



REAL ESTATE FRAUD IN B.C. IS ON THE RISE

WHAT IS IT & WHAT CAN YOU DO TO PROTECT AGAINST IT?

Since the COVID-19 pandemic and the attendant reliance by the business and legal communities on completing transactions electronically, the incidence of fraud (both by organized crime and by individuals) has increased exponentially in large cities across Canada. In Toronto alone, The Globe and Mail and CBC News recently reported more than 30 fraudulent mortgage or sales transactions were committed by impersonators using homes they do not own since 2019, with at least 3 known fraudulent sales having been attempted in B.C. (of which two were successful in 2019 and 2020, with a third attempt having been thwarted in 2021 before the sale was finalized).

What is real estate fraud?

There are typically four types of fraud associated with real estate transactions: mortgage, value, title and rental.

Mortgage fraud occurs when a person purports to mortgage or refinance a home with a lender under false pretenses (usually with no legal or beneficial interest in the property being charged).

Value fraud occurs when a lender is led to believe that a property's value and attributes are worth more than is actually the case (usually misled by repeated sales or "flipping" of the property between individuals involved in the scam or by "invoiced" high-end renovations that never in fact occur), adding exponentially to the price of the home or its value for refinancing purposes.

Title fraud occurs when the ownership or title to a property is fraudulently changed or documents are forged to allow a scammer who is impersonating the legal owner to illegally sell the property.

Rental fraud occurs when individuals lie or present forged documents to a prospective landlord in an attempt to establish a false work, income or rental history in order to secure a lease for the purpose of residing in the premises and/or gaining access to information about the owner which can then be used to conduct one of the preceding frauds.

The scam artists generally look for homes that are vacant or rented (with absentee owners) and clear title (or a minimal mortgage or home equity loan), with a view to recouping the highest possible return for their efforts. They often rent the targeted property first, then impersonate the owner (having acquired their personal information and secured appropriate false identification) and either secure a new or second mortgage on the property or list it for sale, taking the first reasonable offer received and disappearing with the proceeds.



Unlike credit card fraud, title fraud puts the onus on the homeowner to prove that a fraud has occurred. It requires considerable time, money and effort on the part of the legitimate owner to restore their title and remove any fraudulently registered mortgage or transfer of title on sale of the property. And until one's title is restored, the rightful owner will be unable to sell or mortgage the home, potentially derailing important financial or estate planning goals.

Why has such fraud been relatively rare in BC until now?

Fortunately in B.C. a number of measures are in place that have limited the success of these criminal schemes in the past and should help to limit their growth going forward – but success requires vigilance.

Firstly, in B.C. property titles are registered under the *Land Titles Act* (LTA) at the local Land Titles Office (LTO) using the “Torrens System” – a registry system that is intended to provide conclusive evidence that the person or legal entity recorded on title to a property as being the owner is in fact the owner. Registration vests title in the land and certifies the indefeasibility of the title (subject to a few statutory exceptions, including a fraud in which the registered owner has participated). A title that is indefeasible cannot be defeated, revoked or made void. Only a person registered as the owner has the right to transfer or otherwise deal with their legal title to the land. An Assurance Fund compensates property owners in the unlikely event they are financially impacted by a title registration error or become the innocent victims of a title fraud.

The registry system provides three additional checks against fraud:

- 1) An owner registered on title may obtain a **duplicate title certificate** from the LTO (which is a hard copy version of the title registry that effectively “freezes” the title, meaning that no new transfers of title may occur and no new mortgages may be registered against title to the property until the duplicate indefeasible title certificate is returned to the LTO);
- 2) The Land Title and Survey Authority (LTSA, the statutory body responsible for delivering secure land titles in B.C.) offers **Parcel Activity Notifier subscriptions**, which provide alerts to the registered owner if any application is submitted against their title; and
- 3) Under the ***Land Owner Transparency Act*** (LOTA, which was introduced to combat money laundering in B.C), the visibility of land ownership is enhanced through addressing “hidden” or “beneficial ownership” when the “legal” title to a property is held by a corporation, partnership, trust or other designated “reporting body”. LOTA requires that a transparency declaration be filed with the administrator anytime that an application is made at the LTO to register or transfer an impacted interest in land.

