

Practice Issues for Real Estate Lawyers



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LAWPRO

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Agenda

- Email Funds Diversion Scam
- Private Mortgages Update
- Funds Transfer Update
- Lender-Lawyer Working Group
- Client ID Verification
- Zombie Deeds
- Taxes
- Tips To Avoid Claims

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Funds Redirection Scams

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Funds Redirection Scam

- Lawyer or client will receive email (from hacked email account)
 - with wire directions or redirection
 - hacked account may be lawyer's; client's; 3rd party in email thread
 - fraudsters monitoring email exchange for payment request
- **Need to verify independently the banking details every time!**
- Lawyer, staff & clients need to be forewarned & attentive to diversion
- Very real looking & convincing scenarios:
 - Law firm request for client to send funds
 - Mortgage discharge statement modified as to wire instructions



Action: - Call before you click!
- Call to verify bank details before sending funds
- Advise clients to call to verify

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Call before you click!

Before sending funds by wire call to verify account information



Advise clients to call before they click



Private Mortgages Update



- **New LSO definition of “lending client”**

- Rules 3.4-13 definition amended April 22, 2021 – more objective verifiable criteria
- If not a lending client – then a private mortgage

- **New limit for private lender representation**

- Limit for a lawyer to represent both the borrower and lender increased from \$50k to \$75k

- **New anti-fraud measures by title insurers**

- Increased fraud claims involving private mortgages lead to title insurers denying to insure private mortgages over \$500k (aggregate) unless pre-approved lender
- New ID verification requirement?

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Private Mortgage Update

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Funds Transfer Update

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Presently 2 channels to be modernized into 3 channels

1. Lynx (replaced LVTS as of August 2021) irrevocable funds but ISO 20022 (international data rich protocol) only to be added fall of 2022
2. RTR (Real-time Rail) consumer and small business channel (new) to be launched 2023, including ISO 20022
3. ACSS (to be replaced by retail batch channel)(most cash register transactions; utility payments, cheques/bank drafts, etc.)

Presently payments work on trust basis – given a credit until funds confirmed

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Payments Canada Payment Channels

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How can lawyers confirm they have “good” money?

- Banks eliminating certified cheques & promoting “wires”
- Wires seen as unreliable (delivery in minutes or hours/days)
- How to identify “good” funds
- Lynx wires have a PCRN - Payment Confirmation Reference Number - unique to the payment. Having this PCRN would confirm the funds received are good funds (LVTS+9digits)
 - Sending lawyer should send it to receiving lawyer
 - Receiving lawyer should get their FI to give them PCRN – match!

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Fund Transfer Update

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Lender-Lawyer Working Group



Canadian Bar Association Real Property Section + Canadian Bankers Association

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- **36 topics dealing with lender's mortgage instructions**
- **Including Escalation List for FI contacts re:**
 - - outstanding discharges; and
 - - late discharge of mortgage statements
- **Available to all**
- **Lender-Lawyer Working Group – channel of communication to discuss issues of concern**
 - List of Financial Institution who accept wire payments for discharge of mortgage
 - Information on where to go for mortgage instructions and discharge statements
 - Mortgage Pre-payment information for borrowers (exercised prior to discharge date)
 - Best Practices Guide for timely processing of wires

CBA Mortgage Instructions Toolkit

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Client ID Verification

New rule – January 1, 2023

- **See LSO website and resources**
 - <https://lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/identification-and-verification>
- **From 4 to 5 methods to verify ID**
- In person – review government issued ID
- Virtually – ID verification via 3rd party to authenticate the government-issued photo identification document
 - See also - The [Digital Identification and Authentication Council of Canada](#) list of vendors
- File credit method
- Dual process method - verify a client's identity by relying on any two of the following pieces of information – Reliable source/bank
- Hire an agent

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- **Do NOT simply copy and file!**
- **Does the picture match the client sitting in front of you?**
- **Pictures on various ID documents the same?**
- **Is the person in the picture smiling?**
- **Apparent age in picture vs date of ID document**
- **Ministry driver's license online search**
- **Ontario driver's license number**
 - starts with 1st letter of last name
 - Ends with person's date of birth
- **Signature in ID document match your client's signature?**
- **Laminated ID no longer valid**

Tips when verifying ID documentation in person

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Zombie deeds

- **What are they?**
- Transfer signed during lifetime but registered after transferor's death
- **Consequences of registering a zombie deed?**
- Director of Title may suspend/cancel your access rights – HAS suspended!
- **Can a corporation create a zombie deed?**
- Yes, if dissolved, but not if sole shareholder/director/officer dies

