

ACE NEWSLETTER

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ACE is a Legal Clinic Serving Low-Income Seniors

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Title Fraud:

How it Can Happen, and What You Can Do To Protect Yourself

By Graham Webb, LL.B., LL.M.

Staff Lawyer

The advent of electronic registration of title deeds and mortgages has left the land registration system virtually unrecognizable to most older Ontarians. E-registration has accentuated some dangers relating to title fraud that have always been present but were less widely exploited. An older adult familiar with traditional deeds and mortgages could easily fail to recognize the new form of title documents, if asked to sign one. This article sets out the problem of title fraud, gives examples of cases ACE has seen, and describes remedies and prevention strategies to avoid becoming a victim.

TITLE FRAUD: WHY NOW?

Title fraud is currently a very serious problem in Ontario. The Law Society of Upper Canada, which is the self-governing agency that regulates lawyers in Ontario, has reported that by 2001 annual losses on fraudulent mortgages alone were more than \$300 million in Canada and upwards of \$5 billion in the U.S., and rising. The Law Society has identified title fraud as a "hot topic", and has published special resources for lawyers to do their part in fighting title fraud in Ontario. However, the root causes of title fraud, and successful strategies to combat it, do not begin and end with the legal profession.

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Protecting Consumers in Energy Contracts

By Rita Chrolavicius, LL.B.

Staff Lawyer

Most individuals purchase gas or hydro from their local gas and hydro utility companies. Since the federal government deregulated the natural gas and hydro industry, consumers can choose to buy natural gas or hydro from different marketers.

The Advocacy Centre for the Elderly has received numerous complaints from seniors who have entered into contracts with natural gas marketers

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New Do Not Resuscitate Confirmation Form Introduced for Paramedics and Firefighters



By Judith Wahl, LL.B
Executive Director

A new Do Not Resuscitate (DNR) Confirmation Form has been introduced by the Ministry of Health and the Office of the Fire Marshall to authorize paramedics and firefighters, the most common first responders in emergencies, to honour patients' wishes in respect to resuscitation.

The law and policy that applies to paramedics dictates that paramedics must resuscitate and under no circumstances can they honour DNR directions from patients and their families. In 1999 the Ministry of Health and Long Term Care (MOHLTC) introduced a DNR/Validity Order Form that would be completed by a physician or nurse (RN, RN(EC) or RPN) and handed to the paramedic at the time of the patient's transfer from their own home, or long-term care home, to hospital. The paramedic was then able to honour the DNR order if the patient had a cardiac arrest during transport.

However, in order for the DNR to be followed, the regulated health professional (physician or nurse) had to physically hand off the form. This obviously was not possible in most situations where the patient was at home receiving palliative care and did not have a nurse or physician right on site. A Task Force was therefore struck to try to develop a new standard and a process to implement the new standard. This new form is the result of the work of the Task Force. This form will be available across Ontario as of November 1, 2007, with full implementation by February 1, 2008.

The new form (DNRC Form) is a one page form with a unique serial number. The forms are made available only to the appropriate regulated health

professionals that are authorized to sign them and are not available on the internet to the public. This is important to prevent misuse of the forms.

The DNRC form is to be used as a communication tool between health care providers and emergency responders, and may be completed by the physician or nurse and left with the patient or patient's SDM. The properly completed form signed by the physician or nurse is sufficient authority to the paramedic or firefighter that the DNR may be honoured even if the physician or nurse is not handing the form directly to the emergency responder at the time of transfer.

The patient or SDM may revoke consent to DNR at any time, and the form is then cancelled. This revocation can even be expressed by the patient or SDM while the paramedic is present with the patient. The form makes it clear that although the paramedic is not to do resuscitation on the patient, the paramedic will provide comfort care and appropriate palliative care interventions as needed by the patient.

The form must be fully completed to be valid. Before the physician or nurse signs the form, he or she must make sure that certain preconditions have been met. The physician or nurse must confirm that either:

a current plan of treatment for the patient exists that reflects the patient's expressed wish when capable, or consent of the patient's substitute decision-maker ("SDM") when the patient is incapable, that CPR NOT be included in the patient's plan of treatment. This means that a conversation must take place with the patient or patient's SDM

about resuscitation or no resuscitation. The physician or nurse must get an informed consent to the plan of treatment that includes this DNR directive. That means that the physician or nurse must explain the risks, the benefits, the side effects and the alternatives to CPR, and then get the patient's or SDM's decision.

OR

the physician's current opinion is that CPR will almost certainly not benefit the patient and is not part of the plan of treatment, and that the physician has discussed this with the capable patient or the SDM when the patient is incapable. This is to address circumstances when the physician is not offering CPR as a treatment. No informed consent is then required as no treatment is being offered, however the conversations with the patient or SDM must still take place. The physician cannot just direct the paramedics not to provide CPR without this conversation having happened.

