



RED FLAGS THAT SHOULD PROMPT QUESTIONS AND DUE DILIGENCE WHEN DEALING WITH REAL ESTATE TRANSACTIONS

To help lawyers recognize potential fraudulent transactions, the Law Society's mortgage fraud investigation team has compiled a list of significant indicators or “red flags” that should prompt further review of any transaction in which they appear.

While this list of indicators is not exhaustive, it summarizes many of the major issues and concerns the team has seen in its investigations of lawyers for mortgage fraud and related allegations.

The fact that one or more of the following red flags appears in any transaction does not necessarily mean that the transaction is improper, or that a fraud is being perpetrated. However, when a real estate and/or mortgage transaction exhibits one or more of these red flags, a lawyer should apply extra diligence.

Lawyers have a duty to advise their clients, including lenders, of any information discovered in the course of the transaction that in the lawyer's reasonable opinion would affect the decision of the client to complete the transaction.

Red Flags

- Two or more Agreements of Purchase and Sale for the same property and closing on the same day or within a few days of one another, at different sale prices.
- Substantial escalation in the sale price of a property over a relatively short period of time.
- Short closings, coupled with excessive urgency to complete the transaction.
- The same lawyer acting for all parties, except the legitimate vendor.
- Instructions and information, such as title information, coming from a third party.
- The purchaser provides no or minimal funds on closing, such that only the mortgage advance is required to complete the legitimate purchase.

- The purchase funds come through a last-minute “gift letter,” “promissory note” or second mortgage, or some other source or arrangement and this fact is not known to the lender and is not part of the mortgage commitment and instructions to the solicitor.
- The presence of the same purchasers, vendors, real estate agency and mortgage broker in multiple transactions.
- The lawyer receives an unusual volume of transactions from the same purchasers, vendors, real estate agency and mortgage broker.
- The lawyer is offered higher than usual legal fees for acting on transactions.
- The client does not wish to sign an acknowledgment and direction authorizing the lawyer to electronically sign and register a document.
- Last-minute registrations under Power of Attorney.
- Last-minute transfers contemplating “Trustee” arrangements such as “Trustee to beneficial owner” at NIL consideration followed immediately by the registration of a mortgage and the advance of mortgage proceeds
- The lawyer is instructed to address or send the reporting letter to a third party.
- Agreements of Purchase and Sale, and/or amendments to Agreements of Purchase and Sale in which deposits are payable directly to the vendor and not to the real estate agent or the vendor’s Lawyer.
- Additional deposits or other credits to the purchaser contained in amendments to the agreement of purchase and sale and/or not supported by written agreement.
- The net mortgage advance received exceeds the balance on closing on Statement of Adjustments.
- The lawyer receives instructions to pay excess mortgage proceeds to third parties not related to the transactions.