

Real Estate Fraud and Scams: Identification, Avoidance, and Prevention

**Research project for Emerging Issues/Advance Topics Course
Master of Forensic Accounting Program
University of Toronto**

**Prepared by So-Fung Shu
June 9, 2022
For Professor Leonard Brooks**

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Acknowledgement

The author wishes to acknowledge suggestions made by Kartik Manohar, MFAcc, CAMS, CISA, FIS, during the research for this report.

Summary

In 2022, the real estate and rental and leasing industry made up 13% of Canadian GDP as the largest industry in Canada. Bank of Canada statistics show that the new housing price index have increased by 12% from 2020 to 2021. As a suitable country for investors and with housing prices on the rise, total residential housing investment in Canada reached \$248.7 billion in 2021.

Fraud is committed through the use of deception for illegal gain. It usually involves a breach of trust and concealment of the true nature of the activities. Traditionally, criminals were attracted to real estate as a favourable vehicle for money laundering. Now, with housing prices at record highs and a continuous growing real estate market, criminals are even more attracted to the real estate industry. In 2022, the Canadian Anti-Fraud Centre received fraud and cybercrime reports totaling \$530 million in victim losses, almost a 40% increase from 2021. While we do not have statistics on the fraud amounts related to real estate, we can see that fraud is on the rise and everyone should be more alert.

There are four types of real estate fraud this paper will explore:

- Foreclosure Fraud;
- Title Fraud;
- Mortgage Fraud;
- Pre-Construction Fraud.

Criminals have evolved and schemed to hide these frauds beneath different disguises. Technology has also assisted in making them more successful through the ease of looking up property ownership and fabricating documents or fake IDs. IFAs play a great role in investigating these fraudulent activities and putting criminals behind bars.

Authorities need to continue to amend current rules and regulations to respond to criminal advancements and protect law abiding citizens. Professional governing bodies also need to respond to current situations by revising their guidelines and emphasizing the importance of ethical conduct to their members.

While fraud will never disappear, it is the duty of everyone to stay alert and exert caution so we can avoid falling victim to fraud. Thus, we must all educate ourselves to identify, avoid, and prevent real estate fraud in order to protect ourselves and our loved ones.

Introduction

In 2022, a CTV news article title caught my attention, “Ottawa senior says he lost life savings investing with company now facing fraud charges.”¹ Intrigued, I started researching this matter in more depth. Fortress Real Developments (Fortress) was attracting investor funds by allowing them to participate in real estate development projects through a syndicate mortgage. Syndicated mortgages involve two or more investors (private funds) investing in a real estate development project in their early stages, when financing is difficult to obtain. These projects include commercial and large-scale residential real estate developments. “Canada’s syndicated mortgage market grew rapidly amid a general real estate boom, ballooning to \$6 billion in 2016. Many are solid investments that are discharged without incident.”² However, this was not the case with Fortress. Many investor complaints were made to the RCMP, claiming Fortress did not disclose the various risks, the investment terms were not clear as to how much commission is paid, who has priority returns, and some investments were put into much riskier projects than the investors were comfortable with. “In the past decade, more than 20,000 retail investors have put as much as \$1.5 billion into syndicated mortgages, mostly in Ontario, according to regulatory sources. Roughly 90 per cent of those investments, the sources said, have ended in a loss or are at risk of doing so, and Fortress

¹ Fleming, Tyler, “Ottawa senior says he lost life savings investing with company now facing fraud charges,” *CTV*, July 6, 2022, 5:16pm, <https://ottawa.ctvnews.ca/ottawa-senior-says-he-lost-life-savings-investing-with-company-now-facing-fraud-charges-1.5977015> Accessed on May 8, 2023.

