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Dear Ms. Leung,

We are writing in response to the Financial Services Regulatory Authority of Ontario ("FSRA")'s consultation process on its proposed guidance for FSRA-licensed mortgage brokers, agents, brokerages and administrators on the deterrence of deceptive and fraudulent practices in the mortgage brokering sector.

A Title Insurer's Perspective

As a title insurer that is licensed to operate in Ontario, we are in a unique position to comment on one type of mortgage fraud that results in significant title insurance claims. As will be elaborated in more detail below, this type of mortgage fraud is often referred to as "title fraud" or "mortgage title fraud" and occurs when an imposter obtains a mortgage loan registered on the property owned by the person being impersonated.

FSRA will no doubt be aware of the media attention recently regarding this form of crime. While it may seem that this issue is new due to this media attention, it is, in fact, something that the title insurance industry has been dealing with for at least two decades. However, in the last few years, it has become more prevalent. There are various theories as to why this has occurred, including the lucrative nature of this crime and relative ease in which it may be committed; the increased use of remote signings; the sophistication of the organized criminal element often involved; and the ease in which forged identification can be obtained. Private lenders are particularly susceptible to this crime. This may be attributed to the fact that such lenders are often equity focused and less concerned with due diligence regarding the borrower. Their loans frequently are interest only - with all interest prepaid upfront. When no monthly mortgage payments are required, the criminal can easily hide the fraud since the lender only becomes aware of the fraud at the end of the term (typically 6-18 months) when the borrower does not pay back the mortgage and its attempts to enforce the mortgage are met with the true owner claiming they were impersonated. Criminals are willing to pay high interest, fees, and commissions because they have no intention of ever paying any of the money back.

The scope of this problem is large – tens of millions over the last five years alone. Title insurers have instituted many fraud mitigation efforts, including asking questions to identify problematic transactions and scrutinizing identification, including using technology. However, title insurers are the very last party to be brought into a transaction. Mortgage brokers/agents and lenders are the first parties to be involved with a transaction and the fraud mitigation efforts they implement can materially reduce the amount of mortgage title fraud. It appears that in many cases, mortgage brokers/agents and lenders are simply relying on the lawyers involved in the transaction to confirm identity. It's important to note that lawyers may be less equipped to identify an imposter than the broker or lender as the lawyer's involvement is focused on the legal aspects of closing a transaction and they have no better skills at identifying forged identification than a broker/agent or lender. Given the disparity in compensation between what a lawyer charges for the typical mortgage residential mortgage transaction, in the range of $400-$1,000, compared to broker/agent commissions and lender interest/fees, it would seem that brokers/agents and lenders should assume significant responsibility for the verifying of the identity of the parties for whom they seek to arrange or provide mortgage financing.

A Detailed Look at How Mortgage Title Fraud is Perpetrated

The typical mortgage title fraud starts with finding a property to target. What makes a "good target" is a property that is mortgage free, or with a large amount of equity, for the obvious reason that this means the amount of money stolen can be significant because lenders are willing to provide a large mortgage loan. Additionally, a rental property is attractive because the fraudster may rent it in order to have possession of the property to allow appraisers and other parties to view the property. These characteristics often lead to the owners of these properties being elderly (having paid off their mortgage(s)) or investors, including many from outside of Canada.

Once a property is targeted, details of the property and the owner(s) are gathered by the fraudsters – much of which can be gathered from a title search or from documents mailed to the property (sometimes stolen from mailboxes). This allows the fraudster to create forged identification and other documents that will be used in commission of their crime. Where the fraudster has rented the property, there may be no need to forge utility and tax bills as they may be mailed to the property.

The fraudster will approach a mortgage broker/agent for a loan. The fraudster may use tactics such as presenting an urgency to obtain the mortgage and offering to pay larger fees or commissions or a promise of repeat business. Excuses for not being able to meet in person are provided. Communication is by email, popular chat services, or cell phone.