In addition, owners of real property are actively encouraged by realtors to obtain **title insurance** at the time of purchase, where the insurer typically takes over in the event of fraud (assisting with contacting the police, notifying all parties involved and hiring/paying lawyers to fix the problem).

Secondly, both federal and provincial legislation impose a heavy burden on professionals (realtors, bankers, lawyers, and notaries) engaged in “financial transactions” - like the sale, purchase or lease of real estate - to exercise due diligence when representing their client.

Specific mandates include:

- A. Under the **federal Proceeds of Crime [Money Laundering] and Terrorist Financing Act of 2001 (PCMLTFA)** and related Regulations, entities engaged in financial transactions (*including banks, insurance firms & brokers, accountants, real estate companies & brokers, and dealers in securities, gems and precious metals*) are required to implement robust measures to “know the client” with whom they are dealing and to report any suspicious activity to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

While money laundering and fraud are different criminal activities, the indicators of both and the professional obligations of entities facilitating the transaction often overlap.

The “know your client/customer” (KYC) measures each entity is required to implement include:

- Establishing a Customer Identification Program which – *at a minimum* – requires obtaining 4 pieces of identifying information about a client or customer including their full name, date of birth, permanent address and identification number (*SIN, passport, driver’s license, etc.*). Additional items requested might include: (i) a history of prior financial transactions (with references), (ii) the names and contact details of employers, (iii) details the client or customer can provide regarding the proposed transaction (*including the objective, method of funding, the names and addresses of all other parties to the transaction, and where final funds and reports are to be sent*), and (iv) information sourced through reporting agencies and public databases like the Better Business Bureau, the LTO and/or LOTA, the companies and partnership public registries, and the like.
- Performing Customer Due Diligence which involves the process of classifying all the information collected during the Customer Identification process – the goal being to obtain enough information to verify the customer’s identity and assess any potential risk in assisting them with the proposed transaction. Most clients and their proposed transactions are legitimate; but, in the event the preceding processes give rise to concern, the service provider must then subject the client to an “enhanced” level of due diligence.
- Progressing to Enhanced Due Diligence is required when identification efforts raise “red flags” about the proposed transaction or the motivations of the parties involved (*such as the discovery that identification records have been altered or that the party designated to receive the funds is different from the parties requesting the transaction or that one of the parties to the transaction resides outside the country and balks at providing enhanced identification (such as a “source of wealth” verification step) through a reputable local agent*).

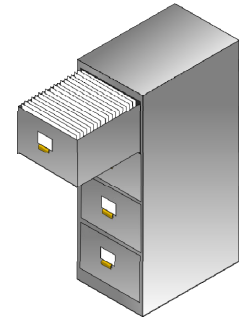
In addition, the legislation requires the professional entities facilitating the transaction to:

- (i) keep records – designated by profession - that include (*to name just a few*):
- the results of their KYC identification and verification efforts,
 - a record of any large cash or virtual currency transaction of \$10,000 or more received from a party in a single transaction, unless the amount is received from another financial entity or public body who is acting on behalf of a client that is a financial entity or public body,

- the name of individuals authorized to give instructions in respect of the transaction (including copies of a signature card for each),
- a record of every deposit/withdrawal made in respect of a prescribed transaction,
- the number and type of every account affected by the transaction, including the name of each account holder, and
- a record of every international electronic funds transfer (initiated or received) of \$1,000 or more; and

(ii) engage in ongoing monitoring of the business relationship.

Records mandated by the PCMLTFA or Regulations must be kept for a period of at least 5 years after: (i) the day on which the account to which they relate is closed (*as regards things like signature cards, records setting out the opening, operation, and intended and actual use of the account*); (ii) the day on which the last business transaction is conducted (*as regards largely identification records*), and (iii) the day on which they were created (*as regards all other records*).



Though far from being an exhaustive analysis of the federal legislation, the preceding brief summary illustrates the regulatory oversight of financial transactions that exists throughout Canada. Strict adherence to the dictates should assist both professionals and their clients in limiting the risk of falling victim to a scam.