² Shecter, Barbara, “Fortress Real Developments founders charged with fraud in connection with syndicated mortgage probe,” *Financial Post*, June, 22, 2022, <https://financialpost.com/real-estate/mortgages/fortress-real-developments-founders-charged-with-fraud-in-connection-with-syndicated-mortgage-probe> Accessed on May 8, 2023.

projects make up more than half of the investments.”³ The RCMP launched an investigation into Fortress in 2016, which led to the two founders of Fortress being charged with fraud in 2022. Unhappy investors who lost money with Fortress also pressured regulators to start an investigation. The Financial Services Commission of Ontario (FSCO) sanctioned several brokers and four brokerages that were involved in distributing Fortress syndicated mortgage investments. A \$1.1 million settlement was reached with many brokers losing their license and Fortress was levied a \$250,000 administrative penalty.⁴

After reading up on this case, I felt the need to research more about real estate and real estate fraud. Is real estate no longer the safe haven to save for my retirement like I was taught growing up? If I still want to purchase properties as an investment, how can I steer myself clear of fraudsters?

³ Scuffham, Matt, “Ontario watchdog revokes licence of Fortress’ lead mortgage broker BDMC,” *Financial Post*, February 2, 2018, <https://financialpost.com/real-estate/mortgages/update-1-ontario-regulator-revokes-mortgage-broker-bdmc-license-after-probe/wcm/770cad7c-1349-48b5-aafe-a17067a88688/amp/> Accessed on May 8, 2023.

⁴ *Ibid*, 2.

What is Real Estate

The Canada Revenue Agency defines real estate as property that cannot be moved, including:

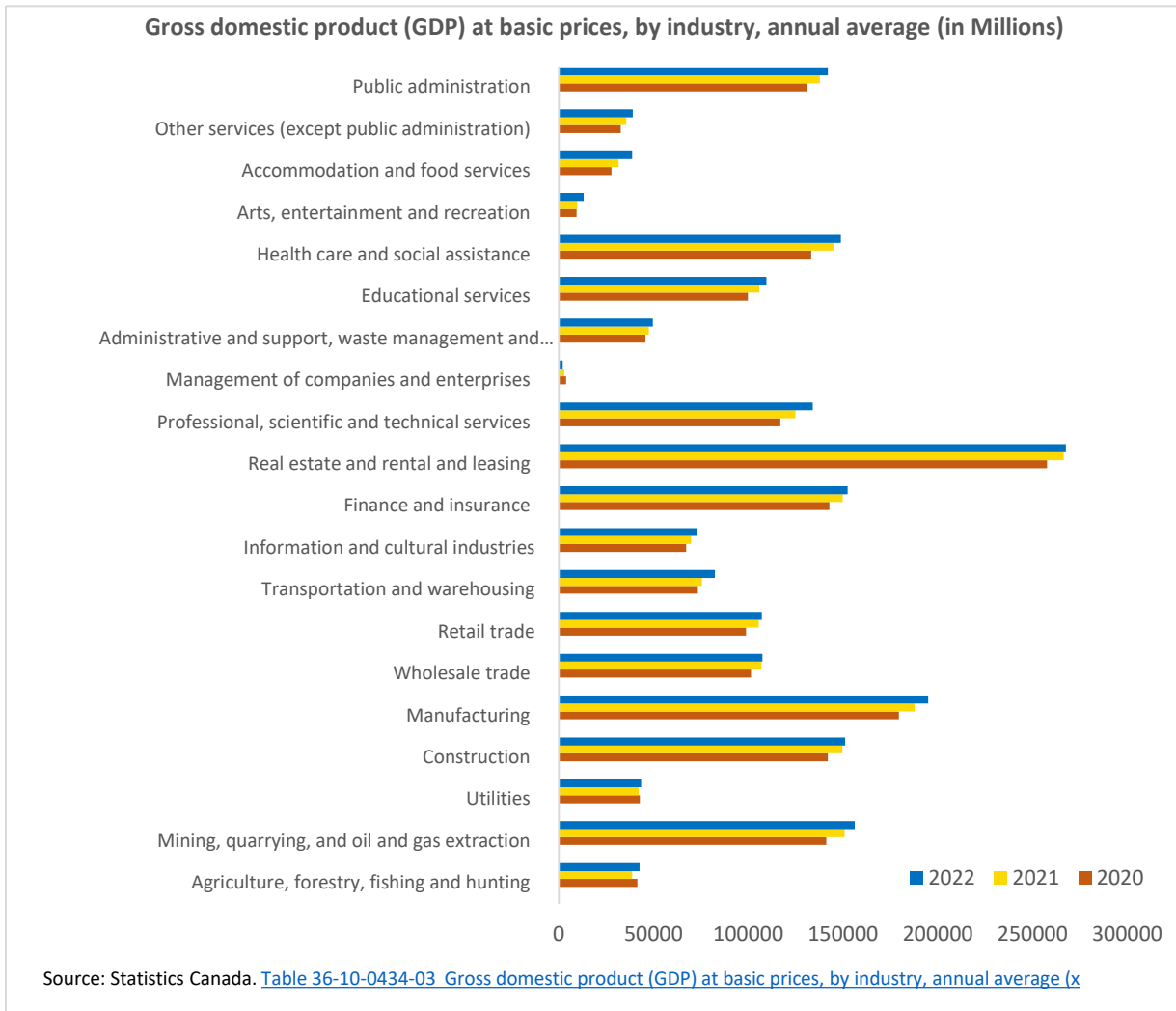
- vacant land;
- rental property (both land and building);
- farm property, including both land and building (other than qualified farm or fishing property);
- commercial and industrial land and building.⁵

