

We Want To Hear From You

From the desk of

Ray Leclair, Vice President, TitlePLUS®

Do you have a topic you would like to raise with other real estate lawyers or clerks? I am always impressed by the wealth of knowledge and innovation of the real estate bar and would like to provide you with the opportunity to share this knowledge.

We are creating a column in the TitlePLUS EXPRESS where you can share your ideas with each other. **We are looking for articles about real estate practice.** For instance, you and your clerks can share ideas on:

- things you have learned which you think others would find interesting;
- valuable short cuts and making work processes more efficient;
- improving client service; or
- marketing or advertising.

It could be a regional topic or a national one.

Submit your articles to Mahwash Khan by e-mail at mahwash.khan@lawpro.ca.

Google Maps™:

Can Your Clients Find You There?

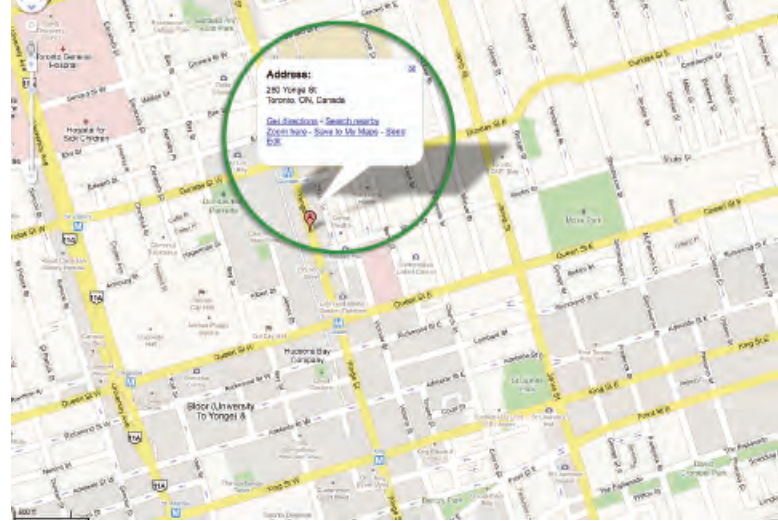
by Dan Pinnington, Director, practicePRO®
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Every day millions of Canadians go to Google™ to look things up. In many cases people don't even bother with the yellow pages any more – they go straight to Google. Some of those people are looking for legal information or a lawyer. For this reason, it is important to increase your visibility in the Google search engine and its various other tools. Google Maps is one of the best places you can do that.

You can find Google Maps by going to Google (www.google.ca) and clicking on the Maps link at the top. You are probably familiar with using Google Maps to look up an address or find directions from one point to another. But Google Maps can do a lot more.

It can also provide information about businesses that fall within Google or Google Map searches. Try this: Enter the address of your office and add the word “coffee” and you will instantly get a map showing your office location with lots of “placemarks” showing the location of all nearby coffee shops. You can click on these placemarks for more information, including phone numbers, street addresses, customer reviews, and links to company websites.

To help existing and potential clients find you, you should make sure your firm information appears on Google Maps. The Canadian Lawyer Map, an initiative started by retired Toronto law professor Simon Fodden and hosted on the blog slaw.ca, makes it easy to do this. Simon's goal is to have a Google Maps placemark for every law firm in Canada. It is a collaborative project, and all lawyers and firms are welcome to add their information. The idea is that at a glance, clients or potential clients can scan a Google Map of their area and see all local law firms, their contact information, and a link to their websites.



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Adding yourself to the Canadian Lawyer Map is easy. Follow these steps:

- You first need a Gmail™ account. Gmail is Google's free e-mail service and it just takes a second to register. Note, you don't have to use the Gmail account for e-mail, but you will need it to login to Google programs. Go to Google.ca, click on the “Gmail” link and follow the instructions.
- Next, go to <http://tinyurl.com/CanadianLawyerMap> and sign in with your Gmail address. Look at the top right for the “Sign in” link.
- Click “Edit” at the top of the list of firms on the left side of the screen.
- Type the address of your firm in the “Search Maps” box.
- When your location appears, click on the lightbulb on the top left of the map. When you hover over it, it will say “Add a placemark.” You can drop the placemark at your location. (Note: there are different colour placemarks for each province and territory.)
- After you drop the placemark, a text box will appear that will let you add your firm's details. Select “Edit in Rich Text” mode to be able to add your contact information, website and images (e.g., your firm logo). You can also change the colour of the placemark by clicking on the coloured marker to bring up a range of possible colours and markers.
- When you are done, click “OK.” Now your firm will appear on both the Canadian Lawyer Map and any other law-related Google Maps search of your area.

Now try a Google Maps search using the name of your city or town plus “lawyer” or “law firm.” For example, “High Park Toronto real estate lawyer” or “Haliburton lawyer.” Voilà, your firm information will appear.

Mortgages Granted by Fraudster Invalid

Under B.C. *Land Title Act*¹



Two recent cases from the B.C. Court of Appeal have clarified previous conflicting case law on the provisions of the B.C. *Land Title Act* (the “Act”) dealing with fraud.

Gill v. Bucholtz et al., The Land Title and Survey Authority of B.C. (third party), 2009 BCCA 137 (B.C. Court of Appeal), was a classic case of title and mortgage fraud. The plaintiff owned property in New Westminster, B.C. In November, 2005, a fraudster forged his signature on a transfer to a co-conspirator, who then granted mortgages to the defendants.

