

Mortgage Fraud ~ Two Innocent Parties



By **Brian Madigan LL.B.**

That could be a problem! In fact, that's how you lose your house.

Let's assume that Bob owns a house in the City and decides to rent it out for a period of time. He is planning a well-earned vacation travelling the world in his retirement.

So, he rents it to Albert and away he goes. Albert becomes devious after a while and impersonating Bob (because Bob left lots of original identifying documents in the house) he approaches a bank for a mortgage loan. The deal goes through, Albert gets the money from the bank and disappears.

The mortgage goes into default, the bank sells the property under power of sale, to William. But, William is completely innocent.

He is an arms-length, innocent purchaser for value in the marketplace.

Under Ontario law, William gets to keep the property. Courts have to choose between two innocent parties, Bob and William. Albert was the bad guy, but he has escaped.

The other issue is the role of the bank. The Bank is now obligated to follow reasonable and careful steps known as "due diligence" to ensure that they are dealing with the right person. Courts are likely to feel sorry for Bob losing his house, and less sorry for the bank. Surely, there was one more search, one more question, one more inquiry that they could have made to ensure that Albert was not Bob. If so, they may be obligated to place Bob in the position that he would have been had this mortgage not been placed upon the property. But, remember that's just money, they no longer have the house.

Also, bear in mind, this is going to cost Bob a fortune in legal fees to get some money here. As nice as banks are, they won't simply write this cheque easily.

This would actually be a much better story if Bob bought "Title Insurance". At least the insurer would pay the legal fees.

So while some of the potential issues associated with title fraud and mortgage fraud have been resolved, there are still a number of risks that remain behind.

Some property insurers will add an endorsement to a homeowners policy to cover that matter of fraudulent conveyances, but title insurance is probably cheaper since it's a one time premium.

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