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Taxes

- a. HST – changes to tax treatment of assignments of Purchase and Sale
 - 1. All assignments of new home contracts (after May 7, 2022) are now subject to HST, without exception
 - 2. Original deposits may be exempt from HST under proper conditions
<https://avoidaclaim.com/2022/hst-now-applies-to-all-assignments-of-new-home-new-condominium-contracts-i-e-flipping/>
- b. NRST expanded province wide and increased to 20% (from 15%) - March 30/22
<https://avoidaclaim.com/2022/amendments-to-non-resident-speculation-tax/>

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Taxes (continued)

c. Budget 2022: Vacancy tax - Bill C-8, the Underused Housing Tax Act

- Effective Jan 1, 2022
- Owner must report every Dec 31st and pay tax by April of next year
- 1% of value of real estate

d. Ottawa Residential Vacant Unit Tax – 1% of value of property

- by-law was approved on May 11, 2022. The VUT will be implemented in the 2023 taxation year and apply to non-principal residences vacant in 2022 for at least 184 days.
- <https://ottawa.ca/en/living-ottawa/taxes/vacant-unit-tax#section-79b2077b-8c33-4a02-b6e7-1baab9b72cf0>

e. Also, Ottawa Vacant Unit Permit – effective Nov 1/22

- Under the bylaw, a \$1,703 annual permit would be required as soon as a property has been unoccupied for 120 consecutive days or as a result of a catastrophic event.

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Purchase of Residential Property by Non-Canadians Act

- In effect January 1, 2023 to December 31, 2025 – 2 years
- Summary - non-Canadian prohibited from purchasing, directly or indirectly, any residential property
- Offense - \$10k fine; court ordered sale of the property
- Caution - every person or entity that counsels, induces, aids or abets or attempts to counsel, induce, aid or abet a non-Canadian to purchase, directly or indirectly, any residential property
 - CBA Real Property hoping to lobby clarification or change

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Tips To Avoid Claims



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The Golden Rule:

Document
Document
Document

Suggestion: 10-minute rule!

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Be vigilant of fraud

Be aware and monitor for signs of fraud

Educate everyone in the firm

Fighting fraud is a team effort

See Fraud Fact Sheets & AvoidAClaim blog



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Guard against cyber risks



Be aware & safeguard against cyber risks

Educate everyone in the firm – personal and firm risks

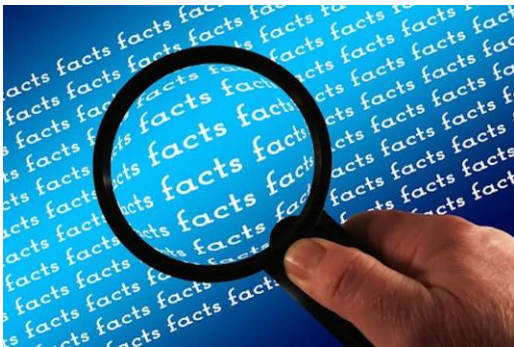
Use multi-factor authentication to reduce hacking



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Ask questions/Verify information

- Inadequate investigation/knowledge of the facts: # 2 reason for claims
- Growing area of concern
- What to do for cost conscious clients who reject due diligence - DOCUMENT



Wellness

- Take care of yourself
- Only healthy individuals can take care of others



Resources

- Avoiding the wire fraud nightmare - <https://www.practicepro.ca/2021/10/avoiding-the-wire-fraud-nightmare-what-you-need-to-know-to-protect-yourself-and-your-clients-december-2-2021/>
- Wire Fraud Scams on the Rise: 5 Tips to Reduce Your Risk - <https://avoidaclaim.com/2021/wire-fraud-scams-on-the-rise-5-tips-to-reduce-your-risk/>
- What to do if money is diverted to a fraudster’s account? - <https://avoidaclaim.com/2021/what-to-do-if-money-is-diverted-to-a-fraudsters-account/>
- Update about Fund Transfers - <https://avoidaclaim.com/2022/update-about-fund-transfers/>
- Fraud Prevention - <https://www.practicepro.ca/practice-aids/fraud-prevention/>
- Be Alert to fake ID - <https://avoidaclaim.com/2022/whats-wrong-with-this-picture-be-on-alert-for-fake-ids-issued-by-different-authorities-or-different-times-with-identical-photos/>
- Zombie deeds - <https://www.practicepro.ca/2020/04/zombie-transfers-can-come-back-to-haunt-you/>
- HST Errors - <https://avoidaclaim.com/2022/common-hst-errors-in-real-estate-transactions/>
- Wellness - <https://www.practicepro.ca/practice-aids/wellness/> Myassistplan.com - <https://homeweb.ca/map>



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Questions? - Thank you



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