

Fraud and Deception in Real Estate Transactions

Two co-founders of Secure Legal Title, Sean Dalton (Chairman) and Jean-Bernard Wurm (Managing Director) argue that while fraud is rare in institutional transactions, the amounts at risk are high, and legal title coverage insurance effectively mitigates the risk.

Robert McLean



Sean Dalton,
Co-Founder & Chairman



Jean-Bernard Wurm,
Co-Founder & Managing Director

Q1: How often have you discovered fraud during due diligence?

Fraud and deception are time-honored practices that can occur at any stage of the transaction and financing process. We encounter it infrequently with institutional or corporate entities, although we may see it in the historic chain of title. We are, however, particularly cautious when dealing with individual sellers.

Q2: What are the principal types of fraud?

There are four main types: “**Title Fraud**”, when ownership documents are changed or forged, allowing a fraudster to claim an ownership interest in order to illegally sell or refinance the property. Second is “**Mortgage Fraud**”, where a mortgage is obtained from a lender under false pretenses. Third, “**Value Fraud**”, when a lender, through concealment or intentional misrepresentation of the property’s attributes, is led to believe a property is worth more than it really is. And, finally, “**Permit Fraud**”, where bribes are paid to local authorities to obtain a change in zoning or a building permit. There are well-documented cases, not only in Romania on the Black Sea, but also in Cannes where three former mayors were jailed for granting permits against payments. Since we ensure the validity of permits, we could be liable for those obtained fraudulently.

Q3: How does title insurance deal with the risk of fraud?

If lawyers or notaries uncover a fraud

during due diligence, we may or may not exclude it from the policy. However, title insurance will always protect the assured, be they lenders or buyers, victims of a fraud discovered after we issued the policy. During the claim adjustment process, we may pursue the fraudulent party on behalf of clients.

Q4: What is the role of the notary?

Notaries play a key role. In most jurisdictions, they require individuals to appear in person with full identification, a major fraud-prevention technique. But since the essence of fraud or deception is to go undetected, there are, perhaps, cases of fraud among our policies which we don’t yet know of and, for which, we may have to indemnify the assured.

Q5: Are there jurisdictions you consider riskier than others?

Surprisingly, most cases of deception in title insurance have occurred in the UK, where the majority of transactions are residential and thus more prone to fraud. We’ve been very impressed by the high standard of legal work, governance and jurisprudence in CEE, especially in Poland and Romania, although they have instances of fraudulent transactions as well.

Post-communist countries present special risks since we also insure the validity of title to shares in a real estate company. The poor state of documentation in the former communist world created vast opportunities for fraud. In addition, people were just not very expert at documenting transactions. Communist



enterprises were converted into stock companies, with shares supposedly given to the employees. Often, these companies were re-privatized only because of the properties they owned, with the buyer having no interest in continuing the activity of the company, although otherwise claimed. This was a deceptive excuse to take control of the land and led to many property sales. The fraudulent re-privatization was done in collusion with the city or public authorities. It went against the interest of the state, clearly in breach of the privatization agreement and ignored investment requirements.

Q6: What are some categories / examples of fraud?

Falsified Powers of Attorney:

There are known cases of improper or forged powers of attorney where deeds were granted for properties privatized after 1990 in former communist countries.

Dishonest cadastral experts:

We had a case where our lawyers advised us not to rely on a cadastral expert who had been convicted of knowingly falsifying certain data, such as boundaries, matters of overlapping, accesses to roads.

False claims: A recent example also involved criminal activity. By physically occupying a beachfront property owned by our client, the owner of an inland property, with a much lower value, claimed that the property boundaries were incorrect.

Money laundering can be an issue for title insurers since attempts to channel illegal funds through real estate transactions are quite common.

In a recent case in Madrid, the ultimate beneficiary, through a chain of companies, was on the sanction lists of the EU and US. Spanish authorities would have been entitled to reclaim the property and, if we had insured the validity of the mortgage, we would have had to indemnify the bank. This same risk can occur in Poland, Romania or any EU country.

Mortgage risk: Two loans put on the same property in a commercial transaction.

False title: We reviewed a fraud case in Poland where a cooperative sold land that did not belong to them. They were entitled to use it as agricultural land but, after 1990, they decided to sell it. This was pure fraud as the land was actually owned by the municipality. Currently, the property is unsalable and uninsurable.

“Claim trading”: In a re-privatization process where a buyer acquired property claims from some of the legitimate beneficiaries, subsequently obtained a re-privatization decision, and then sold the property for a multiple of what had been paid to the previous individual owners. This process became fraudulent when it was combined with false Powers of Attorney or appointment of a guardian/trustee for dead persons, and complicity at the municipal level.

Collusion: We encountered an unusual case in Romania of a suspicious concentration of “revolutionary heroes” in a single location, who had been entitled to receive public land. This would have clearly been impossible without collusion with elected officials.

Q7: What are some red flags?

We normally deal with institutional investors, banks or corporations with strong governance, so fraud is generally not a major concern. However, we have to be particularly cautious with individual sellers, or multiple sellers of adjacent land plots (a common occurrence in rural areas), even if we’re insuring a major corporation which is buying the land.

Two other red flags include ownership through an offshore tax haven, which always raises questions of legitimacy. Or, due diligence, where lawyers report that they are working on documents which they could not verify or they have drawn attention to missing documents.



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