Different from any other asset, such as equities, bonds, jewelry, artwork...etc., real estate properties can be purchased for personal use, business use, or as an investment. Like any other investment vehicle, an investment property is purchased with the intention of making a profit, whether through rentals to produce income or through land banking or speculating to resell for capital gains. These properties can include condominium towers, residential housing such as single-family homes or multi-family residential housing, offices, industrial sites, retail space, parking lots, or agricultural land.

⁵ Canada Revenue Agency, "Real Estate," January 24, 2023, <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains/completing-schedule-3/real-estate-depreciable-property-other-properties/real-estate.html> Accessed May 8 ,2023.

An introduction to Canada’s real estate market

Statistics Canada publications show that Canadian GDP attributed to the production of housing assets totaled \$141.5 billion in 2021, up from \$110.3 billion in 2020. There were more than 1.3 million jobs associated with the production of housing assets in 2021.⁶



In 2022, the real estate and rental and leasing industry was worth \$267,586 (in 2012 chained dollars, see Appendix 1), making up 13% of Canadian GDP as the largest industry

⁶ Statistics Canada, “Housing economic account, 1961 to 2021,” January 16, 2023, <https://www150.statcan.gc.ca/n1/daily-quotidien/230116/dq230116d-eng.htm> Accessed on May 8, 2023.

in Canada. This information implies that if anything catastrophic were ever to happen to the Canadian real estate and rental and leasing industry, as the largest GDP contributor, its impact would be far and wide, which is why this paper decided to focus on Canadian real estate alone.

Supply and Demand

To better understand the housing market in Canada, we should first look at its fundamentals, supply and demand. A market forecast released by Canadian Real Estate Association (CREA) on April 14, 2023, talks about the worsening of Canada's housing supply issue in the existing home market while new listings are currently at 20-year lows.⁷ In a housing market outlook released by Canada Mortgage and Housing Corporation (CMHC) in spring 2023, it projected that new constructions will continue to contract in 2023 due to a shortage of labour, elevated cost of material and higher project financing costs.⁸ Toronto Regional Real Estate Board (TRREB) president Paul Baron also mentioned that the issue with real estate now is not the demand for housing, but the ability to meet this demand with adequate supply.⁹ These forecasts suggest that volume is not the contributing factor for the increase in value in the real estate sector, but rather price. This signals trouble for the Canadian housing market, as like any other asset, when prices skyrocket without proper foundation, a correction is imminent.

⁷ Canadian Real Estate Association, CREA Updates resale market forecast, April 14, 2023, <https://www.crea.ca/housing-market-stats/canadian-housing-market-stats/quarterly-forecasts/> Accessed on May 12, 2023.

⁸ Canadian Mortgage and Housing Corporation, (n.d.) "2023 Spring Housing Market Outlook – Demand, Supply & Prices," <https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/market-reports/housing-market/housing-market-outlook> Accessed on May 12, 2023.

