

# FRAUD

## How to avoid becoming its next victim

Fraud is a real and growing problem for all law firms and their staff. Each year, fraudsters “trick” dozens of law clerks and lawyers, young and old, in practices large and small, into helping make fraud happen.

Fraudsters come in all shapes and sizes. They could be the promising new “clients” who just walked in off the street. Or a third party you never do get to meet. Or a member of an organized crime syndicate who is laundering money through your trust account. Or even a colleague whom you’d never suspect.

And it’s not just real estate firms that are being targeted. Litigation firms, firms specializing in corporate commercial work, wills and estates lawyers and others also are frequent targets.

How can you protect yourself and the firm? Take some time to read this information on fraud. It explains the most common fraud scenarios and how to spot them.



# BAD CHEQUE SCAMS

Fraudsters retain the firm on a contrived legal matter so that they can run a counterfeit cheque or bank draft through the firm trust account and walk away with real money. When the bad cheque or draft bounces, there will be a shortfall in the trust account.

## Business loan fraud

- New client retains your firm's services to help with buying small business equipment or inventory.
- Documentation in client's file looks real (invoices, letters, etc).
- Background checks (corporate or PPSA searches) may look normal.
- You're asked to represent lender and borrower.
- Certified cheque from "lender" arrives promptly, gets deposited to your trust account.
- Certified cheque looks authentic and has all normal security features.
- Funds are disbursed to the client.
- Days later your bank tells you the cheque/draft is fraudulent.

## Debt collection fraud

- Generally targets litigators.
- New client (often offshore) contacts your firm seeking representation on a debt collection.
- Client provides legitimate documentation including invoices, demand letters, etc.
- Collection is hassle-free; debtor returns calls and pays up promptly.
- Certified cheque looks authentic and has all normal security features.
- You're instructed to send funds, minus legal fees, to an offshore account.
- Days later your bank tells you the cheque/draft is fraudulent.

## RED FLAGS

- Client is offshore, unknown to the firm and/or in a rush – pressures you to "do the deal" quickly.
- Client willing to pay higher-than-usual fees on a contingent basis from (bogus) funds you are to receive.
- Client shows up around banking holidays – when banks are closed and offices short-staffed.
- Debtor pays without any hassle – unusual given client's need to retain you to get payment in the first place.

## TIP: DIG DEEPER

- Do a reverse phone number search on the company and use Google to verify phone numbers, addresses and e-mail contacts.
- Contact the company to confirm that they are expecting debtor's payment or business loan.
- Go to bank website to verify branch transit number, address and phone number on the cheque.
- Hold funds until your bank confirms the funds are "good" by contacting the other bank, and it's safe to withdraw from the deposit.

# REAL ESTATE SCAMS

## Identity theft fraud

- Client uses fake ID to assume identity of existing property owner (or director/officer of corporate owner).
- Client sells or mortgages the property, or discharges mortgage from title, then gets new (often high-ratio) mortgage from another lender, and repeats, using different lenders and lawyers each time.
- Paperwork looks in order; no encumbrances on title, but one or more recently discharged mortgages.
- Client in a hurry and accommodating: May discourage house inspection or appraisal.
- Transaction closes, you pay proceeds to client who makes a few mortgage payments, then disappears with funds.
- Lender sues you for value of mortgage.

## Flip (value) fraud

- Client says she or he is a real estate agent or in business of buying and selling.
- Client promises high fees, lots of business for quick turnaround on deals. (Short turn-around means proper searches aren't conducted).
- Once transaction closes, client flips property to accomplice (e.g. appraiser and/or mortgage broker) for much higher value.
- Lender issues mortgage on inflated property value.
- Client uses mortgage proceeds to pay initial purchase price, splits excess funds with accomplices.
- Client makes a few payments, then disappears with funds.
- Lender sues you for excess/inflated value of mortgage.