The intent of this new form and standard is that patient's (or SDM's) consent to "no CPR" will be known. It also should encourage best practices about informed consent: the physician or nurse should not be signing this form unless that physician or nurse ensures that a conversation has been had with the patient or SDM about CPR and an **informed** consent has been obtained for including no CPR in the plan of treatment for the patient, or the conversation about why CPR is not being offered to the patient has been had with the patient or the SDM. The plan of treatment and the conversations about "no CPR" must be done before this form is signed.

This form is a direction to paramedics and firefighters about "no CPR", and it is not in itself a consent to "no CPR" in other circumstances. However, this new form and standard in respect to paramedics and firefighters should push long-term care homes and other health facilities to revisit their advance care planning and consent practices and policies.

ACE has observed that a number of long-term care homes do not ensure that proper informed consent is obtained to a plan of treatment. Completion of a tick box "level of care" form is not a plan of treatment. Some homes have policies stating that the patient/ new resident must consent to "no CPR" as a condition of admission. A blanket policy is not appropriate and is not legal. Some homes require new residents or their SDMs to complete tick box advance directive forms that do not comply with Ontario law, or have non-regulated health providers such as PSWs or other non-health care staff assist patients in completing advance directive forms.

In the context of these new DNRC forms, it would be very risky for a physician or nurse signing the form to rely on any "conversation" between the resident/SDM and a PSW, other staff member, or volunteer as satisfying the precondition to signature of the DNRC form. It is unlikely that the patient or SDM will have received the information necessary to give an informed consent to "no CPR" in the plan of treatment if done in that manner.



There are many misunderstandings about advance care planning and health care consent in the practices of long-term care homes and other care facilities. It is hoped that this new DNRC form and standard will have a perhaps unintended result of increasing the knowledge about health care consent and advance care planning, and will result in changes in practices overall on these issues throughout the health system.

ACE Welcomes New Articling Student!

Navneet Johal has joined the ACE office as an articling student. Before being called to the Bar in Ontario, law school graduates must pass exams set by the Law Society of Upper Canada and must complete a 10-month articling term under the supervision of a lawyer. Navneet will be working with the ACE lawyers on the wide variety of legal and research issues within our mandate.

With a background in Gerontology and Health Studies from McMaster University, Navneet decided to pursue a legal education so that she could put her knowledge to work for seniors facing legal issues. She says:

“I have always been acutely aware of the issues surrounding the growing aging population in Canada. As it continues to expand in the years to come, more work will need to be done. This is precisely the reason why there is a need for caring, committed, and informed voices to protect the needs of this expanding cohort in Canada; and this is what has driven me to pursue a career in Elder Law.”



Navneet is no stranger to ACE: she spent the summer in 2005 and 2006 working in the ACE office as a law student. She continued her research and writing on elder law issues during her third year of law school at the University of Ottawa in 2006-2007.



Navneet brings wonderful enthusiasm and sensitivity to her work, and ACE is thrilled to have her in the office. We hope she enjoys her articling year and gains practical experience that will help her help others in the future!

TRENDS, TALES AND TRIUMPHS

ACE 2007 AGM

The Annual General Meeting of the Advocacy Centre for the Elderly will be held on Tuesday, November 27, 2007. Members are invited to attend to hear ACE lawyers and legal colleagues speak about the **trends** in legal issues facing our clients, the types of **tales** our clients are relating to us about their lives (with identifying details removed, of course!), and the recent **triumphs** ACE has achieved on behalf of low-income seniors.

ACE lawyers, and our guest speaker Jan Goddard, a lawyer in private practice, are on the front lines.

Come to the AGM and hear their take on the ongoing and ever-changing challenges they encounter in a legal practice serving seniors.



Date: Tuesday, November 27, 2007

Location: Downtown YMCA

Address: 20 Grosvenor Street, Toronto
(West of Yonge Street, North of College)

Time: 7:00 p.m.

Mark the date in your calendar!

We look forward to seeing you at the AGM.

Retirement Home Regulation Update

The Advocacy Centre for the Elderly wants to know if YOU are interested in participating in a discussion, exchanging information and creating an action plan in respect to the regulation of care and services in retirement homes.

If you are, please contact Judith Wahl by email (wahlj@lao.on.ca) or by calling 416-598-2656 (and leaving your contact info) or sending your contact information to ACE (address on back page).

Why are we asking this now?

On Friday, Sept 7, 2007, just before the start of the election period on Sept 10, 2007, the Honourable Jim Bradley, Minister Responsible for Seniors, announced that his Liberal Government was planning to introduce **Consumer Protection legislation** to set standards of care and services for retirement homes. The News Release is on the Ontario Government Website at the page for the Ontario Seniors Secretariat at <http://www.citizenship.gov.on.ca/seniors/english/news/2007/n20070907.shtml>.

Prior to this announcement, the Ontario Seniors Secretariat conducted a public consultation about this issue in 12 cities from January to March 2007. The report of that consultation is also on the Seniors Secretariat website.

