



This publication is intended to provide general information only and is not a substitute for legal advice.

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REAL ESTATE
COUNCIL
OF ALBERTA



Mortgage and Title Fraud

TYPES OF MORTGAGE AND TITLE FRAUD

Mortgage and title fraud can take many forms. Five major types are: mortgage fraud for housing, mortgage fraud for profit, mortgage fraud for title, mortgage foreclosure fraud and title fraud. Understanding mortgage and title fraud will help you recognize and avoid it.

- 1. Mortgage fraud for housing** – is providing misleading or false information on a loan application to qualify for a mortgage you would not otherwise get and/or indicating you will live in the home when you will not. The goal is to own a property or a more expensive property for which you would normally not qualify. This is accomplished by homeowners misrepresenting income and the level of their debt in order to receive a lower interest rate or qualify for a larger loan. You have a responsibility to provide accurate and truthful information on a mortgage application. Providing false or inaccurate documents to support the mortgage application is also part of the fraud.
- 2. Mortgage fraud for profit** – usually includes a number of individuals working together to inflate the price of a home or get loans for non-existent homes. Organized crime is often the mastermind of the fraud schemes, which are normally done in conjunction with industry insiders with financial gain as the motive. This fraud is more complex. The professionals involved in this fraud could be: a real estate appraiser, mortgage broker, real estate broker, lawyer, credit agency employee, lender, title insurer, and outside investor. It may also include a vendor (seller) and/or a 'straw buyer'. The real buyer usually has poor credit and is unable to get financing. A straw buyer

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is a person who makes a purchase on behalf of another person. The straw buyer may, for a piece of the profit, lend his or her identity and good credit to the fraud. The real buyer promises to make all the payments and pay the straw buyer for the use of his or her credit rating.

These insiders may, for example, knowingly or unknowingly accept the use of false personal or financial information, use inaccurate appraisals, or transfer mortgage funds to an individual knowing they will be misused.

Straw buyers can be held legally responsible for the debt they incurred on behalf of others. The straw buyer takes the risk if the real buyer cannot or does not pay. One common outcome of the scam is that the professionals pocket the cash and the straw buyer is left with the property and no means of paying for an inflated mortgage on the property. A person who has had their identity stolen may unwillingly become a straw buyer.

Other mortgage fraud schemes for profit can be perpetrated by individuals who take money from investors and promise it will be invested in high yield mortgages. In some cases initial promises aren't followed through and the actual transaction as outlined may not even occur. If the transaction involves a scheme or arrangement whereby the purchaser may earn a return through the efforts of a third party in connection with real estate, it may be considered to be a sale of a security and

therefore fall under the jurisdiction of the Alberta Securities Commission (ASC). It should be remembered that any investment involves some level of risk. Usually, higher returns mean a higher level of risk.

- 3. Mortgage fraud for title** – occurs when a fraudster uses your stolen identity, fake documents and identification to change the title on your home. Using these documents, the fraudster applies for and takes out a mortgage. The bank lends the money to the fraudster based on the stolen or fake documents and leaves the victim with the debt. Even if the fraudster does not change the title of the home you could still have a mortgage debt that you didn't agree to if he/she uses your stolen identity and takes out a new mortgage without your knowledge. It could be your responsibility to prove you did not authorize the title change and mortgage.

It takes time, money and effort to unravel identity theft. Take precautions to prevent this type of fraud. Check the title on your home and regularly check your credit rating to ensure everything is in order. See the Identity Theft tipsheet at http://servicealberta.ca/pdf/tipsheets/Identity_theft.pdf for information on preventing identity theft.

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- 4. Mortgage foreclosure fraud** – foreclosure scams generally target vulnerable, low-income individuals whose homes are in foreclosure, or are at risk of defaulting on their loans. There are many variations of foreclosure scams all of which share several common elements. A criminal approaches a legitimate owner with a debt-consolidation scheme that typically involves the owner paying upfront fees and transferring the property title (sometimes unwittingly) to the fraudster. The legitimate owner typically receives a cash payout from the fraudster to address immediate bills and remains in the home paying “rent” or “consolidated debt payments” to the fraudster. However, in contrast to legitimate debt consolidation programs, the fraudster pockets all payments from the owner and ignores bills and taxes, which lead to debt-collection procedures against the owner. The fraudster may re-mortgage or sell the property to an accomplice leaving the owner without the property title, homeless and in debt.
- 5. Title fraud** – may or may not involve mortgage fraud.

