

# *the* **Scrivener**



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**AMANDA MAGEE**

# Fraud Hurts Everyone.

**Working Together,  
There Is Much We Can Do to Prevent It**

Title fraud has made headlines this past year and continues to be a concern for those in the real estate industry.

→ **With fraudsters and technology becoming** more sophisticated, it can be difficult for even the most experienced real estate professionals to detect something amiss on a transaction.

That is why information is key and why, for decades, Stewart Title has been at the forefront of educating on title fraud detection and prevention. I am pleased to be able to address this topic again by sitting down with a few of our in-house experts to relay their tips and best practices.

**Amanda:** How is title fraud perpetrated and why is it on the rise?

**Karen:** Title fraud is when someone impersonates the owner of the property to sell or mortgage it and absconds with the funds. That happens in many ways but, in most instances, impersonation is key, facilitated by the ease with which fraudsters can obtain fake identification in the name of the person they are impersonating. In past Stewart Title claims, we've seen title fraud by family members using a forged Power of Attorney to defraud another family member; but now, the most common type of title fraud involves strangers

who use fake identification documents to impersonate the true owner, often on vacant or tenanted properties or targeting the elderly and other vulnerable individuals.

The rise in title fraud can be attributed largely to more sophisticated technology leading to very convincing fake ID. Because almost all fraudulent deals involve impersonation, there is now an emphasis in the real estate industry to be more vigilant when verifying client identity.

For example, we had a claim where an 85-year-old widow was served with a Notice of Legal Action in which she was named as the defendant. The plaintiff, a lending company insured by Stewart Title, claimed she had obtained a mortgage and defaulted on her payments.

The woman denied having taken out such a mortgage. Upon investigation, we found that all the identification and other documents used to procure the mortgage were fraudulent and that an appraisal supporting the application was also fake, including the photographs of the supposed interior of the condominium. She had no idea how the fraudster obtained her personal information. Stewart made a payout to the lender of approximately \$350,000.

**Paul:** On the investigation side, we've seen an increase in title fraud related to private lender deals and tenanted properties, as well as a trend toward more elaborate schemes by criminal organizations.

In one of our claims, a property was purchased for rental income. The property was rented through a real estate agent who undertook the due diligence and vetting of the renters. Unfortunately, the renters were part of an organized crime group that used high-quality fraudulent ID, credit reports, and employment records to impersonate the owner and her husband. Within a couple of months, the criminals had sold the property to a real estate wholesaler. Imagine his surprise, when the true owner's husband went to the house to do routine maintenance and was advised by a neighbour that the house had been sold. The owner submitted a claim and we successfully had the title reverted to her.

Title frauds like those are becoming more frequent. By tracking them, we can implement new measures and educate our clients on ways to detect and prevent them.

**Amanda:** What helps you spot a potentially fraudulent transaction?

**Karen:** There are many different indicators of potential title fraud but some of the most common ones can be identified by examination of the facts.

- Does the deal make sense? For example, look at the interest rate and term. If you see a private mortgage that has a 1-year term, a relatively high interest rate, is interest-only, and all the interest is prepaid, is that the type of mortgage a borrower who has a mortgage-free property would need to obtain (versus a lower rate institutional mortgage)? Because nobody is looking at the mortgage for a year, the fraudster has a whole year to get away with the crime.
- Is the property mortgage-free? Mortgage-free properties tend to be targeted. If there's very little money after

paying out a prior mortgage, then it's less likely a fraudster would target the property. But if the fraudster could get a million dollars, because the property is mortgage-free there's higher reward to the fraudster and therefore higher risk of title fraud.

- Where is the money being paid? Criminals want to get the money away as easily as possible. Often their lawyer or Notary is told to send the money to a corporation or to someone to whom the client owes debts. Requests to send money to anyone other than the registered owner(s) of the property or to pay for legitimate transactional costs—legal fees, property taxes, etc.—should cause you considerable concern and must be reported to your title insurer before closing.

Looking at the title information for suspicious patterns. Are there lots of flip transactions or regular private

mortgages going on and off, or is there other strange activity on the title?

- Is the property vacant or tenanted?
- Is a Power of Attorney being used?

When there are "red flags" of title fraud, the legitimacy of the entire transaction should be investigated.

**Paul:** One thing to look for is whether there is a lack of Canadian or provincial government-issued ID. And if there is ID, is it real?

Stewart's Underwriting Department has become very good at looking at ID and identifying errors such as a driver's licence that should have an address in the issuing province but has one for a property in another province. Or, the

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signatures are inconsistent, the borrower's stated age and appearance don't match the photo, there are misspellings of the borrower's name, or the font and spacing are not accurate.

When we are uncomfortable with the transaction or the ID, that's when we use an online multi-factor identity authentication and verification tool (often referred to as "MFA"). We also apply the banking component in the verification tool that checks for an element most fraudsters don't have—a bank account in the name of the client that has been established for a period of time and has regular transactions going through it. We do not receive actual balance or specific financial transaction details. MFA technology has proven very useful in preventing some title frauds this past year.

**Amanda:** How do we work together to stop title fraud?

**Karen:** Legal professionals should have a system in place to identify transactions that may require more scrutiny so they can identify title fraud as soon as possible.

