

Practice Issues for Real Estate Lawyers



Raymond G. Leclair
Vice President, Public Affairs
Lawyers' Professional Indemnity Company

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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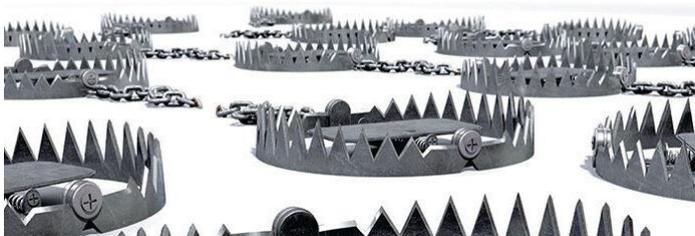
Purchase of Residential Property by Non-Canadians Act

- 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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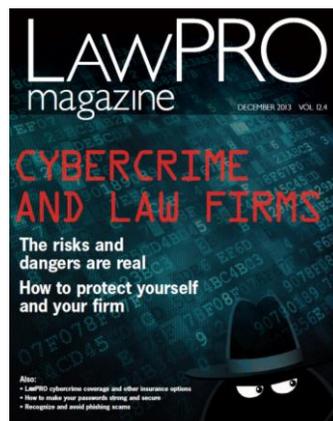
Guard against cyber risks



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://avoidclaim.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://avoidclaim.com/2021/what-to-do-if-money-is-diverted-to-a-fraudsters-account/>

Update about Fund Transfers - <https://avoidclaim.com/2022/update-about-fund-transfers/>

Fraud Prevention - <https://www.practicepro.ca/practice-aids/fraud-prevention/>

Be Alert to fake ID - <https://avoidclaim.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://avoidclaim.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



Raymond G Leclair, LL.B.
Vice President, Public Affairs
(416) 598-5890 or 1-800-410-1013
ray.leclair@lawpro.ca

Connect with me:
LinkedIn: Raymond G Leclair
Twitter: RayLeclair

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