The buyer’s lawyer is responsible to ensure the purchased property has clear title by being registered and free from any unknown claims, liens or encumbrances against the property. A clear title ensures the property is marketable and the homeowner will not have any legal difficulty in selling the property. A lawyer will state whether or not the property has clear title in a report to the buyer.

Alberta uses the Torrens Land Title System, and the Province maintains an Assurance Fund to guarantee title. This means the Province will compensate any owner who suffers a loss due to an error on the title or as a result of a fraudulent transaction. Should this happen, you may take steps to obtain compensation from the government through the Assurance Fund. The Province has taken the responsibility as a matter of policy to maintain public confidence in the integrity of the system.

Much of the literature on land title fraud is American. The United States jurisdictions are not Torrens Land Title Registries, and do not have the same guarantee.

Further protection is available with the purchase of title insurance for a one-time fee. It covers the time between submission and title registration and **deficiencies** not shown on real property reports (i.e. missed easements and builders’ liens), municipal issues (lack of proper permits that need rectifying) encroachment issues, losses associated with fraudulently registered mortgages and legal fees incurred in defence of your right of ownership. After the closing date and during the entire time the property is owned, title insurance protects against forgery, fraud, duress, incompetency, incapacity and impersonation.

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WHAT YOU CAN DO TO PROTECT YOURSELF

To protect yourself from being an unwilling participant in mortgage fraud, do your homework.

- Read all documents or have your lawyer review the documents before you sign.
- If you are going to purchase real estate and finance the purchase through a mortgage, be certain you are using a licensed mortgage broker who is registered under the *Real Estate Act* in Alberta. Licensed mortgage brokers are required to practice in accordance with the Act, Regulations, Rules and Bylaws enforced by the Real Estate Council of Alberta (RECA). RECA carries out the function of regulating registered real estate and mortgage broker professionals.
- RECA also administers an assurance fund set up to provide some financial protection for clients of licensed mortgage and real estate brokers. The Fund compensates consumers who suffer a financial loss as a result of fraud, breach of trust, or a failure to disburse or account for money held in trust by an industry member with respect to a trade in real estate or deal in mortgages. RECA investigates registered members. Real estate transactions through non-members are not covered by the RECA assurance fund.

For details on how to access the fund and to learn if the person you are dealing with is an authorized individual, check with RECA before you make a deal. Call toll free 1-888-425-2754 or visit www.reca.ca.

WHAT SHOULD I DO IF I SUSPECT A SUSPICIOUS TRANSACTION?

Consumers should be aware of red flags that may be indicators of a fraudulent transaction. The existence of red flags does not guarantee a fraud, however it should be cause for suspicion. If there are more than two or three red flags in a transaction they should be considered seriously. RECA's website has a list of the red flags and helpful information bulletins.

If you find information to be false or misleading, contact the lender and advise them of your findings. If the persons involved are industry members (real estate associates/brokers, mortgage associates/brokers or real estate appraisers), report the results of your review to RECA in writing.

If you suspect fraudulent and/or other illegal behaviour, contact the local police or Royal Canadian Mounted Police in addition to RECA.

Please forward other red flags to RECA.

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INVESTING YOUR TIME AND DOLLARS WISELY

Protect your real estate investment dollars by first doing homework.

- Consult public real estate websites to review property listings in the community where the property is located. Compare features, size and locations to establish if the asking price seems reasonable.
- Get independent representation for your purchase. If the seller objects, consider it a red flag.
- Check to make sure your representative is an authorized real estate professional. Contact RECA.
- Using an authorized real estate professional does not cost anything from a purchaser's standpoint. Usually, all commissions are paid by the seller.
- Beware of a real estate broker or mortgage broker who has a financial interest in the transaction.
- Ask your independent representative to provide you with a comparative market analysis of the property.

- Ask for a copy of the land title or go to a registry agent office and ask for a historical title search.
- In the offer to purchase, include the option to have the property appraised by a designated or accredited member of the Appraisal Institute of Canada or the Canadian National Association of Real Estate Appraisers.
- Insist on a home inspection to guard against buying a house that has been cosmetically renovated or formerly used as a marijuana growing operation. Grow operators frequently use mortgage fraud to purchase their properties.
- Ask to see receipts for recent renovations.
- When you make a deposit, ensure your money is being held in trust.