Always ask yourself.

- Do you know your clients?
- How did they come to you?
- Were they referred by a reputable referral source?
- Does it make sense that the client has chosen you? For example, does the title show they've been using another lawyer or Notary recently, does the person live anywhere near you or speak the same language as you? Do they actually know anything about the property?

Also, what is the nature of the transaction?

If the deal doesn't make sense, you may not want to get involved or you may want to request that the client use an MFA technology to verify their identity and investigate fraud indicators.

- Is there pressure to close quickly?
- Is the client unwilling to connect with you consistently or resisting virtual or face-to-face meetings?
- Is the client appearing to be influenced by another party? In particular, be aware of elder abuse.
- Is there a request to send the proceeds to parties other than the registered owner(s)? Any of those things are red flags.

As title insurers, we ask questions during the order process that are designed to recognize transactions that need

scrutiny. Those and follow-up questions are based on claims we've had and are ever-evolving. The more information you give us, the better we can assess the deal. The need for scrutiny is imperative as fraud schemes continue to evolve.

For example, we saw one case where a woman developed a relationship with a man over a couple of months. Eventually, she convinced him he should purchase a condominium unit she knew of. Unbeknownst to him, the woman was working with a co-conspirator impersonating the owner of that particular unit. The man bought the unit and later found out he had purchased it from an imposter.

When we investigated the claim, we asked the man how he knew the woman. He said they were friends. But we can't assume that because they were friends, they really knew each other. We have to look at the context of their friendship and ask, "How long have you known this friend? Where did you meet this friend?" There's a difference between a longtime friend and a friend you met 2 months ago.

**Jay:** We're seeing unprecedented changes targeting title fraud prevention and the use of fake ID.

The Cullen Commission investigation has shown that money laundering in BC is a big problem; the governing Board of the Law Society of British Columbia has established a Trust Review Task Force to consider recommendations of the Cullen Commission regarding the handling of trust funds and management of trust accounts by lawyers. As part of its mandate, the Task Force will assess the current trust accounting rules and related requirements, such as client identification and verification.

FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) has revoked a temporary relaxation of their rules that apply to Notaries and proposed amendments to include armored car companies, mortgage administrators, mortgage brokers, and private lenders as reporting entities come into effect on October 11, 2024.

Overall, regulatory bodies are paying a lot of attention to what's going on and making changes. That's a good thing but it is challenging when you have all these new rules and the introduction of many new technologies. When combined, all of this can be overwhelming for busy legal and real estate professionals.

In addition, the Law Society's guidelines say lawyers should be doing robust due diligence on every transaction anytime they move money. Further, as a direct result of the Cullen Commission, FINTRAC has put more resources and funding toward fighting money laundering and enforcing their rules. In both cases, the rules for managing risk are more than just looking at an ID document. It means you have to look for red flags, make reasonable enquiries, and follow up on suspicions and doubts. One easy, cost-effective way to do all the ID and money laundering and title fraud due diligence is to use a tool with multi-factor identity verification.

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**Amanda:** What is the potential fallout for the legal profession and others in the industry if title fraud is detected?

**Karen:** Title insurance provides a safety net to recover monies for the insureds, restore title into the rightful owner's name, and work through the investigative process with different parties including counsel on both sides, real estate agents, mortgage brokers, and law enforcement.

For legal professionals, however, being involved in a fraudulent transaction can be an onerous, time-consuming, and stressful process so preventing it from proceeding is in everyone's best interest.

Clients expect their legal representative to be the gatekeeper on their transaction. Police, law societies, and regulatory agencies have clear expectations. Therefore, a lot of the fallout from title fraud falls on the legal professional. Along with the trouble of being involved in an investigation, there's the possibility of losing clients and rapid reputational harm.

**Amanda:** Would you like to add final thoughts?

**Karen:** Title fraud is not a victimless crime. There's a homeowner who's going through a terrible experience when they find out they don't own their home or somebody else has mortgaged it. Anything we can do to prevent that, including using multi-factor identity verification, is important. It's a positive service for clients.

**Paul:** A few additional steps and working with your title insurer can help spot a bad deal and prevent a title fraud from taking place. A title fraud can take a number of painstaking years for a resolution and the toll and possibility of reputational damage are extremely serious.

**Jay:** Legal professionals have obligations that require having a lot of checks in place. Our platform helps fulfill those duties in a convenient and easy fashion: ID verification that can detect very sophisticated fakes; connection to credit bureaus, telecommunications companies, banks, and other data points that help identify title fraud and money laundering.

We've built all those components into Treefort. As a practising lawyer, I saw the need for a tool that could keep on top of all of the evolving steps and regulations required to be both compliant and best protect my clients.

**Amanda:** I want to thank our experts for their time and for sharing their thoughts. It's clear we all need to be wary and work together to protect clients, preserve the reputation of the professionals involved, and maintain the integrity of the real estate system as a whole so it does not become an easy target for fraudsters and money laundering schemes. 🍷

**AMANDA MAGEE** is Vice President of Business Development for Stewart Title's Western Canada Operations.