Frustrating property fraud

Jayne Elkins and Karen McGinley look at who is vulnerable to property fraud, some typical fraudulent transactions and what can be done to frustrate them

In England and Wales the Land Registry system is open to public view. Since October 2003 the Land Registry has dispensed with paper land certificates and scanned documents have replaced original documents in online applications to the Land Registry to register a dealing. From this summer original documents are no longer required with postal applications. Many conveyancers are concerned that, with these changes, property fraud is going to increase.

Who is particularly vulnerable to fraud?

Anyone can be the victim of fraud, but there are certain categories of people and property more vulnerable than others:

- owners who do not live at their property (eg, elderly owners who have moved into care homes, those working abroad, a co-owner who has moved out following a break-up with a partner and holiday home owners);
- personal representatives where the owner has died and the property is vacant;
- anyone who has already been the victim of identity fraud;
- vacant properties, properties undergoing redevelopment, properties with no mortgage and tenanted properties; and
- unregistered property.

Fraud is more easily perpetrated in the situations where the owner is not living at the property, as the address for the registered proprietor on the register may not be up to date, so that notices from the Land Registry do not reach the owner.

Recent examples

Fraudulent transactions usually include an element of identity fraud and fraudulent documents being presented to the Land Registry. In addition, they will also often include either a "rogue" conveyancer in a bona fide law firm, a "bogus" law firm, or a fictitious branch office of a bona fide law firm.

In *Swift 1st Ltd* v *Chief Land Registrar* [2014] PLSCS 40 a lender was tricked into making a loan secured on a registered property not owned by the borrower. The fraud was uncovered only when the lender served possession proceedings for mortgage arrears on the bewildered registered proprietor.

In *Lloyds TSB Bank plc* v *Markandan & Uddin* [2012] EWCA Civ 65; [2012] PLSCS 27 fraudsters went to great lengths in an elaborate scheme where a fraudulent buyer/borrower (represented by a genuine firm) was in cahoots with a bogus branch office of a genuine law firm, purporting to act for the registered proprietor selling the property.

Key points for property owners concerned about fraud

- Apply for voluntary registration of any unregistered land.
- Ensure that the address(es) for the registered proprietor are kept up to date.
- Consider entering more than one address for the registered proprietor at the Land Registry, particularly if the registered proprietor does not live at the property.
- A seller or landlord should ensure that their mail is redirected after they have sold a property or let their home.
- Sign up for the Land Registry's Property Alert Service to ensure that any searches or dealings relating to a property are notified to the registered proprietor.
- Apply for a form RQ, form LL or form RQ (Co) restriction (as appropriate), which require a conveyancer to certify that they are satisfied that the person dealing with the property is the registered proprietor.

What can be done to frustrate fraud?

If suspicious circumstances come to light during a transaction, conveyancers must comply with their obligations under the Proceeds of Crime Act 2002 and, where appropriate, should report their suspicions to the police.

Sophisticated frauds can be difficult to spot. However, conveyancers can thwart fraudsters by being alert to warning signs and taking the following steps:

1. In addition to the usual "know your client" procedures, conveyancers should look at any relevant information carefully in the context of the surrounding circumstances. For instance, it is easy to check that the age of a client selling a property is consistent with the date shown for the registration of the property in the seller's name and, where a company is selling, to check that it was incorporated at the date of registration.

2. Extra care is needed when the seller is in one of the categories identified as being particularly vulnerable. A face-to-face meeting may be required to establish that the owner genuinely wishes to sell. Clear instructions will be required if day-to-day liaison is to be with a third party and the conveyancer will need to proceed with caution.

3. Conveyancers should check the details of the firm or conveyancer in question. The Law Society, the Solicitors Regulation Authority, the Council for Licensed Conveyancers and the Institute for Legal Executives all hold details of individuals registered with them. Look at the website for the firm in question and check the existence of any branch office acting. Watch out for anything suspicious about a website or a letter heading, such as indistinct details, hotmail address, or no landline telephone number.

4. A conveyancer should be alert to unusual occurrences that do not make sense in a "normal" transaction. In *Lloyds*, for instance, the buyer inexplicably paid the deposit direct to the seller's "conveyancer", the seller was paying all the buyer's outgoings on the transaction, the documents were not sent through on completion and the buyer's conveyancers were asked to take the purchase monies back into their account some two weeks after completion and send them out again to another account. Be careful where the deal changes without good reason or prices suddenly change significantly. Consider whether the seller's signature on the sale/mortgage documents is consistent with their signature on an earlier deed.

5. Owners of properties can also take practical steps to protect themselves and conveyancers should recommend these steps where appropriate (see box) .

6. Lastly, all conveyancers should follow the guidance in the *Conveyancer's Handbook* and the recommendations of their professional bodies, including AML requirements and instructions in the *CML Handbook*, where acting for a lender. Conveyancers should make careful attendance notes and ensure that, on completion, money is sent out only where adequate undertakings have been received. Sloppy practices and failure to follow professional guidelines expose clients to fraud and may also leave innocent conveyancers unprotected.

Fraudulent activity may be on the increase, but by taking sensible precautions both conveyancers and owners can reduce the risk.

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