Use the following resources:

- To find a registry agent near you for a historical title search check the Service Alberta website <http://www.servicealberta.ca/find-a-registry-agent.cfm>.
- To find out if a mortgage broker or real estate professional is licensed in Alberta, and to see more mortgage red flags visit www.reca.ca.

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RED FLAGS

Mortgage Fraud

- ▼ Someone offers you a fee to use your name and credit information to obtain a mortgage.
- ▼ You are encouraged to include false information on a loan application.
- ▼ You are asked to leave signature lines or other important areas on a loan application blank.
- ▼ The loan amount on the mortgage is significantly higher than the value of the property.
- ▼ The mortgage has been refinanced several times and in each instance, the amount of the mortgage has increased.
- ▼ The seller or investment adviser discourages you from seeing or inspecting the property you are offering to purchase.
 - Be certain you are buying the property from the person on the title of the property.

For lenders, if the property has changed hands many times over a short period of time, this can indicate non-arm's length transactions that are manipulating the apparent value of the property in order to induce a lender to lend more money than the property is truly worth.

Mortgage fraud is not a get rich quick scheme — it's illegal. Getting involved in a mortgage scam can damage your credit rating, your current and future employment prospects and your professional designation.

Identity

- ▼ Buyer is a numbered company seeking a high ratio mortgage.
- ▼ Buyers or sellers' names are only partially indicated; e.g. last name appears without a first name ("Smith"), or the first name is indicated by only an initial ("R. Smith").
- ▼ Parties have no formal office; communication is by cell phone, email and fax; meetings are held at public places.
- ▼ The deposit cheque(s) is coming from someone other than the buyer.
- ▼ Deposit is provided in cash or by money order.
- ▼ Someone acting on a power of attorney represents the buyer or seller.

Property Value

- ▼ Purchase price is the same as or higher than list price.
- ▼ Property list price or purchase price is unusual for the neighbourhood.
- ▼ Parties to the trade provided the appraisals.

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Unusual Transactions

- ✔ Quick succession of trades on one property.
- ✔ Uncommon commission arrangements, unusual adjustment to commissions, flat fees, low fees.
- ✔ Listing information is unusual or inconsistent with the transaction. For example, listing is removed from the listing database prior to sale, sale is not reported, listing reappears at higher price.
- ✔ Associate named in the listing is different from the purchase contract, listing database history doesn't support pricing, etc.
- ✔ One lawyer represents both parties to the transaction.
- ✔ Contract indicates unusual language, for example, "this is a private sale" not all parties named on the contract have signed it.

Brokerage

- ✔ Brokerage does not check background of prospective industry professionals.

Title Fraud

- ✔ You receive calls from the bank insisting that you're late with your mortgage payments.
- ✔ Returning from vacation to find your house is now home to another family, sold out from underneath you while you were away.
- ✔ You give out your personal and financial information to an identity thief; sometimes it could be a family member.
- ✔ Your forged signature is on documents you did not sign.

Did you know?

- Law enforcement officials and lenders believe that 10-15 per cent of all mortgage applications contain false information.
- Lenders can and do sue individuals who participate in mortgage fraud.

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FOR MORE INFORMATION

Consumer Contact Centre Edmonton: 780-427-4088

Toll-free in Alberta: 1-877-427-4088

Queen's Printer Bookstore

You may purchase Acts and regulations from the

Queen's Printer Bookstore:

10611 - 98 Avenue, Edmonton, Alberta T5K 2P7

Edmonton: 780-427-4952

Toll-free in Alberta: Dial 310-0000 then 780-427-4952

These are also free for you to download in the "pdf" or "html" formats at www.qp.alberta.ca

Alberta Securities Commission (ASC)

If you think you have been involved in or become aware of a mortgage fraud that involves securities, please contact:

ASC Public Inquiries

Toll-free: 1-877-355-4488

www.albertasecurities.com

Produced in cooperation with the Real Estate Council of Alberta (RECA).

A current version of this and other consumer publications are available at www.servicealberta.ca.