

PRESS CONFERENCE

BY

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

2nd May, 2019

The Theme of this morning's Press Conference is:

Fraud and Identity Theft in Conveyancing Transactions and Certification of Title to Property

1. PURPOSE OF PRESS CONFERENCE

The purpose of this Press Conference is to bring to the public's attention the increasing number of incidents of fraud and identity theft in real estate transactions and to point out some possible measures that can be taken to reduce the risk of these occurrences.

THIS PRESENTATION WILL PROVIDE GENERAL INFORMATION FOR THE PUBLIC AND IS NOT INTENDED TO GIVE LEGAL ADVICE ON ANY PARTICULAR MATTER. IF YOU ARE AFFECTED BY ANY OF THE ISSUES TO BE DISCUSSED THIS MORNING, IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE FROM A QUALIFIED ATTORNEY-AT-LAW.

The Legal Profession Act mandates the Law Association of Trinidad and Tobago (LATT)¹, *inter alia*, to:

- a. maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago; and
- b. protect and assist the public in Trinidad and Tobago in all matters relating to the law.

¹ Legal Profession Act Chap.90:03 – Section 5 (Purpose of Law Association)

In furtherance of its mandate the Law Association previously held seminars for Attorneys-at-Law and other stakeholders including Bankers, Real Estate Agents and Surveyors to educate and engage them on the issue of fraud in real estate transactions.

Further on **21st January 2016** and **13th December, 2017** the Law Association of Trinidad and Tobago published advertisements in the daily newspapers to advise and caution the public about this issue. This Press Conference will provide further and more detailed information to the public and is a continuation of the efforts of the Law Association to fulfill its mandate.

The occurrence of fraud in real estate transactions is not unique to Trinidad and Tobago. It occurs throughout the world and is becoming increasingly more sophisticated as fraudsters take advantage of improved technology and increased access to personal data. Statistics in England alone have shown that fraudulent property sales are on the increase with the value of such frauds moving from £7.2M in 2013 to £24.9M in 2017.

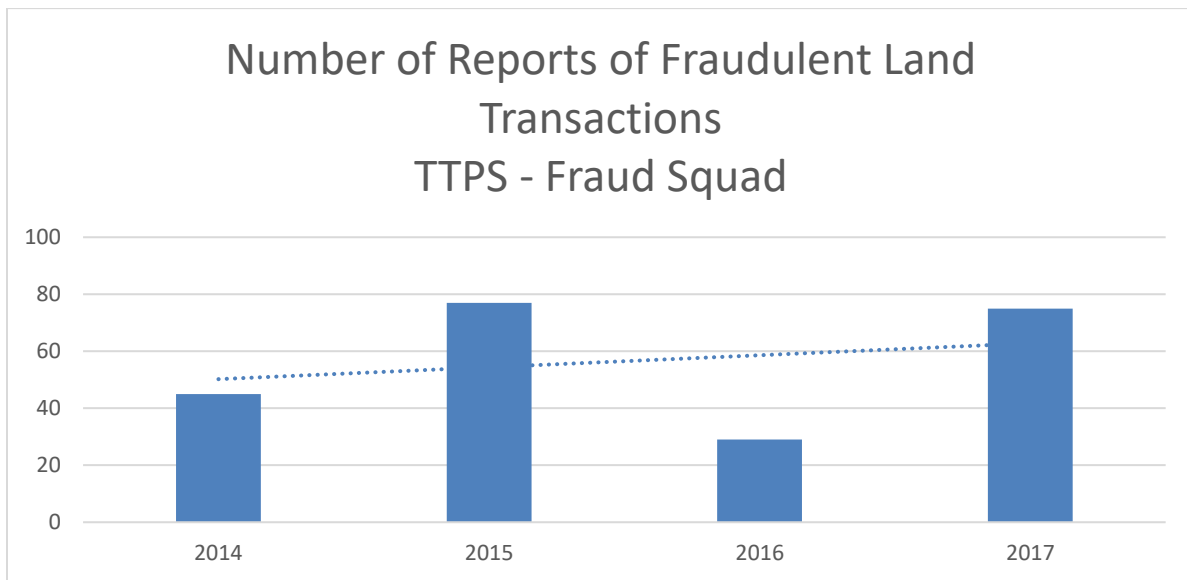
In recent times members of the Corporate Commercial and Conveyancing Committee of the Law Association of Trinidad and Tobago (“**the Committee**”) have observed an increasing number of questionable transactions involving the sale and purchase of real estate in Trinidad and Tobago.