ACE believes that this consultation was flawed both in content and process. An article in the last ACE Newsletter (Fall 2006/Winter 2007, Vol. 4, No. 2) outlines these concerns. It is available at www.advocacycentreelderly.org under the link "Publications". As well, our submission to the consultation is also posted on the website on the ACE home page.

We have identified THREE KEY ISSUES that were not addressed in this consultation, or were not discussed sufficiently to get appropriate feedback from participants in the consultations.

1. **CONTINUUM OR PARALLEL SYSTEM?**

The consultation did not ask the question whether Retirement Homes are part of the

- * CONTINUUM of housing with a cap on the level of care that may be sold and delivered, or are
- * a PARALLEL system to long term care homes offering health services on a private pay model.

This is a significant policy issue as the latter model is TWO TIER MEDICINE. A decision needs to be made as to whether the regulation of retirement home care and services is a CONSUMER PROTECTION ISSUE, as proposed by Minister Bradley, or a HEALTH SERVICES ISSUE.

2. IMPLICATIONS OF THE “THIRD PARTY” REGULATORY MODEL

The implications of the proposed “third party” regulatory model, based on the model used for TICO (the Travel Industry Council of Ontario), was not discussed sufficiently for the attendees to understand what this would mean in practice. Resolution of problems related to travel services is significantly different than problems related to care and services in retirement homes.



3. STANDARDS FOR CARE AND SERVICES

There was not sufficient time at the consultation to discuss WHO should set the standards and WHAT these should be.

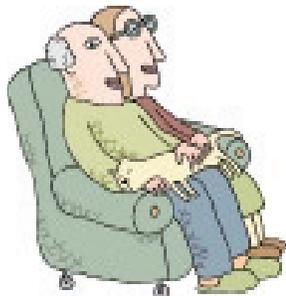
The news release states that the consultation attendees suggested that the new standards be built on the voluntary standards established by the Ontario Retirement Communities Association (ORCA). But there was no critical analysis of these standards provided for the consultation participants, copies of the standards were not provided at the consultation, and there was no time at the consultation to specifically review and comment on these standards.

ACE has identified serious flaws with these standards and submits that detailed discussion of standards, not just on a standard contract as announced in the press release of September 7, 2007, must be done before any type of legislation is created, whether it is consumer protection legislation or health legislation.

WE WANT TO HEAR FROM YOU.

If YOU are interested in discussing the regulation of retirement home care and services, contact ACE and let us know how we can reach you.

We will send additional information as to the next steps after we know who is interested in this collaboration.



The recent Ontario election resulted in another Liberal majority at Queen’s Park, so we must assume that the announcement of September 7th is the new government’s plan of action. Therefore we need to work to have these key issues addressed before any legislation or standards are introduced.

This is an opportunity for those interested in these issues to be proactive. We look forward to hearing from you!

Meet Randall Harris, ACE Summer Law Student

Interviewed by Pauline Rosenbaum, Staff Lawyer

Randall Harris, a third-year law student at the University of Toronto Faculty of Law, spent the summer of 2007 working with ACE.

ACE: You are about to enter your third and final year of law school at the University of Toronto. Why did you decide to study law?

RH: A full answer to this question would fill the entire ACE Newsletter! But here are the major reasons. Prior to starting law school I was working on my Master's in Chemical Engineering. I was doing research on the biodegradation of pollutants by soil bacteria. Though I found many aspects of this work fascinating, I realized that my interests were less in the science behind bacterial degradation and more in the broader societal issues surrounding the production, use, and clean-up of toxic pollutants. It also became apparent that no matter how much scientific research was gathered, without adequate laws and enforcement mechanisms the production and widespread use of these chemicals would persist. I began to realize law was crucial in promoting change within our society and became interested in how the law worked.

Also influential in my decision to enter law school was my upbringing. My mother is Colombian and my father is Canadian. Throughout my childhood we often moved between the two countries. I was always struck by the contrasts between the two. For example, in Colombia my Dad drove like a nut because everyone else did and because there was little consequence. Here he follows the traffic laws (mostly) and drives in an orderly fashion. Growing up, this small yet drastic difference always intrigued me. Why was there pervasive disregard for the rules of the road in Colombia while in Canada people (including Colombians visiting or who had migrated here) generally followed them? I could only conclude that having laws written down somewhere was not enough. Something else was required in order for these laws to be respected and followed. I believed the study of law might help me answer this question.

ACE: What is Pro Bono Students Canada?

RH: Pro Bono Students Canada (PBSC) is a national organization that attempts to provide law students

with hands-on legal experience in the public interest sector. One PBSC program matches law student volunteers with non-profit organizations which require legal assistance. PBSC also manages a number of fellowships which fund students to spend a summer working at a public interest organization. The goal is to benefit both the student and the organization.