⁹ Toronto Regional Real Estate Board, (n.d.) Market Watch, "GTA Realtors Release May 2023 Stats," <https://trreb.ca/index.php/market-news/market-watch>, Accessed on May 12, 2023.

Immigration policy

CREA's monthly stats report states that there were 267,630 people who have migrated to Canada in the fourth quarter of 2022, an increase of 222.7% from the same period in 2021.¹⁰ Already grappling with a residential housing supply issue, it is not clear where these new immigrants will find housing. To add salt to injury, the Trudeau government announced an immigration target of 500,000 newcomers a year. Bay Street Economist David Rosenberg commented "The problem is that the country does not have the adequate supply, especially when it comes to residential real estate, to absorb this sort of immigration-led population growth without exerting further strains on the stretched housing market."¹¹ Irresponsible immigration policies are making our housing crisis worse by creating more demand and continuing to drive house prices higher.

Affordability index vs housing price increase

From the chart provided by Bank of Canada below, we can see that the new housing price index¹² have increased by 12% from 2020 to 2021, suggesting housing prices are on the rise. Housing affordability¹³ has also risen from 0.35 to 0.45, which signifies that

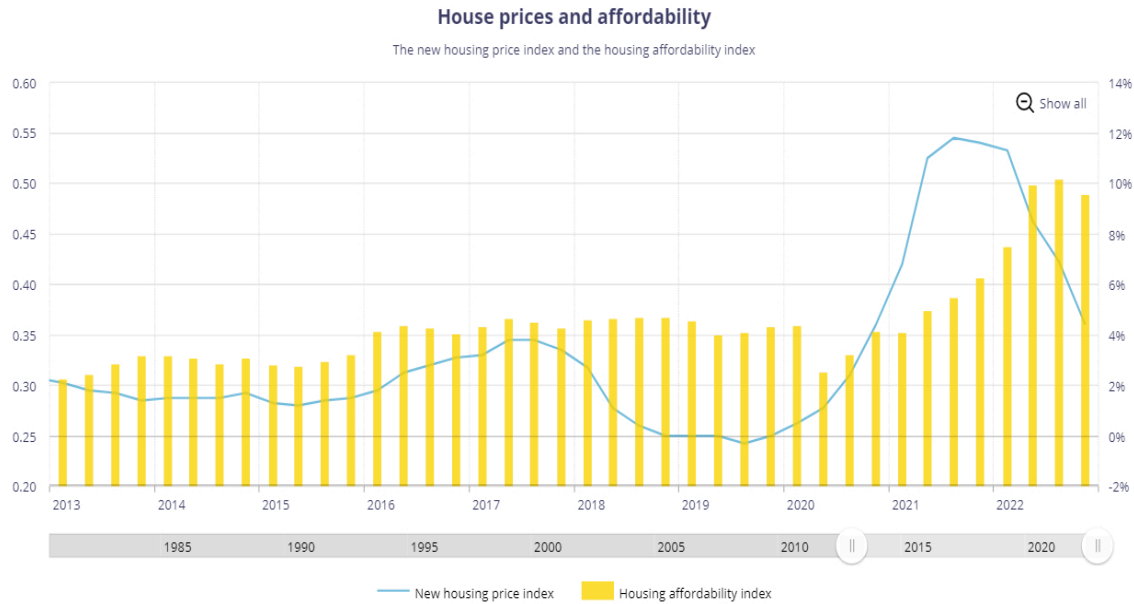
¹⁰The Canadian Real Estate Association, (n.d.) Monthly Stats Report, Accessed on May 12, 2023 from <https://stats.crea.ca/en-CA/stats/3Q2HzUYU4wEwPsBtNYIQEu/>.

¹¹ Bharti, Bianca, "Trudeau's immigration policy worsening housing affordability crisis: Rosenberg," *Financial Post*, May 3, 2023, <https://financialpost.com/news/economy/trudeau-immigration-worsen-affordable-house-crisis-rosenberg#:~:text=Ottawa's%20lofty%20immigration%20targets%20are,Bay%20Street%20economist%20David%20Rosenberg> Accessed on May 9, 2023.