The decision turned on the interpretation of the following sections of the *Act*:

23(2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to the following: ...

(i) the right of a person deprived of land to show fraud, including forgery, in which the registered owner has participated in any degree; ...

25.1(1) Subject to this section, a person who purports to acquire land or an estate or interest in land by registration of a void instrument does not acquire any estate or interest in the land on registration of the instrument. ...

26(1) A registered owner of a charge is deemed to be entitled to the estate, interest or claim created or evidenced by the instrument in respect of which the charge is registered, subject to the exceptions, registered charges and endorsements that appear on or are deemed to be incorporated in the register.

(2) Registration of a charge does not constitute a determination by the registrar that the instrument in respect of which the charge is registered creates or evidences an estate or interest in the land or that the charge is enforceable.

The B.C. Supreme Court² had held that even though the transfer was void, the plaintiff’s title remained subject to

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the mortgages. The court was applying previous B.C. decisions in which the title holders' recourse was to apply to the B.C. Land Title and Survey Authority Assurance Fund to recover the funds necessary to pay the fraudulent mortgages against their properties.

The Court of Appeal ruled that the court below had incorrectly applied the statute with respect to the mortgages. The Honourable Madame Justice Newbury, with the other two Justices of Appeal concurring, agreed with the court below that the transfer was void under Subsection 23(2)(i). However, she held that the mortgages were also void, due to the wording in Section 26 concerning charges. The court stated that this wording is "considerably weaker" than the words "indefeasible" and "conclusive" in Subsection 23(2) with respect to fee simple estates, and that the common law rule of *nemo dat quod non habet*³ therefore applied to invalidate the fraudulent mortgages.

The court stated:

On its plain meaning, the exception in s. 23(2)(i) to the indefeasibility of title applies and the phrase 'void instrument' in s. 25.1(1) includes a mortgage taken from a person who obtained her title by fraud or forgery, as occurred in this case. The *Act* preserves the *nemo dat* rule with respect to charges – even where the holder has relied on the register and dealt *bona fide* with a non-fictitious registered owner. The mortgagees in this case did not acquire any estate or interest in Lot 4 on registration of their instruments because having been granted by a person who had no interest to give, those instruments were void, both at common law and under s. 25.1(1).

As a result, the mortgages against the plaintiff's title were cancelled.

A similar conclusion was reached for the same reasons when the B.C. Court of Appeal heard another case with similar facts, *Re Oehlerking Estate*, 2009 BCCA 138.

Based on these cases, mortgages granted by fraudsters on B.C. properties are invalid, even though the fraudsters are the registered owners of the properties at the time of granting the mortgages. B.C. lawyers and lenders should be aware of this risk, and consider obtaining title insurance for both their purchase and mortgage transactions, in order to protect their clients against the consequences of fraud.

¹ R.S.B.C. 1996, c. 250

² 2008 BCSC 758

³ "No one can give what they do not have."

For Saskatchewan Lawyers

Until recently, obtaining a TitlePLUS title insurance policy in Saskatchewan required the involvement of a member broker of the Insurance Brokers' Association of Saskatchewan (IBAS). You are no longer required to have your clients consult with an IBAS member broker and can now order TitlePLUS purchase, mortgage-only (refinance) or current owner (OwnerEXPRESS®) policies directly from us.



Update on Confirmed Lenders

Creative Arts Savings and Credit Union Limited is now a TitlePLUS Confirmed Lender for residential, commercial and farm properties in Ontario.

Please refer to the TitlePLUS Confirmed Lenders page on titleplus.ca for a complete listing of Confirmed Lenders along with their approved transaction types.

NEW HOME PROGRAM

Now on Facebook:

TitlePLUS[®] New Home Program in Ontario



The TitlePLUS program has launched a new page on Facebook called "TitlePLUS New Home Program in Ontario."

The TitlePLUS New Home Program is for residential purchase transactions involving specific new home and condominium developments in Ontario, which have been enrolled in the program. This page provides the public with information about this unique title insurance product as well as providing other tools and resources. There are links to: current projects enrolled in the TitlePLUS New Home Program; Tarion's website; the Real Simple Real Estate Guide™ which contains resources for those buying or mortgaging homes and helpful information on the role of the real estate lawyer; and more!

To view the page, follow [this link](#) and log on to Facebook.

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If you did not receive this newsletter via e-mail, please send your name and e-mail address to titleplus@lawpro.ca and we will send all future issues to you via e-mail.



Upcoming Ontario New Home Program Closings

To view developments with upcoming Ontario New Home Program closings, [click here](#)

ESSAY PRIZE



2009 TitlePLUS Essay Prize Winner

We are pleased to announce that Geneviève Langlais, a student at the University of Ottawa is the winner of this year's TitlePLUS Essay Prize.

In her essay entitled "La fraude hypothécaire, un domaine de droit turbulent" (Mortgage fraud, a turbulent area of law), Ms. Langlais talks about the different types of fraud, how they take shape and what steps should be taken to prevent them.

Ms. Langlais was presented her award at the Gala Evening of the Ontario Bar Association Real Property Section in Toronto on June 25, 2009. The award, including a cash prize of \$3,000, was presented by Kathleen A. Waters, President & CEO of LAWPRO® and Raymond G. Leclair, Vice-President, TitlePLUS.

"Unfortunately, fraud continues to be a relevant subject in our industry," said Ms. Waters. "Geneviève's essay did a good job of summarizing the threat and the need for awareness."

Congratulations, Geneviève!



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