Given these observations, the Committee reached out to certain agencies namely:

- a. the Trinidad and Tobago Police Service – Fraud Squad; and
- b. the Registrar General.

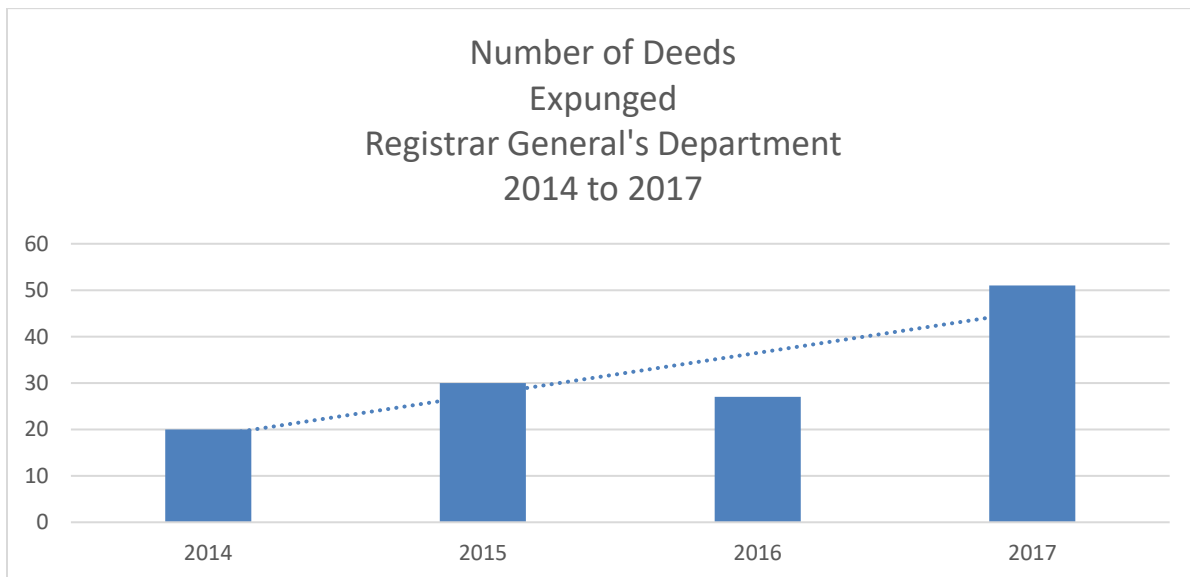
From the information received it is noted that there has been a general increase in the number of cases of fraud involving transactions with real property between the period 2014 to 2017.

Fraudulent Land Transactions Reported to T&T Police Service - Fraud Squad				
Year	No. of Reports	Dollar Value (\$TTD)	Reduction/Increase (%) - No of Reports	
2014	45	\$ 16,374,765.00		
2015	77	\$ 6,163,695.00	71%	-62%
2016	29	\$ 696,144.00	-62%	-89%
2017	75	\$ 17,656,982.47	159%	2436%



For the same period there was a similar increase in the number of Deeds or Title Documents that were expunged from the records of the Registrar General’s Department i.e. the Land Registry.

Number of Deeds Expunged at Registrar General's Department 2014-2017	
Year	Number of Deeds Expunged
2014	20
2015	30
2016	27
2017	51



In the Committee's view the data reinforces the suspicions of its members that the number of questionable and fraudulent transactions being conducted, is and has been, on the rise for some time.

2. EFFECT OF FRAUD IN REAL ESTATE TRANSACTIONS

Usually victims of fraud in real estate transactions are persons who, through their hard work and sacrifice, have scraped together just enough money to purchase a home or land upon which to build a home for themselves and their families. The loss of their hard-earned money, can be a serious setback for such persons and their families.