I had spent the summer after my first year at law school working at an intellectual property firm. It was a great experience and I met some wonderful people. However, I wanted my second summer to allow me to work for a cause or an issue I could wholeheartedly dive into. I was attracted to policy issues and wanted to work for legal reform. An obvious place to look for such work was in advocacy organizations such as ACE. Unfortunately, the budgets of these organizations are limited, and funding for a summer student is often out of reach. Thankfully, funds have been established by generous individuals and organizations which enable such internships to exist.



ACE: Why did you choose to work with ACE?

RH: While I was researching different public interest organizations, I came across ACE's name and was immediately intrigued. Then, after reading about ACE's work on its website I knew that I wanted to spend my summer here, for several reasons. First, ACE works to improve the lot of a segment of society which is often ignored and which is vulnerable to abuse. Few times have I been as incensed as when my family discovered that a salesman had been charging my grandmother, whose memory was failing, multiple times for the same service. Second, I had become increasingly interested in health law and policy issues through courses and seminars in law school. The fact that ACE was a frequent player in debates and legal disputes in this field greatly appealed to me. Finally, I was drawn to the fact that ACE uses different approaches to accomplish its mandate: public legal education, direct client representation, and law reform. I imagined (and was right) that ACE would be a very dynamic institution and that I would learn a great deal from the different routes one can take to promote positive change in society.

ACE: You spent the summer collecting and analyzing information from Ontario hospitals and LHINs (Local Health Integrated Networks) concerning what ACE refers to as the "first available bed" problem. What surprised you the most about your research?

RH: I was surprised that laws could be disregarded so overtly by institutions (hospitals) which one generally thinks of as looking out for the patient's best interests. Of course, it also became clear to me that hospitals are facing tremendous pressure to get seniors out of their beds and into long-term care homes as soon as possible in order to clear beds for incoming patients. What shocked me even more is that there seemed to be nobody (besides ACE) policing hospitals to ensure that patients were not subject to such policies. I had naively imagined that the government (whose laws were being ignored) would not allow these policies to be practiced. This made it clear to me how important non-governmental organizations such as ACE really are. Without such organizations, governments could pass politically popular laws yet acquiesce to these laws being broken when it is convenient to do so.

ACE: As you gathered more information about the "first available bed" problem, how did you start to think about the question and its impact on seniors?

RH: The "first available bed" issue is a dilemma caused in part by scarce resources (i.e. hospital beds, adequate long-term care home beds) and the burden is being borne disproportionately by seniors. This outcome goes against what is written in the legislation, and against key principles such as autonomy and dignity. The long-term solution will involve teamwork between government, LHINs, hospital and long-term care home administrators, seniors, etc. In the meantime, however, it is crucial that ACE continue to fight for the right of seniors to choose where they want to live.

ACE: In addition to working on your research project, you also spent time with ACE lawyers visiting clients and sitting in on client interviews. How would you describe these experiences?

RH: They were fantastic learning experiences. The relationship between counsel and a client is very complex, but this complexity is heightened when the very capacity of the client to instruct counsel is questionable. I found it fascinating how ACE lawyers managed these difficult situations with such tact. You cannot learn these skills at school and I am fortunate to have had an opportunity to witness ACE lawyers at work.

ACE: How do you think your summer at ACE will impact on the way you approach your studies in your third year of law school, and your future practice of law?

RH: My summer at ACE certainly affected my course selection. It opened my eyes to some of the specific skills required by lawyers to be effective advocates. I therefore enrolled in courses that attempt to teach these skills. Also, I signed up for courses within the health law field and will be taking a course on wills and estates. Both are subjects which often impact seniors.

In terms of my future practice of law, ACE has taught me important lessons about what to look for when choosing a career path. I have learned that I want to work somewhere with an overriding mission to serve the public interest. At ACE there is a palpable feeling that the organization serves an important role in society, and this sense of mission infuses its work with dynamism and purpose. I will be looking for that same feeling as I go along my career path.

ACE: What did you learn about the Legal Aid clinic system and the delivery of legal services to low-income Ontarians?

RH: The services provided by Legal Aid are essential, not only for individuals to resolve their personal legal disputes but also to ensure that advocates exist for the most vulnerable in society. It is a frightening thought to imagine Ontario without a Legal Aid system. We certainly cannot take it for granted.

ACE was very lucky to have had the benefit of your great work this summer, through the sponsorship of Pro Bono Students Canada. Thank you!

Thank you, and all the best!

Protecting Consumers in Energy Contracts

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and electricity retailers without understanding what they were signing. They may not realize that the price they agreed to pay is higher than what they were previously paying. They may not realize that some contracts are locked in for a period of five years. Termination of a locked-in contract may result in a penalty of over \$1000.00, or a cost per unit of hydro or gas for the balance of the contract.



In other cases, the marketers may refuse to terminate the contract. In a recent court case, there was a dispute between a hydro marketer and the owner of a multiple unit apartment building. The issue was whether a particular contract had been automatically renewed for a year. For contracts signed before July 30, 2005, contracts can be automatically renewed or extended if a renewal letter is sent by the marketer and no reply is received. The judge referred to “the presence in the Ontario electricity retail market of a common, but curious contract renewal mechanism - negative options”. In this case, the marketer charged approximately \$50,000.00 more than the local hydro company would have for the relevant period of time.

