

Fraud & Identity

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Presented by

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Why is this important?

- There are general obligations under the Financial Transactions Reporting Act 1996.
- Bank & Lawyers must take relevant steps to verify the identify of person involved in conveyancing by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person.
- Title fraud may result in a worst scenario whereby the lender may face losing the entire loan:
 - Risks:
 - The lender may have to recover this through a long and protracted litigation
 - There is no assurance that the lender will recover the entire loan through such litigation
 - Reputation of the company at risk

Title Fraud?

- This can impact on a range of parties involved – including the lender
- Types of the title fraud (non exhaustive)
 - Identity fraud – e.g. non existent person
 - Identity theft – Impersonates an individual e.g. family members, relatives, close friends etc
 - Misappropriation of loan funds
Misappropriates some of the loan funds by agent, attorney or broker
 - Valuation fraud – e.g. inflating the value of the property

- To reduce fraud, the lender may process the loan application through the client's respective brokers and/or solicitors thereby:
 - Checking the information on the application form – Actually contacting the referee
 - Form to be completed through [or in presence of] the borrower's broker or solicitor
 - Confirmation of identity
 - Certified or Original copy only
 - Check signature – e.g. Driver licence
 - Photo ID – e.g. Driver licence or Passport only
 - Other documentary evidence

- Obtain the credit report and compare with the application form
- Reference check
 - Employer
 - Company registration & PPSR
 - Referee
- Review the agreement
 - Independent party involved?
 - Independent lawyer?
 - Real estate agent?
 - Unusual terms? / Arms length transaction?

- This is not an exhaustive list – this is only a guide – the lender may also reduce the risk by:
 - Checking where the loan is going to be used
 - Checking whether there is anything suspicious?
 - No emergency contact details provided
 - No landline number given
 - Delays or failure to provide the original identification documentations
 - No positive identification – e.g. never open bank account in NZ, not ordinarily resident in NZ etc

- A registered proprietor holds his estate or interest in land free from all estates or interests not recorded on the Register , except in the case of fraud. Therefore, the Register is intended to be conclusive evidence of interests.
- Frazer v Walker (1967) NZLR 1069
 - “Registration once effect must attract the consequence which the Act attaches to registration whether that was regular or otherwise.”

- Duncan v McDonald (1997) 3 NZLR 669 (CA)
 - The case The New Zealand Court Appeal has ruled that an innocent mortgagee is entitled to exercise its rights under a forged mortgage and is entitled to rely upon the covenants in the mortgage but only to the extent that they are required to enable the property rights under the mortgage to be enforced. Therefore, the mortgagee has no rights against the owner other than the right to sell the property.

- **ASB Bank case [Refer to the attached booklet]**
 - A woman using a false passport and other false identification documents
 - Attempt to refinance and the bank agreed to provide mortgage over the unencumbered property
 - Contact a local law firm and processed the refinance
 - The loan was advanced to the solicitor's trust account
 - On the same date, the funds were transferred through another account to a foreign exchange company and taken in cash
 - The bank on next working day found that the passport was false
 - The woman never lived at the property – However, a woman of the same name did live in the property
 - The solicitor appeared to have done everything that could reasonably have been expected of him in the circumstances

Conclusion

- A registered proprietor who suffers loss due to title fraud is entitled to claim compensation under s 172 of the Land Transfer Act 1952.
- But the Government will not fully compensate the lender if it can be proved that the lender involved in the transaction was at fault and the fraud may not have been happened had a more extensive identity check been carried out.
- A finding of contributory negligence (if this can be substantiated), then the Registrar-General of Land has the right to reduce compensation.

- Warning SIGNS:

- The client is acting in a suspicious manner
- Failure to provide traceable contact details
- Transaction between the family members
- No independent parties involved