The crucial points for the public to be aware of, as far as, it relates to fraud in real estate transactions are:

- a. A Deed or Title Document transferring property to an unsuspecting Purchaser which is found to have been fraudulent may be incapable of transferring good title to the property in question to the Purchaser;
- b. Similarly, Deeds or Title Documents including conveyances and mortgages following a fraudulent Deed may be incapable of transferring good title and therefore may be invalid;
- c. A fraudster who impersonates the Owner of a property and conveys it to another party is liable in both civil and criminal law for his action.
- d. Where a victim of a fraudulent real estate transaction becomes aware of the fraud and with that knowledge disposes or attempts to dispose of the property to an unsuspecting Purchaser, he is similarly liable

3. EXAMPLES OF FRAUDULENT MISREPRESENTATION

The type of fraud in real estate transactions that we are concerned with invariably involve what in law is referred to as fraudulent misrepresentation.

Possible methods whereby fraudulent misrepresentation can be utilized to commit fraud in relation to real estate include the following:

a. **Identity Theft:**

- i. **Where the so-called “Vendor” uses false identification documents to impersonate the true Owner.**

The so-called “Vendor” would falsely represent that he is the Owner of the property and present forged identification documents e.g. a National Identification Card, a Driver’s Permit or a Passport.

The Elections and Boundaries Commission and the Transport Division of the Ministry of Works and Transport have in the past advised that they are unable to provide confirmation of the validity of identification documents to persons other than the owners of such Identification Cards and Driver’s Permits. Therefore, an Attorney-at-Law or prospective Purchaser are presently unable to secure independent verification of the identification of a Vendor from these bodies.

ii. **Where someone i.e. a “Vendor” utilizes a Deed Poll to misrepresent himself as the true Owner of a property.**

A fraudster may utilize a Deed Poll to change his name to match that of the true Owner of a property. The fraudster may then proceed to secure valid forms of identification, whether it be an Identification Card, a Driver’s Permit or a Passport, using that name and thereafter intentionally represent himself as the true Owner of a property.

iii. **Where Deeds or Title Documents bearing forged signatures of Attorneys-at-Law are used to transfer “ownership” of properties.**

Based on feedback received by the Committee from various practitioners there are several instances where the signatures of Attorneys-at-Law who purportedly prepared or witnessed Deeds were forged. In these cases, it is quite likely that the so called “Vendor” or “the Purchaser” would have conspired with other persons to defraud the true Owner of his property and to “sell” the property to an unsuspecting Purchaser.

b. **Where someone i.e. a “Vendor” who intends to acquire a property enters into an Agreement for Sale to sell his property before he has himself acquired the legal title but fails to disclose this fact to the “Purchaser”.**

In such cases, a deposit may be made by the “Purchaser” to the “Vendor” but the acquisition of the property by the “Vendor” does not occur and thus he is not in a position to convey the property to his Purchaser. In such a case, the “Vendor” would be liable to his “Purchaser” to refund the deposit. However, if the “Vendor” has utilised the deposit and is incapable or unwilling to refund it, the “Purchaser” may find it difficult to recover same.

When someone enters into an agreement to sell property in the foregoing circumstances, he is obligated under the law to disclose to the Purchaser that he does not yet have the title but has only entered into an agreement to purchase it from the person who currently holds the title.

In some cases, a “Vendor” may present to a Purchaser a copy of an Agreement for Sale that bears a false signature of the true Owner which states that the true Owner has agreed to sell the property to that so-called “Vendor”. When the Purchaser pays him the “Vendor”/fraudster would usually abscond with the Purchaser’s funds.

- c. **Where a so-called “Vendor” shows a “Purchaser” a property, but the actual Agreement for Sale entered into and ultimately the Deed or Title Document conveying the property are made for an entirely different property which he may or may not own.**

The so-called “Vendor”/fraudster, in such a case, may show a property that has various amenities e.g. access to paved roads, drains, supply of electricity and water etc; however, the property that is actually the subject of the Agreement for Sale and the Deed or Title Document is located elsewhere. The Purchaser may only become aware of this fact well after the transaction is completed and the purchase price paid to the “Vendor”/fraudster.