New contracts that are entered into after July 30, 2005 are not subject to the automatic renewal or extension provisions. However, we have had complaints from people who have inadvertently renewed their contract by cashing a small rebate cheque. Once again, the consumer did not understand the multiple page, small print contract.

Some marketers use door-to-door salespeople to solicit contracts. If a door-to-door salesperson asks you to sign a contract, it is a good idea to ask that a copy of the contract be left with you so that you can take your time to study it. Before you sign a contract, compare the unit price of gas and hydro that is listed on your present utility bill to what is being offered in the contract. The questions that you should consider are:

- What is the unit price of the gas or hydro?
- How does that compare to the amount you are presently being charged?
- How long is the term of the contract?
- Are there any charges or fees if you try to end the contract before the period specified in the contract?

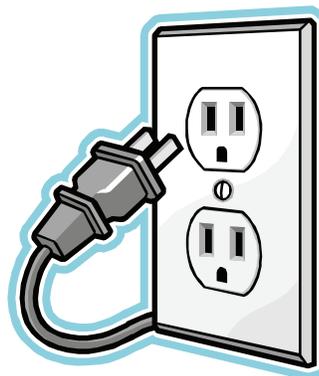
If the door-to-door salesperson uses undue pressure to get your signature, you may be able to cancel or rescind the contract under the provisions of the *Consumer Protection Act, 2002*. Undue pressure is considered to be an “unfair practice”. A consumer who has been subjected to an “unfair practice” may cancel or rescind the contract they entered into within one year of signing the contract. Notice of cancellation may be delivered to the vendor by any means. It is best to give notice of cancellation in writing and to specify that the consumer is rescinding the contract because of an unfair practice within the meaning of the *Consumer Protection Act, 2002*.

The Ontario Energy Board regulates the province’s electricity and natural gas sectors. They have a web-site that contains useful information at www.oeb.gov.on.ca. The Ontario Energy Board can deal with complaints, but they cannot force a company to resolve a complaint where there has been no violation of any legal or regulatory requirement.

Locking into a five year contract can be disadvantageous for any consumer, but it can be especially disadvantageous to seniors on a fixed income. Unexpected illness or injury, or change of circumstances, may mean that a senior has to sell his or her home. Having to pay a penalty to terminate a contract early is an expense to be avoided.

The Ontario Energy Board does not allow public utilities to make a profit on their hydro and natural gas purchases. The price charged by the public natural gas and hydro utilities is set by the Ontario Energy Board. In contrast, the price charged by a natural gas or hydro marketer is the price set out in the contract.

The best defence is to be an educated consumer. For any contract that you are presented with, sign nothing unless you are well aware of what you are agreeing to.



To see some samples of cancellation letters, visit the Ontario Ministry of Government Services’ website at <http://www.gov.on.ca/MGS>.

Then, search for the term “**sample cancellation letter**”.

Or, go to this website:
http://www.gov.on.ca/MGS/en/ConsProt/STEL02_046418.html

Title Fraud

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A wide range of factors that involve many people in different walks of life contribute to the opportunity for title fraud. In its 2005 *Report to Convocation*, the Law Society described four factors that contribute to mortgage fraud:

- **De-personalized mortgage lending:** The process of buying a home and obtaining mortgage financing has become increasingly depersonalized. A new homeowner can now apply for a mortgage on-line or by telephone, sign documents sent by courier, and arrange mortgage financing without ever having to meet anyone in person.
- **Easier access to vast amounts of real-property information on-line:** Electronic land registration, combined with electronically available real-property assessment information, gives computerized access to nearly all the information someone would need to initiate a title fraud.
- **Increased competition among mortgage lenders:** The Canadian Institute of Mortgage Brokers and Lenders has reported that consumers have many more choices about where to obtain mortgage financing, and that “the lending community is becoming larger and much more aggressive about pursuing clients.”
- **Increased competitive pressure to close a real estate deal quickly:** In some transactions, “traditional safeguards, such as hiring a lawyer early in the process, are seen as a hindrance to the speed and cost effectiveness of closing a

deal and are being bypassed.”

Some other intergenerational trends also contribute to title fraud. Older home-owning adults tend to live in very valuable homes that are most often mortgage-free. In some cases, friends, neighbours and family members with an expectation of inheritance are anxious to obtain an immediate inheritance, and in extreme cases are willing to commit title fraud to do so. Perpetrators of title fraud who were not previously connected to the older adult, attracted by the high equity value of an older person’s home, sometimes prey upon the failing mental capacity of older adults to induce them to sign legal documents they do not fully understand. Community-dwelling older adults are often very house-rich and cash-poor, which invites the burglary of title and equity-value of their homes.