Once the mortgage loan is approved, the fraudster may or may not meet in person with the lawyer acting for them. The fraudster will often request that the mortgage proceeds be sent to third parties (and not made payable into the name of the person they are impersonating). Reasons given for such a request include that the third parties are creditors or that the borrower is out of the country and needs a "friend" to assist with handling the money. Due to requirements of title insurers that mortgage proceeds not be made payable to "unpermitted" parties – i.e., to parties other than in the name of the registered title holders, prior registered encumbrances, and certain other permitted parties such as the municipality to pay taxes – this occurs less frequently now. As a result, fraudsters are now opening bank accounts in the name of the person they are impersonating so that they can negotiate a cheque made payable to the registered owner of the property.

As the above indicates, these fraudsters are sophisticated and nimble – they change the manner in which they commit this type of crime to avoid mitigation efforts. However, regardless of the specific permutation, fundamental to this form of mortgage title fraud is the impersonation. As a result, how the identity of a borrower is verified is the key to providing a solution to this problem of mortgage title fraud. The traditional manner of verifying identity – obtaining two pieces of identification; looking at them; comparing the picture to the person presenting them; and copying or scanning them for record keeping – is clearly not sufficient to prevent this crime.

Proposed Guidance – Will it Materially Reduce Mortgage Title Fraud?

The proposed guidance refers to the following for identification verification:

Verify identification

- *Verify identification through multiple reliable sources (e.g., request more than one piece of identification, consider multi-factor authentication (MFA)).*
- *The minimum requirement is one piece of valid government-issued photo identification and one piece of secondary identification.*

- *Compare legal names on ID to other documents that connect the borrower to the property, such as property tax and/or utility bills.*
- *Ensure the correct form of identification is used. Do not accept Ontario health cards or Social Insurance Number (SIN) cards.*
- *Check if the identification is valid. If the identification is expired or is being used by someone other than the person whose name is on it, it is not valid. If it is not valid, ask for valid identification.*
- *Verify Ontario driver's licences on the Ministry of Transportation's [Driver's Licence Check]() website.*

In our view, the above is reflective of a standard that will not materially mitigate against the risk of impersonation, unless a technology that uses a reliable form of multi-factor authentication ("MFA") is mandated. The reasons the above is, in our view, insufficient absent the reliable MFA technology, are:

- Fraudsters know the name, address, and date of birth of the person they are impersonating – it is included in all transfer deeds and this is public information.
- Thus, comparing information given by a borrower to the credit report information is of little value as this information is known to the imposter.
- Fraudsters are able to create very good forged identification – that most parties who are not specially trained to examine are unable to identify as forged. Some identification is actually issued by the Ministry and, therefore, is completely accurate in terms of characteristics but simply has the wrong picture for the person named on it.
- Fraudsters are aware of the need to have secondary documents – like utility bills and can easily steal them or forge them. The "real" person does have the dual source information needed. Unfortunately, the fraudster may take advantage of this fact.
- The Ontario driver licence test only advises if the identification number is valid, but it does not check if the number belongs to the person pictured on the identification. Fraudsters simply use a valid number (belonging to another person) when they create their identification.
- Fraudsters are aware the identification must not be expired (and thus, put a proper date on it) and are not known to use forged health cards or other identification that is not acceptable in an attempt to commit a mortgage title fraud.

Our Recommendations

1- Reflect the Existence of Mortgage Title Fraud More Prominently in the Guidance

The Guidance refers to "Forms of mortgage fraud" as outlined below.

