

# CHECKLIST TO PREVENT REAL ESTATE FRAUD

## PURCHASE TRANSACTION

### ISSUE AND BEST PRACTICE

#### ID VERIFICATION

##### PROPERTY IS MORTGAGE FREE (acting for Purchaser)

- Obtain two pieces of ID (one photo ID) and inspect for any irregularities (spelling, age, address, etc.).
- Request attestation re: ID of Vendor.

##### PROPERTY IS MORTGAGE FREE (acting for Vendor)

- Obtain two pieces of ID (one photo ID) and inspect for any irregularities (spelling, age, address, etc.).
- Verify Vendor's address on Canada 411.
- Verify Vendor's address and telephone match.
- Google Vendor's name for any irregularities.
- Any other inquires that may be determined necessary.

#### MORTGAGE DISCHARGED WITHIN THE LAST 12 MONTHS

- Review title carefully looking for suspicious circumstances such as:
  - A discharge registered within a short period of time after registration.
- Confirm the Lender registered the discharge.
- Determine whether to contact Lender or his solicitor/notary to confirm the mortgage was, in fact paid out - especially a concern if mortgage is private.

#### MORTGAGE TO REMAIN ON TITLE AFTER CLOSING

- Confirm the status of the mortgage directly with the Lender that will remain on title. **DO NOT** accept a mortgage statement from the borrower.
- Does the mortgage statement confirm that a large amount of the mortgage has been paid within a short period of time?
- Does the name of the Lender on the statement match that registered on title?

**NOTE:** Title Insurance may not be available if the mortgage statement obtained was not provided directly by the Lender.

#### POWER OF ATTORNEY ("POA")

- Ascertain the reason for the use of the POA
- If preparing the POA**, obtain and FULLY document the reasons for use of POA. Obtain two pieces of ID (one photo ID) from both the grantor/donor and the attorney/donee. Speak and take instructions from the grantor directly.
- If a third party prepared the POA:**
  - Obtain a notarized or original POA from the client;
  - Review POA for proper form and execution;
  - Get particulars of donor/grantor - where is he or she? Contact information, etc.;
  - Communicate with the grantor/donor directly, to confirm legitimacy of transaction, reason for use, etc.;
  - Any proceeds should be paid to the name of grantor/donor, not the attorney/donee.

## VENDOR IS SELLING VIA POA (acting for Purchaser)

- Contact Title insurer immediately to ensure the requirements are satisfied.
- Contact lender immediately (whether acting for the lender or not) to determine whether the lender is willing to extend the funds where the vendor is acting through a POA, and on what terms.
- Requisition (if applicable in the jurisdiction where the property is located):
  - Registration of a copy of the POA on title and delivery of a copy of the registered POA well in advance of closing;
  - Review the POA to determine whether it provides the authority being relied upon to complete the transaction, and whether it meets formal requirements under the applicable legislation;
  - The Vendor's solicitor/notary to provide an attestation of the POA's identification and his verification of authenticity of the POA, no suspicious circumstances etc. use is appropriate, legal owner is unavailable or unable to complete the transaction himself;
  - Comply with any other investigative steps required by the lender and/or title insurer.

## ADDITIONAL INVESTIGATION / POTENTIAL RED FLAGS

- Unusual rush request
- Client unknown to the firm
- Client unable to provide information
- Client reluctant to attend at office
- Client lives out of town
- Private lender (do conflict search) - verify existence of private lender through online searches
- Out-of-town lawyer/notary (do conflict search) - verify existence of lawyer/notary through online searches
- Last minute redirection of funds (especially via email).
- Instructions to pay money (sale proceeds or mortgage proceeds) to a third party or out of the ordinary course
- Recent change to corporate profile/directors officers
- Any other unusual circumstances

## LOOK OUT FOR FRAUDULENT CHEQUES

### POTENTIAL RED FLAGS

- No financing is involved (assess client's likelihood of having funds without financing).
- Closing funds are being provided by a private lender or unfamiliar financing institution.
- Closing is around a holiday.
- If a private transaction, the Purchaser's deposit is delivered is to the Firm rather than a realtor. The transaction is then cancelled and the return of the deposit is to be paid from the Trust account.

*If any of these circumstances arise, consider if the cheque should be verified with the financial institution before proceeding (see professional indemnity insurer's requirements for verification for certified cheques, if any).*