HOW DOES TITLE FRAUD HAPPEN?



There are many types of title fraud that do not have any pronounced effect on older adults. These forms of fraud usually involve a home-owner willingly selling a home at fair market value to a stranger who somehow inflates its value to fraudulently obtain excessive mortgage proceeds. The vendor home-owner would have no part in the fraud, and is not usually injured by it.

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Although spectacular and newsworthy, these value-inflation frauds are not normally a matter of concern to older adults. However, there are a number of increasingly well-known frauds that are prominent in victimizing older adults.

Impersonated and Forged Transfers and Mortgages

Long before the electronic registration of title documents, forged title deeds and mortgages became a problem for real estate lawyers. Most lawyers have never been in the practice of routinely sending title documents out to clients to sign and return by courier, without an in-person meeting, but on rare occasions that did occur. Until 1985, when a signed witness and affidavits of age and marital status and of execution were required, there was much less opportunity to offer a forged document. However, in the 1990s a few spectacular cases of the registration of forged title documents captured the attention of the legal profession, and led to an increased vigilance over the authenticity of title documents.



Historically, most real estate lawyers did not take the steps they do now to ensure that the person actually signing a title document is the authentic title-

holder of the property. It was unusual to inspect and photocopy personal identification such as drivers' licences and other documents that mortgage lenders now invariably require. Today, to sign a title document, a homeowner should

expect to produce at least two pieces of identification, including one piece of photo ID, that would ordinarily be photocopied and kept on file to prove the authenticity of signed documents.

Despite this heightened sense of vigilance over the authenticity of title documents, instances of fraud by impersonation still occur. In some reported cases, although a very small number, the impersonation might be facilitated by the naïve co-operation of a lawyer who is duped into exercising a lowered level of diligence in real estate transactions. In other cases, a sophisticated plan is made to “invent” a fictitious purchaser of real estate from someone impersonating the registered owner of the property. In these cases, the impostor “sells” the property at market value to the fictitious purchaser, who in turn finances it with a new mortgage. Once the deal is closed, the impostor vendor, the fictitious purchaser and the mortgage money used to finance the transaction all vanish at once, leaving only a very real mortgage debt against the home. The true owner of the home would only discover the fraud later, sometimes at the point of eviction for non-payment of the fraudulent mortgage debt. This type of fraud was widely reported in the 2006 Ontario Court of Appeal case of *Lawrence v. Maple Trust*, which prompted a change in the law.

While forgery and impersonation can happen to anyone of any age, older adults face other pressures that make them more vulnerable to this type of fraud:

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o **Absence of photo ID:** Many older adults, having chosen not to drive, no longer carry an Ontario drivers' licence, which is the most common form of photo ID. The absence of a drivers' licence and other photo ID can sometimes be "explained away" more easily by someone posing as an older-adult home-owner. However, with due diligence a solicitor would normally be expected to adequately verify identity in such cases.

o **Genuine confusion over a name:** The name that appears on title might not be the same name that appears on a person's photo ID. Older titles that pre-date the 1985 land registration reform did not record the date of birth of the title-holder, with the effect that persons of different generations with similar names may more easily impersonate each other. Family members with identical or similar names can present an easy opportunity to impersonate each other.



Use of Forged Powers of Attorney

Another circumstance that ACE sees periodically is the use of a forged power of attorney to complete title transactions. In one recent case, our elderly client gave an authentic power of attorney to her two adult sons, who could only act jointly. Without her knowledge, someone forged a new power of attorney in her name to one of her

sons, as her sole attorney for property. The son named in the forged power of attorney then used this document to personally sign, as her attorney for property, a transfer of title to himself and two new mortgages on our client's home without her knowledge or consent. When our client later discovered that she no longer held title to her own home, the police were involved and verified that power of attorney document had been forged. While the matter is now before the courts, and the outlook is good that our client will recover title to her home and be compensated for most if not all of her losses, she did face the very real threat of eviction for a default in payment of the fraudulent mortgage transactions that were outside her knowledge. One can only imagine the distress of an octogenarian served with a Sheriff's notice to vacate a home she has owned and occupied for more than forty years, not knowing that she had been defrauded.

The use of forged powers of attorney is a very well-known occurrence. In fact, this type of fraud is specifically addressed in remedial title-fraud legislation enacted by the Government of Ontario in the fall of 2006. While remedies for the fraudulent use of forged powers of attorney are clear, the remedies for the fraudulent use of authentically-signed powers of attorney are less so. The definitions of "fraud" in remedial title fraud legislation do not include the fact situation where a power of attorney is authentically given, but fraudulently used by the named attorney for property to steal the title to real-property or the proceeds of

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a fraudulent mortgage from a homeowner. This underlines the message that homeowners of all ages should always be vigilant not to give out powers of attorney that are not necessary or that are ill-advised.

