitted an "unauthorized" document.**

**Despite the fact that both lawyers carry mandatory liability insurance and are governed by the Law Society's strict rules of professional conduct, under Bill 152 they can be immediately suspended from using the Teranet system without notice, and without a right to a hearing on the immediate suspension. There is no right to appeal a suspension.**

**Eventually, there may be a hearing to decide whether the suspension should be made permanent.**

**Without a Teranet licence, the lawyers lose their real estate law practice and their staff. Their clients, including clients on pending deals, are forced to find other lawyers.**

**The two innocent lawyers in my scenario then sue the Ontario government claiming that the decision to revoke their access rights without notice was draconian, arbitrary, discriminatory and unconstitutional.**

**Several years and three appeals later, they win millions of dollars in damages against the government.**

**A spokesperson told me last week that the McGuinty government is "looking at" ways to strengthen the Land Titles Assurance Fund claims process and make it more transparent.**

**They are also "looking at" who can and cannot access the Teranet system.**

**In addition, they are "actively assessing the feasibility" of notifying owners any time a change is made to their titles.**

**When Bill 152 was introduced in the legislature, Conservative MPP Joseph Tascona said, "Victims of fraud are forgotten. Homeowners in this province are still at serious risk. The bill fails to reduce the harm by ensuring that the person who is the rightful owner of the property keeps the property.**

**``The bill ... does not establish any system to ensure that people with fraudulent intentions don't still go on the land registry system.**

**"It also does not reform the land titles assurance fund, because it has not made it a fund of first resort to be operated by an arm's-length board of directors, to ensure that the process works quicker, to ensure that the process is fair to the people who are victims of fraud. And it also doesn't help the victims of fraud by providing reasonable legal costs to ensure that their rights are protected."**

**Bill 152 is the first baby step in addressing only one problem of title fraud, but it creates more problems than it fixes.**

**We still have a long way to go, and I worry that the title fraud dilemma will get much worse before it gets any better.**