

# GOVERNMENT RELATIONS

## BC Court of Appeal decision benefits property owners

What happens when an innocent homeowner has a mortgage placed on their property by a fraudster who forges documents and signatures, fraudulently transfers title, secures a mortgage and then takes the cash and disappears?

The BC Court of Appeal has confirmed that a registered property owner's title to their land is secure.

In an April 2009 decision in *Gill v. Bucholtz*, the Court found that unless a mortgage is granted by the true owner of a property, the mortgage is invalid and the owner's title will be returned to its original state.

Originally, a lower court transferred title back to the rightful owner, but the fraudulently-obtained mortgage remained on title, meaning the property owner was responsible for it.

The owner asked for compensation from the Land Title Assurance Fund, administered by the Land Title and Survey Authority (LTSA), an independent authority which manages, operates and maintains BC's land title and land survey systems.

The Assurance Fund compensates property owners deprived of a property title because of an error in the administration of the land title system or because they are an innocent victim of fraud or a wrongful act, including forgery caused by identity theft. The fund can also cover court costs and legal fees.

But in this case, the Honourable Madam Justice Newbury found that the Assurance Fund was not required to pay because the fraud involved an invalid mortgage.

The mortgage company, not the property owner, was responsible for the mortgage, because "the Legislature of British Columbia would appear to have adopted the policy that the cost of frauds perpetrated against mortgagees and other chargeholders should be borne not by the public (as the funders of the Assurance Fund) but by lenders and other chargeholders themselves," said Justice Newbury.

### What went wrong here?

When a property transfer is registered in BC, the applicant must present a signed transfer document for registration to effect the conveyance. The professional who witnesses the signature of the vendor on the transfer – a notary public or lawyer – has a professional obligation to perform due diligence and require proof of identification.

Financial institutions providing mortgages are also responsible for taking every measure to ensure a borrower has title to the property they are attempting to mortgage.

### What happens if this proof is fraudulent?

"You must confirm that the registered owner with whom you are dealing obtained the property bona fide and for value," says Roger Lee, a lawyer with Davis LLP.

"Here the lenders could not rely on what the registered owner said, so in the future, one option is to confirm with the previous vendor," says Lee.

The Federal Government's Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) program also requires REALTORS®, accountants, lawyers, builders and financial institutions to verify their clients' identities for transactions following specific FINTRAC guidelines.



### Property owners can protect themselves

- Property owners can order a Duplicate Certificate of Title if their title doesn't have a mortgage or agreement for sale registered against it. Once an owner has a Duplicate Certificate of Title, no sale, transfer, mortgage or agreement for sale can be registered without first also surrendering the Duplicate. Note: If this document is lost or destroyed it is expensive and time-consuming to replace. Without it, a property owner can't sell a property, make an agreement for sale or arrange a mortgage.
- Use the Activity Advisory Service provided by BC OnLine. This service will provide an e-mail notice to the lawyer or notary when an application is made that may affect the owner's title.

### Did you know?

- Land title fraud is exceptionally rare. In the past 19 years, of a total of nearly 15 million transactions in BC, only three claims were related to land ownership fraud. Only 14 claims related to lesser interests in land, such as discharges of mortgages, were paid from the Assurance Fund.
- In the 2007/2008 fiscal year, the LTSA processed 1.36 million land title registration applications, the largest recorded number in a single year. Currently, there are 1.9 million active titles and two million active charges in BC.



For more information on the Land Title and Survey Authority and on BC's system of property registration, please visit [www.ltsa.ca](http://www.ltsa.ca).

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## CADREB to increase their maximum success fee

Effective July 1, 2009, the Chilliwack and District Real Estate Board's (CADREB) maximum success fee will be \$150 + GST. Previously, the maximum fee was \$85 + GST. The new calculation is 0.075 per cent, min. \$35, max. \$150, + GST. All sales processed on that day and forward will reflect that change.