Deception as to the Nature and Character of Documents

Perhaps the most common and most difficult of title fraud cases occur when an older adult is deceived into signing a document not fully understood, and without independent legal advice. Someone who last dealt with real estate when s/he purchased a home thirty years ago might not recognize the new landmarks of real-property registration in Ontario. If asked to sign a deed or mortgage with red margins and a sworn affidavit of age and marital status (landmarks of the traditional system), the older-adult home-owner would likely recognize the nature of the transaction despite any misrepresentation from a trusted friend or family member. However, without the familiar landmarks, older-adults are sometimes lost in a new domain.

Many clients come to ACE having been told fantastic stories about how necessary it is to sign some kind of document to do something that is essential to help themselves or their loved one, but that will have absolutely no effect on the legal title to their home. Sometimes, it seems that the older adult would like to operate in a state of suspended disbelief, preferring if at all possible to trust the person so loved in their life, unless contradicted with clear and convincing evidence

of falsehoods. Too often, that clear and convincing evidence does not come in the form of independent legal advice, and is not apparent from what the person is asked to sign without a full and complete understanding. Unfortunately, what is signed in these cases may turn out to be a transfer or mortgage of property that is only later understood when adverse consequences, including a threat of eviction, begin to unfold.

While fraud is a criminal offence, and misrepresentation or deceit can form a defence to the enforcement of legally-signed documents, the burden of proof that is needed to prove fraud, misrepresentation or deceit is onerous. ACE is presently engaged in an increasing number of cases where older adults have been misled into signing documents defrauding them of title to their homes, sometimes under conditions of a compromised mental capacity. Like the Law Society, liability insurers, title insurers, and mortgage lenders of all types, we too are facing increased pressure on our resources to cope with the increased demand for services that these cases present.



...continued on next page

REMEDIES FOR TITLE FRAUD

An older adult who is the victim of title fraud can pursue a number of remedies, depending on the individual circumstances of a case. Not all of these remedies will be available in every case. None of them is a perfect answer to the fraud committed, because even if a remedy succeeds it is usually fraught with uncertainty until a successful outcome is achieved. These are some of the possible remedies:

- **Criminal Complaints:** A criminal complaint could result in an order for restitution and compensation if the fraudster is convicted. Even if there is no conviction, the results of a police investigation could assist in other civil proceedings.

- **Defence of Mortgage Enforcement Proceedings:** It is usually necessary to defend mortgage enforcement proceedings brought against the defrauded home-owner for the possession and sale of a home to satisfy a mortgage debt. These are difficult proceedings to defend because the home-owner will need to produce some evidence that calls the validity of the mortgage itself into question.

- **Civil Actions for the Restoration of Title and Recovery of Funds:** The defrauded home-owner can bring a civil action against the perpetrator of the fraud for a judgment restoring title to one's home, and for damages resulting from the fraud. While it might not be difficult to obtain judgment for both title and damages, it is usually very difficult to collect any money from the defendant, who might have no means to pay or may have absconded.



- **Civil Actions for Solicitor's Negligence:** The negligence of a solicitor acting on a fraudulent transaction can never be assumed, but must be proven with evidence. If negligence did occur, the home-owner could also bring legal action against the solicitor, who might be responsible in damages. Ordinarily, actions for solicitor's negligence are not easy to pursue.

- **Title Insurance Claims:** Title insurance provides the best possible protection against title fraud. If a fraud is proven by an insurer's investigation, a fraudulent mortgage can be paid out without resort to court proceedings. However, in Ontario title insurance is a fairly recent development, and it is only available if a home-owner or mortgage lender has purchased it. Most older-adult home-owners did not buy title insurance when they bought their homes long ago, and are not covered by title insurance.

- **Land Titles Assurance Fund Claims:** There are two systems of land registration in Ontario: "Land Registry" and "Land Titles". Land registry does not offer any assurance of title. On the other hand, Land Titles does offer some limited protection to home-owners who are the subject of title fraud. As a last resort, a home-owner can make an application to the Director of Titles to delete any fraudulently-registered transactions, and to the Land Titles Assurance Fund for compensation for a fraudulently-placed mortgage. However, this protection only applies in a fairly narrow set

of circumstances that does not capture all instances of fraud; and it does not apply to any land registered outside the Land Titles system.

WHAT CAN YOU DO TO PREVENT TITLE FRAUD?

The phenomenon of title fraud seems to be less connected with the electronic system of registration, which for the most part appears to be quite secure, and more closely tied to the rapidly changing landscape of the entire real estate and mortgage-lending industries that often puts the security of land titles in peril. Here are some strategies for preventing title fraud and protecting yourself:

Existing-Owner Title Insurance: Experienced real estate practitioners widely recommend that older adults owing mortgage-free homes purchase “existing-owner” title insurance. This is the same type of insurance that a new home-owner might buy when completing a purchase transaction. It provides the best possible protection against title-fraud committed by third parties without the knowledge, consent or involvement of the home-owner. The benefits of existing-owner title insurance far outweigh its cost, and it is truly something that many older-adults should not be without. To investigate the costs of coverage offered by existing-owner title insurance, older-adults should speak with a solicitor or other advisor.