- B. That federal oversight is recognized and enhanced in B.C. by provincial legislation (such as the LTA, LOTA and the *Real Estate Services Act* (RESA) and related Regulations and rules) and by the licensing requirements and codes of conduct imposed on professional bodies and their membership.

Real Estate Companies & Brokers: RESA governs the licensing and conduct of individuals engaged in the trade (*sale, purchase or leasing*) of real estate or in the provision of real estate services within B.C. The Act, related Regulations and the Real Estate Services Rules are intended to protect the public by setting minimum competency requirements and standards of conduct for real estate brokerages and individual realtors, which include an obligation to act honestly, in the best interests of the client, in accordance with lawful instructions provided by the client, and with reasonable care and skill when providing real estate services. And, while a client signs an agency agreement with the brokerage and each brokerage is required to have a compliance program in place, all licensees who act as agents in the trade of real estate are subject to the requirements of the PCMLTFA.

In 2019, the Real Estate Council of B.C. (*the predecessor to the newly integrated BC Financial Services Authority* (BCFSA) that came into effect on August 1, 2021) was the first real estate regulator in Canada to partner with FINTRAC for the sharing of information to facilitate anti-money laundering enforcement activities in the province's real estate sector.

The BCFSA has carried on that co-operative effort by producing "best practices" guidelines for real estate professionals including recent bulletins on the application of federal anti-money laundering (AML) mandates (such as "*Licensees Can Help Prevent Fraudulent Real Estate Transactions*" issued on February 23, 2023) and assisting with the creation of AML modules for licensing programs and new forms and tools (such as the 2022 addition of the FINTRAC Form to the LTSA Identity Verification Service).

Failure by a licensee to adhere to AML mandates may result in disciplinary measures by the regulator up to and including possible suspension or loss of one's license. In 2019 for example, the Real Estate Council of BC found that a realtor (*who had. Amongst other things, allowed the buyer to transfer money by wire directly into the realtor's personal bank account using a name other than the buyer's name – in contravention of the requirements of FINTRAC*) had engaged in professional misconduct and ordered a disciplinary penalty of \$7,500, a license suspension for 270 days and required the realtor to (i) complete an ethics course before returning to the practice of real estate, and (ii) submit to enhanced supervision by a managing broker for a period of not less than 12 months following such return.

Mortgage Brokers: Unlike real estate licensees, mortgage brokers (who were regulated under the *Mortgage Brokers Act* (MBA)) are not currently required to report under the PCMLTFA – even though they are well-placed to detect and report a fraudulent conduct related to the valuation and financing of real estate in B.C. The Commission of Inquiry into Money Laundering in British Columbia (the Cullen Commission) released its final report in June 2022 and saw this as an important omission to correct. The Commission recommended the province increase its education and licensing requirements for mortgage brokers to assist in their detection and reporting of money laundering and fraud.

In response, the B.C. government introduced Bill 29-*Mortgage Services Act* (MSA) as legislation intended to replace the outdated MBA. Bill 29 received royal assent on November 3, 2022 and is expected to be in force by late 2023. It empowers the BCFSa to establish a licensing and regulatory regime for mortgage brokerages, principal brokers, mortgage brokers and mortgage lenders, similar to the licensing and penalties framework of RESA, with enhanced disclosure and reporting obligations – including those aimed at reducing money laundering and related fraud in the real estate sector. Like RESA, the MSA (i) prohibits deceptive dealing by the mortgage brokerage/broker, and (ii) includes in the definition of “misconduct” (a) the making or allowing to be made of a false or misleading statement in a record that is required or authorized to be made, filed or produced under the Act, and (b) engaging in conduct that is contrary to the best interests of the public or undermines public confidence in the mortgage industry.

Though not yet in force (given the time required for the Finance Ministry to develop appropriate Regulations and rules), the MSA – in adopting key recommendations of the Cullen Commission -should assist in reducing the proliferation of money laundering and real estate scams in B.C.