- d. **Where the “Vendor” utilizes a Power of Attorney that has been forged or procured by unlawful means:**

This can occur where:

- i. the signature of the true Owner in the Power of Attorney was forged;
- ii. the signature of the Attorney-at-Law whose name appears on the Power of Attorney was forged; or
- iii. the true Owner was incapable of managing his affairs due to mental incapability when he executed the Power of Attorney - more often than not at the instance of another person.

In such cases, the “Vendor”/fraudster would have no authority to act on behalf of the Owner of the property. Any Deed or Title Document executed pursuant to that Power of Attorney would have no operation² whatsoever to transfer any legal interest in a property and therefore any transactions following same would be similarly void.

e. Where the Owner of a property grants a valid Power of Attorney giving authority to someone (the Donee) to sell the property but the Power of Attorney is subsequently revoked.

Where revocation occurs the authority of the Donee ceases to have further effect. The Power of Attorney will be revoked by:

- i. an instrument in writing signed by the Owner; or,
- ii. the death of the Owner; or,
- iii. the disability of the Owner i.e. he becomes mentally incapable of managing his affairs; or,
- iv. the bankruptcy of the Owner.

There are some qualifications to the above, for example:

- i. if a Donee or a Purchaser has acted in good faith and at the time he does so, he is not aware of the revocation, death, disability or bankruptcy of the Owner, the act would be valid; or
- ii. the Power of Attorney is expressly made irrevocable for a period not exceeding one year - any act pursuant to the Power of Attorney done by the

² Boursot v. Savage [1866]L.R.2 Eq. 134 – Sir R. T. Kindersley V.C. (pg140) “...I cannot hesitate to conclude that the Deed of Assignment has no operation whatever.”

Donee in good faith will be valid notwithstanding the death, disability or bankruptcy of the Owner.

Given these complexities, Purchasers should be careful about completing transactions effected by Donees under Powers of Attorney and seek competent legal advice.

In any of these examples of fraudulent misrepresentation, the Purchaser, however, can be left out of pocket and will have to seek to recover any deposit or other sums paid to the fraudulent “Vendor” through the civil courts.

It must be noted here that fraudulent misrepresentation can be prosecuted as a criminal offence and do carry sentences of imprisonment however, this would not result in the recovery of sums so paid.

At the same time, fraudsters will continue to develop new methods to fleece persons of their hard-earned funds despite the associated risks and consequences especially where the average deposit and purchase price range in the tens of thousands, hundreds of thousands and millions of dollars. In their calculation, the possible reward outweighs the risk.

4. RISKS AND CONSEQUENCES

The risks to the fraudster, his victim the potential Purchaser, the true Owner and in some cases the Attorneys-at-Law involved are very significant.

An Owner’s property may be offered for sale completely without their knowledge. The Deed or Title Document purportedly transferring his property may remain valid until steps are taken to revoke it by the true Owner of the property³.

³ Kerr, *Fraud & Mistake* (7th Edition) pg. 7 –[A] contract or other transaction induced or tainted by fraud is not void, but only voidable at the election of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded

Although a Purchaser may pursue an action in civil law against the fraudster in question to recover sums paid to him, the true Owner may also be saddled with the additional expense of proceeding to Court to obtain:

- i. a declaration that the relevant Deed or Title Document is null and void; and
- ii. an order of the Court that the Deed or Title Document be expunged from the register.

Failing to do so may affect the true Owner's title to the property as the fraudulent Deed or Title Document will on its face, have effect until it is cancelled and expunged from the Register. Until then, the true Owner may experience difficulty in selling or mortgaging the property. The expenses incurred in addressing same may not be recoverable from the fraudster unless he is identified, successfully taken to Court and has the means to pay same.

The general principle in the award of damages by the Court is to place the injured party i.e. the victim of the fraud (the Purchaser) in the same position as if the contract or agreement was performed. The fraudulent "Vendor" would therefore, upon the Purchaser being able to prove same, be liable for any sums paid by the Purchaser plus interest thereon plus any loss of bargain i.e. gain in equity value of the property in question.

That being said, the ability of the fraudulent "Vendor" to pay any such award is again premised upon him having assets sufficient to satisfy the award. If the fraudulent "Vendor" does not, then it is highly improbable that one may be able to recover any sums at all.

