

How to Avoid Title Fraud!



By **Brian Madigan LL.B.**

The matter of title fraud, deceit, con-men has gone back in time for centuries.

So, where's the first opportunity to avoid fraud?

Actually, the *Conveyancing and Law of Property Act* contains an interesting right. Let's have a look at section 8:

Rights of purchaser as to execution

8. A purchaser may not require that the conveyance be executed in the purchaser's presence or in presence of the purchaser's solicitor but the purchaser may require that it be attested by a person appointed by the purchaser and the purchaser's solicitor may be appointed for that purpose. R.S.O. 1990, c. C.34, s. 8.

And, here's the definition of **attest**:

1. to bear witness to, certify, declare to be correct, true or genuine, declare the truth of, in words or writing, affirm in an official capacity, to attest the truth of a statement
2. to give proof or evidence of,
3. to put on oath (or affirmation),
4. to testify or bear witness.

So, really there was always a rather ancient remedy contained in the legislation of the Province.

The **purchaser had the right to insist upon his own witness** under the Act.

As custom evolved, this right, to the extent that it was ever particularly common, fell into disuse. The vendor's solicitor would either personally witness the signature of the vendor or would arrange to have someone from the office witness the signature.

Obviously, there was no problem if everything was on the "up and up". The only

time a problem would arise is if the vendor was not real, or was a fraudster. It became relatively easy for a good fraudster to trick an unknowing lawyer into believing they were the vendor.

Today, of course, solicitors require proof of identity, but not too long ago, they basically took a person's word for it.

The interesting older remedy, might be for purchasers to insist that their lawyers require that the vendor execute the deed in the presence of a particular nominated person who might truly attest to the identity of the vendor.

It might be interesting to nominate the realtor. After all, the realtor may have had direct dealings with the vendor, and this would eliminate the fraudster from false impersonation. Another valuable person might be the solicitor who acted for the vendor when the vendor bought the property originally, (this information is available from Land Registry offices).

If there is any lawyer on earth who will not be retained by the fraudster, this is the person. So, the purchaser should hire them, just for this purpose!

If you are purchasing a property and you are concerned about title fraud, don't forget that you are entitled to nominate your own witness.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*