Lawyers: It seems counterintuitive for a criminal to retain the services of a law firm or lawyer to advance a scam, but fraud artists will frequently do so in the hopes of lending “legitimacy” to an otherwise criminal transaction. In addition to obtaining strict confidentiality of the services sought and provided based on the principles of solicitor/client privilege, scammers also gain the opportunity to deposit/laundry their proceeds of crime through the lawyer's trust account to pay for the purchase of a home or discharge of a mortgage, thereby integrating those tainted funds into the legitimate economy.

In recognition of the obligation imposed on lawyers to protect solicitor/client confidentiality (which makes reporting a client's conduct to FINTRAC impractical), the PCMLTFA contains express exemptions from disclosure for legal counsel and law firms “when they are providing legal services subject to the privilege”. However, the Law Society of British Columbia (as the regulatory body that oversees the competency and conduct of its members) has incorporated the key protections outlined in the PCMLTFA “Know your

client” mandate in the Law Society Rules, identifying 6 main requirements that law firms and individual lawyers must meet:

1. Identify the client.
2. Verify the clients ID if there is a financial transaction involved.
3. Obtain from the client and record, with the application date, information about the source of money if there is a financial transaction involved.
4. Maintain and retain the records.
5. Withdraw if you know or ought to know that providing the requested services would assist in a fraud or other illegal conduct.
6. Monitor the lawyer/client professional business relationship periodically while retained in respect of a financial transaction and keep a dated record of the measures taken and the information obtained.

If in doubt about whether a proposed transaction is legitimate or one from which the lawyer should withdraw, the Law Society offers the assistance of experienced practice advisors or the Lawyers Indemnity Fund claims counsel to ensure compliance.

If a cash or trust fund transaction is involved, the Law Society’s trust auditor is available to assist.

And like other professional bodies, the Law Society regularly runs webinars, videos and shares disciplinary proceedings to both inform its members and to reiterate a well-placed caution: “A fraud left unchecked may lead to a member being disciplined, to denial of professional insurance coverage, to personal financial and reputational loss and, in some situations, to the imposition of criminal law sanctions. “

Notaries: In B.C. notaries are legal professionals who provide a valued alternative to retaining a lawyer. They practice in clearly delineated areas of law, which include: residential and commercial real estate transfers, mortgage documentation and refinancing, authentication of documents, notarization and attestations of signatures, and statutory declarations – all areas ripe for abuse by scammers. Because notaries are not lawyers, they may be targeted by scammers hoping to gain “legitimization” of their proposed illegal transaction *or* confirmation of altered identification records *or* document validation at a reduced risk of exposure and cost.

However, BC Notary Publics (like other professionals involved in financial transactions) must submit to a scrupulous review of their personal, financial, educational and business background that examines their character, reputation and integrity in depth. In addition to being required to pass several statutory exams and be approved by the Supreme Court of B.C., they must have post-secondary education plus several years of business experience in real estate, insurance, accounting or the legal field before being allowed to practice.

They: (i) are subject to the dictates of the *Notaries Act* and related Regulations & rules (which include mandates for the creation and retention of records in respect of residential and commercial conveyances, leases, mortgages and the review of title); (ii) are members of the Society of Notaries Public of British Columbia (which established the “Principles for Ethical & Professional Conduct Guideline”, mandating that they conduct themselves at all times with integrity and professionalism regardless of any contrary instructions or inducements from a client, colleague or member of the public); and (iii) are required to carry mandatory errors and omissions insurance (in addition to the Society’s Special Fund to protect

consumers).

The Code of Conduct expressly requires notaries to:

- “take reasonable steps to protect against fraud, misrepresentation or unethical practices”,
- “ensure that they are aware of and comply with all legal obligations imposed on them, *including* any provisions of the *Proceeds of Crime (Money laundering) and Terrorist Financing Act* applicable to them”,
- “carefully screen the identity and voluntariness of each signatory ... and,
- before notarizing a document (such as those required under the Land Titles Act), to know the legal requirements for such attestation.”

As in the case of realtors, mortgage brokers and lawyers, notaries who fail to comply with such directives are subject to disciplinary action for misconduct under the *Notaries Act*.

However, with the rapid rise of home prices across Canada during the pandemic (making the prize well worth the risk of detection), the advent of online transactions and the “work from home” culture (with attendant distractions), and the ever-increasing sophistication of fraudsters, there is no guarantee – even with the preceding statutory protections - that you won’t become a victim.