It is therefore advisable to take all reasonable steps to avoid having to reach this position.

On the macro scale, it is noted that the rise in fraudulent activity has increased the risk, work and ultimately costs of relying upon the title to a property. This has increased the difficulty, cost and timeframe of conducting transactions and lending money upon the security of property in Trinidad and Tobago.

As I have pointed out, fraudulent misrepresentation is also a criminal offence and persons convicted of this offence can face serious penalties in the form of imprisonment and

monetary fines. However, that issue is outside the preview of this presentation since our focus at this Press Conference is to draw attention to the prevalence of fraud in real estate, the methods by which it is facilitated and steps that can be taken to mitigate against its occurrence.

5. RECOMMENDATIONS

In light of all of the foregoing it is recommended that property owners and prospective property owners exercise caution and take appropriate steps to reduce their risk of becoming a victim of such fraud. In that regard the following suggestions should be considered: -

a. Before Purchasing Property, Purchasers should engage in Preliminary Investigations and due diligence

- i. Before signing an Agreement for Sale of a property and paying a deposit towards the purchase price the Purchaser should ensure that the Vendor produces a copy of a Deed or Title Document showing his ownership of the property;
- ii. Purchasers and/or their real estate agents, valuation surveyors should visit the property being sold; where possible, speak to neighbours who may be able to give or verify information about the property and its ownership; whether it is occupied or not, preferably before signing the Agreement for Sale;
- iii. Lenders are encouraged to have their site inspectors engage in similar activity;
- iv. Real Estate Agents or owners should post signs advertising that the property is for sale and their contact information;
- v. Purchasers should retain a land surveyor to verify that the property they are planning to purchase is the same as described in the draft Agreement for Sale or Deed or Title Document except where they are personally aware of its location. This is especially relevant in the case of vacant land in rural areas.

b. Conduct Due Diligence about the “Vendor”

- i. “Google” the name of the “Vendor”;
- ii. Obtain or ensure that your Attorney-at-Law obtains from the “Vendor” at least two originals and copies of documents to verify the Vendor’s identity which are from a reliable and independent source⁴ e.g. ID, Driver’s Permit as well as Utility Bills, Banker’s Reference;
- iii. Scrutinize these documents to see if there is evidence they are not authentic –check their dates of issue – for example, these ought not to be a weekend or public holiday; also look for evidence that it may have been tampered with.
- iv. Request from the “Vendor” copies of any Deeds or Title Documents to the property and ensure that utility bills in his name;
- v. Ensure your Attorney-at-Law conducts thorough searches on the title to any property;
- vi. Visit the Vendor’s residential address to confirm it is a valid address and is known to persons in the community.
- vii. Compare the signatures of the Vendor in different documents.

c. Engage a Qualified and Competent Attorney-at-Law

- i. Retain an Attorney-at-Law who holds a valid practicing certificate from the Law Association and is registered with the Financial Intelligence Unit; Purchasers are reminded that they are entitled to seek out independent legal advice from their own Attorney-at-Law and not rely on solely on advice from the Vendor’s Attorney-at-Law;

d. Where applicable check the bona fides of the Real Estate Agent

- i. Check to see the Real Estate Agent is *bona fide* and registered with the Financial Intelligence Unit.

⁴ Financial Intelligence Unit Customer Due Diligence Guide No. 1 of 2011 and Financial Obligations Regulations 2010

e. Pay moneys into Escrow

- i. The deposit payable under an Agreement for Sale should be held in Escrow by an Attorney-at-Law who holds a valid practicing certificate and is registered with the Financial Intelligence Unit or other qualified and trusted stakeholder;

f. Visit the Property regularly

- i. Owners of property especially vacant land should visit their properties regularly:
 - a. to observe if there are any:
 - i. unauthorized persons are in occupation of the property;
 - ii. unauthorized signs advertising the sale of the property have been installed; and
 - b. to keep in touch with neighbours; sometimes you may learn that they have been informed that you sold the property;
- ii. Purchasers should visit the property being purchased to observe if there are any activities on it e.g. construction or renovations works being conducted which were not advised by the “Vendor” or if any third parties are occupying the property;

g. Ensure Deeds or Title Documents are executed in the presence of an independent witness