## RED FLAGS: THE CLIENT

- Does not care about property, price, mortgage interest rate, legal and/or brokerage fees.
- Uses only cellphone number for contact (one fraudster had nine cellphones, each for a different false identity).
- Cannot produce title documents, survey, reporting letter, tax or utility bills.
- Does not appear familiar with property.
- Won't permit contact with prior lawyer.
- Clients "out of sync" with property – e.g. don't appear educated/affluent enough.
- Funds directed to third party with no apparent connection to transaction.
- Stranger who appears to control client attends to sign documents.

## **TIP:** BE ALERT

- Avoid having documents executed outside your office.
- Consider reviewing or discussing transaction with another lawyer.
- Consider market trends in the transaction area.

## RED FLAGS: THE TRANSACTION

- Repeat activity on single property or for single client.
- Rental and vacant properties especially vulnerable.
- Client buys and sells often, prefers to deal in cash.
- Property listing expired without sale (i.e. sale may be unregistered).
- Frequent and quick mortgage discharges on property.
- New referral source sending lots of business.
- "Rush" deals, often with promise of more.
- Client produces small deposit relative to price.
- No amendments to Agreement of Purchase and Sale.
- Sale is presented as a "private agreement" – no agent involved, or named agent has no knowledge of transaction.
- Municipality or utility companies have no knowledge of client's ownership.
- Client paying little or nothing from own funds.
- Unusual adjustments in favour of vendor, or large vendor-take-back mortgage.
- Use of counter cheques.
- Use of Power of Attorney.

# Is the fraudster in your office?

Not all fraudsters are strangers. Even partners, associates, law clerks or other employees may turn to fraud because of financial pressures from a divorce, failed business venture, or other personal crisis.

Red flags to look out for include:

- Someone never takes vacation or sick leave, works overly long hours, or refuses to delegate work.
- A firm member undergoes a sudden change in lifestyle or change in temperament.
- The firm receives mail for a corporation for which no client file is opened or billed, or minute books are kept in the lawyer's office instead of with the corporate law clerk.
- Unusual patterns such as a sudden increase in payments to a person or credit card company or government, or complaints about slow payment from suppliers or clients, or an increase in written-off work in progress (WIP).

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For more information see "Fraud on the Inside: What to do when partners, associates or staff commit fraud" at [www.lawpro.ca/magazine](http://www.lawpro.ca/magazine).

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## Lawyers' Professional Indemnity Company (LAWPRO®)

This information bulletin is published by LAWPRO to provide lawyers and law firm employees with an overview of some common types of fraud, and to provide practical advice on ways to minimize their exposure to fraud-related claims.

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## MORE INFORMATION ON FRAUD

LAWPRO® has assembled a variety of articles, resources and tips on fraud and how to avoid being its next victim.

To learn more about what fraud looks like and how to prevent it from happening to you and your firm, go to: [www.practicepro.ca/fraud](http://www.practicepro.ca/fraud).

## MORE INFORMATION ON PROTECTING CLIENTS AGAINST REAL ESTATE FRAUD



TitlePLUS® title insurance provides coverage for your clients when they buy a home. Through the OwnerEXPRESS® program, TitlePLUS insurance also provides fraud protection for clients who may have purchased a property earlier but did not also secure title insurance protection on that purchase.

TitlePLUS insurance provides fraud coverage as follows:

- for frauds that may have occurred prior to purchase (e.g. it turns out that the vendor does not really have the right to sell the property);
- if the property becomes a target of fraud at a later date. This is part of the post-Policy Date protection in the TitlePLUS policy.

There is also a "duty to defend" in the policy, which means that it is our problem, not yours, if someone must contact the government to request that title be restored to your name in the official records. (Please refer to the actual policy for terms and conditions).

For more information on purchase transactions, go to: [www.titleplus.ca/lawyers](http://www.titleplus.ca/lawyers).

For more information on current owner title insurance, go to: [www.titleplus.ca/OwnerExpress](http://www.titleplus.ca/OwnerExpress).

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