What additional steps can you take to better protect your title and identity?



1. **Use professionals** when selling, purchasing, leasing or taking out a loan against your home. They are trained, bound by a statutory duty of care, and their conduct is typically monitored by their regulatory or professional body and backed by some form of “errors & omission” insurance or compensation fund. If you have any concerns about the services you receive, you can report them to the applicable regulatory body for investigation and follow-up with disciplinary measures (if required).
2. Get to **know each professional personally** and request in-person meetings whenever possible. Not only will this give you first-hand knowledge of their competence, but it will assist in their due diligence, client verification and reporting obligations under the PCMLTFA and related provincial legislation.
3. Whenever possible **use original** - not copied, scanned or digitalized - **identity materials** (*passport, driver’s license, proof of citizenship and the like*) when meeting with your advisor, as copies can be altered, typically require an experienced eye to detect tampering, and verification requirements under the PCMLTFA can be time-consuming if authenticity of the records is in doubt. While technology does exist to check the authenticity of scanned government-issued photo identification, its use is not mandated and not every professional or brokerage has access to it.
4. Ensure that the **closing of your transaction** allows adequate time for your professional advisers to meet their statutory and professional obligations. “Urgent” transactions tend to raise “red flags” with service providers that may lead them to reject the requested service or to file a “suspicious transaction” report – which actions do protect your interests but may also substantially slow the process of completing the proposed transaction and potentially subject it to unnecessary, increased scrutiny.

5. Reduce your own risk by purchasing **title insurance**, obtaining a **duplicate title certificate** from the LTO (and keeping it in a secure place for future production to the LTO), and requesting **activity notification alerts** from the LTSA.
6. Consider taking out a small “renovation” mortgage, home equity loan or personal line of credit that is secured by a **charge against your home**. You need not use the facility (*or might elect to simply invest the funds*) but having a charge against your title will make your home less attractive to scammers and provide another set of experienced eyes to monitor title activity.
7. Aggressively protect your **personal information** against theft. Bank statements, credit card bills, utility invoices, donation requests that contain your home address and past donation record, etc., should all be reviewed to verify the stated activity and then shredded. Passwords, your social insurance number (SIN), bank account numbers, and other personal identifiers should never be shared – if your professional advisor, your bank, the tax department or some other government agency emails or calls to request such information, obtain callback details and check directly with the individual involved or a manager before responding.
8. Check for **unlawful diversion** of your personal records like tax notifications, monthly bank statements, utility invoices, credit card bills and government or employment records/benefits that are sent to your home address to ensure that they are being delivered on time. Asking your bank, credit card company and utility provider for a “notification of unusual activity” alert will also assist in this regard.
9. Use appropriate malware protection for the information you store on your phone and computer. If your **computer has been hacked**, your phone cloned, or a representative of your health/financial /commercial or employment service provider advises that their servers have been compromised or their records have been stolen, pursue the steps recommended by the relevant service provider to protect against subsequent identity theft by the perpetrators – including changing passwords, freezing or cancelling impacted charge cards, and notifying other related or government agencies as directed.
10. Do not leave your home **vacant for long periods** of time. If you are leasing it or engaging in a home swap or vacation rental, use professionals trained in property management to conduct reference checks (financial/employment/past leasing history), collect/redirect personal mail and “unauthorized activity” notifications, and routinely check the premises to avoid them being used for illegal activities like a drug lab.
11. And if a **title or identity fraud does occur**, speak to a lawyer and your title insurer immediately. This is a complex area that might require the assistance of a court to get your property or identity back. The insurer can assist with the costs and “next steps”, while a lawyer may be able to file a caution or “lis pendens” against title to your home (thereby notifying prospective purchasers and mortgagees that title to the property is under dispute).
12. In addition, reporting the fraud to the police and immediately placing a “fraud alert” with your bank and credit card providers should help to reduce your damage exposure.

As scammers and their tools become more sophisticated, so must the “due diligence” efforts of governments, professionals and individuals alike to counter the threat.