- i. Purchasers are entitled to require that the execution of the Deed of conveyance, lease or assignment be attested (witnessed) by someone they appoint at their own cost. This is a useful right to exercise particularly where the Vendor is a stranger. The appointed person can seek to verify the *bona fides* of the Vendor and his/her Attorney-at-Law. Attorneys-at-Law should advise their clients accordingly.

h. Avoid the execution of Deeds or Title Documents being conducted abroad

- i. When Deeds or Title Documents conveying property or granting Power of Attorney are executed abroad the oath of the witness proving the same must be sworn by him/her in the presence of and certified by one of the following officials:
 - a. a Trinidad and Tobago diplomatic agent or consular officer;
or
 - b. a Judge of a Court of record; or,
 - c. the Mayor of any City, Town or Borough; or,
 - d. a Notary Public;
- ii. The risk of imposters executing Deeds and Title Documents or certifying oaths is higher when a Deed or Title Document is executed abroad. In most cases, the Vendor, the witness and the ‘official’ will not be known to the Purchaser. Accordingly, it is advisable that Purchasers appoint someone to be present for the execution of the Deed or Title Document so that the witness can seek to verify the *bona fides* of the persons involved;
- iii. Where this is not possible the Purchaser should ask the Vendor to give the name, address, telephone and email address of the witness and the Notary Public or other official who would certify the oath of the person who witnessed the execution of the Deed or Title Document so that the Purchaser or his Attorney-at-Law can independently verify and contact them in an effort to confirm their identities;
- iv. The least risky option remains for the overseas Vendor to come to Trinidad and Tobago to complete the transaction and execute the Deed or Title Document.

5. RED FLAGS

Some other indicators or red flags that should put Purchasers and their advisers on notice of the probability that a “Vendor” may be acting fraudulently are⁵:

- a. An excessively obstructive or secretive “Vendor”;
- b. “Vendor” appears to have dealings with several Attorneys-at-Law for no apparent reason;
- c. “Vendor” is accompanied and watched;
- d. “Vendor” presents confusing and inconsistent details about the transaction;
- e. “Vendor” over-justifies or explains the transaction;
- f. “Vendor” is reluctant to meet.
- g. “Vendor” is nervous, not in keeping with the transaction.
- h. “Vendor” appears younger than expected;
- i. “Vendor” refuses or appears particularly reluctant, or delays to provide the information requested without reasonable explanation;
- j. “Vendor’s” area of residence is not consistent with other profile details, such as employment;
- k. “Vendor” provides an address that is vague or unusual – e.g., an accommodation agency, a professional registered office or a trading address;
- l. “Vendor’s” supporting documentation lacks important details such as address and phone number;
- m. The purchase price is much lower than the value of the property;
- n. The property is unoccupied;
- o. The property is not subject to a mortgage;
- p. The “Vendor” is pressing to close the sale quickly;
- q. There is a long period of time between the date on which stamp duty was paid on the Deed or Title Document and the date when same was registered;
- r. The Deed or Title Document was executed in escrow and released out of escrow several years thereafter;

⁵ The Trinidad and Tobago Anti-Money Laundering and Counter Financial Terrorism Guidelines, gives several indicators (which are applicable for identifying money launderers but many of these are equally relevant in identifying persons who use identity fraud to sell property they do not own).

- s. A Deed or Title Document relating to a Vendor's title bears a rubber stamp indorsement to denote the payment of or exemption from stamp duty. Note the Board of Inland Revenue stopped using rubber stamps in 2013.
- t. The Attorney-at-Law preparing the Deed or Title Document died before same was registered;
- u. The location of the Attorney-at-Law's office is extremely far from the address of the Vendor e.g. a Vendor in Arima retains an Attorney-at-Law in La Brea to prepare the Deed or Title Document.

6. CONCLUSION

The Law Association of Trinidad and Tobago urges persons who own property or intend to purchase property to recognise the very real possibility of Fraud and Identity Theft in relation to Real Estate Transactions and therefore exercise great caution when so engaged.

We trust that we have been able to provide some relevant information and guidance to navigate these hazardous waters when conducting property transactions.