



RealTalk® about Real Estate

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Topic: Mortgage Fraud - Duties of a Lawyer (*Law Society of Alberta v Souster*, 2016 ABLS 1)

Mortgage fraud schemes which were exposed after the financial crisis in 2008 are still making the news. Recently, a lawyer had to answer to the Law Society of Alberta for his part in some of these transactions, most of which fell into the “skip transfer” variety. The written decision of the Law Society reminds us that as lawyers we are responsible for advising our clients (including the lenders) of things like:

- whether the property had recently been purchased at a lower price
- whether the mortgage proceeds were used to fund the intervening purchase (*i.e.* the skip transfer)
- that the mortgage proceeds were significantly greater than the original purchase price
- that the unregistered vendors (*i.e.* the skip buyer/seller) were making money on the transaction and that the lawyer was forwarding excess mortgage proceeds to them.

Furthermore, in most cases:

- the lawyer did not meet with the parties to sign documents – that was left to legal assistants
- The eventual buyers did not receive advice or explanations relating to the documents they signed and were rushed through the process
- Personal liability for insured mortgages was not explained to the buyers

Ultimately the lawyer received a 4-month suspension and was ordered to pay the costs of the hearing. There were several mitigating factors which helped to reduce the penalty.

At Admiral Law we continue to focus on service so as to protect the interests of all our clients, including lenders.

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through respectful and effective representation*