Forms of mortgage fraud
Mortgage fraud takes many forms. It may include the intentional misstatement, misrepresentation, or omission of information to obtain a mortgage. It can result in:

- *borrowers paying higher fees, inflated interest rates, or obtaining an unaffordable mortgage (which may lead to defaulting on mortgage payments).*
- *lenders losing money if borrowers cannot repay a mortgage that was obtained based on inaccurate or fraudulent information given to the lender.*
- *lenders facing added costs of collections management, tax arrears or legal costs related to power of sale or foreclosure proceedings, etc. Private lenders who are individuals may be less likely to manage these costs if they are administering the mortgage themselves (e.g., they may not have the infrastructure).*

There is no mention in the above of one of the costliest forms of fraud – mortgage title fraud – where a borrower is impersonated, and a fraudulent mortgage is placed on the impersonated owner's property title. The only reference is at the end of the Motivators of Mortgage Fraud section. We, therefore, recommend that the Guidance specifically reference this form of fraud as the mortgage brokering sector is often the conduit for the commission of this type of fraud. We suggest language such as: *criminals stealing the identity of a property owner in order to fraudulently obtain mortgage financing resulting in an invalid and unenforceable mortgage for the lender.*

2- Identify Verification – Enhance the Guidance and Make this a Requirement

In keeping with FSRA's self-described duties to "contribute to public confidence in the mortgage brokering sector" and to "protect the rights and interests of consumers" we recommend that FSRA modify its guidance regarding identity verification to <u>require</u> (not simply recommend or include this as one of a variety of options) <u>the use of an identity verification technology that uses a reliable form of multi-factor authentication.</u> With respect to "reliability" that technology should (a) satisfy the requirements of the Government Issued ID Method, the Credit File Method AND the Dual Source Method. For the reasons mentioned above, using only one of these methods will not materially reduce impersonation-based fraud. Ideally the solution will provide information that helps assess fraud risk – such as whether the person has been reported deceased. Absent this enhanced identity verification, mortgage brokers, agents and administrators, will simply be continuing with the status quo which has proven to be ineffective in reducing mortgage title fraud. This form of fraud is not victimless – innocent homeowners are faced with lenders trying to sell their homes for non-payment of mortgages for which they have no knowledge. A reasonable expectation is for those parties that benefit most from mortgage lending to be responsible for adequate efforts to prevent mortgage title fraud. Such efforts should reflect the reality of how fraudsters operate and take advantage of technologies that can do a much better job at identity verification than the existing methods. In this manner, FSRA will be a leader in the efforts to ensure consumers are much better protected from this form of criminal activity.

3- Require Mandatory Training in Identifying Suspicious Transactions

The Guidance indicates "This Guidance requires the sector to conduct business in a manner that does not facilitate dishonesty, fraud, crime or illegal conduct."

In our view, to meet this requirement, proper mandatory annual training is necessary. This will ensure that all licensed mortgage brokers, agents, brokerages and administrators understand their responsibilities; are aware of the best practices for verifying identity and other information; and are kept up to date with the most current forms of fraud. As well, it should be made clear that mortgage brokers, agents, brokerages and administrators have a duty to refrain from proceeding with a suspicious transaction.

A variety of industry participants currently offer training on how to prevent various forms of fraud and as such it should not be difficult to create a comprehensive training program.

4- Enhance the Red Flags of Fraud

While the included list contains valuable information, it is missing certain key indicators such as:

- The profile of the borrower does not conform with the details of the transaction – for example, a borrower with a strong credit score, good employment, and lots of equity, is obtaining a private mortgage loan at an interest rate considerably higher than what they could qualify for at an institutional lender.
- The borrower indicates that they will be requesting the mortgage proceeds to be sent to third parties rather than to themselves.
- A third party appears to be providing direction to the borrower.
- The borrower is unable or unwilling to answer basic questions about the property on which the mortgage is to be registered.

- The lawyer providing independent legal advice/representation is unable to speak the same language as the borrower.

We would suggest additional guidance be provided when dealing with elderly clients as they are often targeted.

We thank you for this opportunity to provide our feedback and recommendations during this consultation period. It is our hope that by working together, all stakeholders in the mortgage industry may further enhance consumer protection and consumer confidence. We would be pleased to provide additional information should that be of assistance.

Best Regards,

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