Independent Legal Advice: A home-owner of any age should never enter into any real estate transaction without independent legal advice. Legal advice is not “independent” if the lawyer acting represents more than one interest in a transaction. You need your lawyer to represent you, and to fairly and independently advise you. A lawyer also acting for someone else, even an immediate family member, with a different interest in the transaction is not able to do this. Even though it does cost more to hire two lawyers than one, scrimping on independent legal advice is a dangerous and false economy.

Vigilance not to Sign Legal Documents without Full Understanding: The single most important thing an older-adult can do to protect against title fraud costs absolutely nothing: simply do not sign anything that you do not completely understand. The most difficult thing to overcome is your own signature. In most cases that we see, the older adult has signed something, be it a power of attorney, a deed or mortgage, or some other paper that was never fully understood until it was much too late. Those who absolutely do not sign things they do not understand give themselves the best protection that money can buy.



Ontario Announces New Program Offering Free One-on-One Consultation with Pharmacist about Medications

By Pauline Rosenbaum, Staff Lawyer

Persons taking a minimum of three medications for chronic conditions are eligible to consult with a pharmacist under a new program established by the Ministry of Health and Long-Term Care. The pharmacist will provide professional advice to eligible Ontarians up to once a year, at a 30-minute private consultation. Patients are welcome to bring a caregiver to their appointment.

Eligible patients can choose to participate, and the consult is free of charge. However, the services is only available to community-based patients — people residing in long-term care homes are not eligible .

The Ministry states that eligible people most likely to benefit from this program are:

- Patients who have several chronic medical conditions and are taking several medications;
- Patients who have recently been released from a hospital;
- Patients who have had major changes to their medicine schedule;
- Patients who are taking “high-alert” medications, such as opiates or digoxin;
- Patients who may have trouble managing their medication.

Among other things, the pharmacist will review the list of medications that patients are taking, and ensure that they are taking them as directed. The pharmacist will review the patient’s allergies and lifestyle information, and will explain the intended benefits and potential side-effects of medications. The patient will also be provided with an up-to-date medication list to bring to their doctor or other pharmacists, or for use in the event of hospitalization.



For more information, contact your local pharmacist. If he or she is not a participant in the program, he or she will be able to refer you to another participant.

APPLICATION FOR MEMBERSHIP

ADVOCACY CENTRE FOR THE ELDERLY*

2 Carlton Street, Suite 701, Toronto, Ontario M5B 1J3

Please feel free to photocopy this page and send it to ACE to become a member!

NAME: _____
(Individual/Corporate) Please Print

CORPORATE CONTACT (if applicable): _____

ADDRESS: _____ APT. _____

CITY: _____ POSTAL CODE: _____

TELEPHONE: (Home) _____ (Business) _____

EMAIL ADDRESS: _____

Membership Fee:

(a) individual _____ \$10.00 Enclosed

(b) corporate (agency, group) _____ \$25.00 Enclosed

In addition to my membership fee, a donation of \$ _____ is enclosed.**

Signature

Your membership is important. If the fee presents financial difficulties, please feel free to join anyway.

Committee Membership: I am interested in seniors' issues and would consider membership on an ACE Committee. Yes _____ No _____

Membership Expiry Date: Annual General Meeting, Fall 2008.

By-Law No.1, 14.9 states: No owner or management official of a long term care facility, or employee of any organization representing long term care facilities shall be eligible to be elected to the Board of Directors of the Advocacy Centre for the Elderly.

* Holly Street Advocacy Centre for the Elderly Inc.

** A tax receipt will be issued for donations over \$10.00.

The ACE Annual General Meeting will be held on Tuesday November 27, 2007 at the YMCA in downtown Toronto.

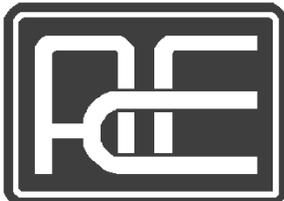
Mark your calendars and plan to attend to hear ACE lawyers, and special guest Jan Goddard, speak about:

***Trends, Tales and Triumphs
in an Elder Law Practice***

See page 5 for more details!



Advocacy Centre for the Elderly



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ABOUT THE CLINIC

ACE is a community-based legal clinic for low-income senior citizens in and around Toronto. It is the first clinic in Canada to specialize in the legal problems of seniors.

ACE is funded by Legal Aid Ontario to provide a range of legal services including direct client assistance, public legal education, law reform, community development, and referral.

ACE is incorporated as a non-profit corporation under the name "Holly Street Advocacy Centre for the Elderly Inc."

Charitable Registration No. 106686728RR0001

HOURS OF SERVICE

Office Hours:

Monday—Wednesday and Friday: 9 a.m.—5 p.m.

Thursdays: 1 p.m.—5 p.m.

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