¹²The New Housing Price Index is a monthly series that measures changes over time in the contractors' selling prices of new residential houses, where detailed specifications pertaining to each house remain the same between two consecutive periods.

¹³The housing affordability index is meant to measure the share of disposable income that a representative household would put toward housing-related expenses. The measure is a ratio of housing-related costs (mortgage payments and utility fees) to average household disposable income. The higher the ratio, the more difficult it is to afford a home.

households are spending more of their disposable income on housing related costs.¹⁴ This is not a good sign for the economy as consumers will have less disposable income to allocate for other needs.



A study done by the National Bank of Canada also found a surge in housing affordability. It worsened by 10.4 points in the second quarter of 2022 in Canada, the worst quarterly deterioration in 41 years.¹⁵ TRREB CEO John DiMichele stated, “Lack of affordability in the GTA ownership and rental housing markets has been well-documented.”¹⁶ Chief Economist of CMHC, Bob Dugan, also stated that “Homeownership will be less affordable because of higher mortgage rates and still-elevated price levels. Rental

¹⁴ Bank of Canada, (n.d.) “Real Estate Market: Definitions, Graphs and Data,” Accessed on May 8, 2023 from <https://www.bankofcanada.ca/rates/indicators/capacity-and-inflation-pressures/real-estate-market-definitions/>

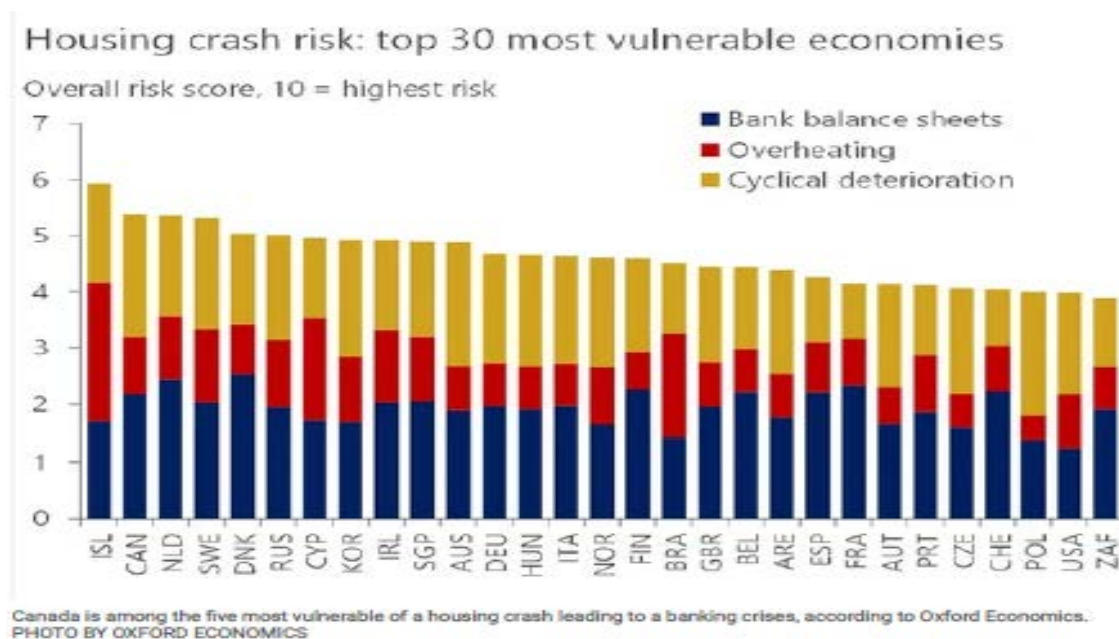
¹⁵Dahms, Kyle, Daren King and Alexandra Ducharme, “The worst deterioration in 41 years in Q2 2022,” *National Bank of Canada*, August 16, 2022, 1.

¹⁶ Ibid, 9.

affordability will also likely decline as demand outpaces supply.”¹⁷ All these findings point to trouble brewing in the Canadian housing market.

Housing Bubble

A housing bubble occurs when speculation or demand pushes house prices too high to a point unsupported by underlying economics. Oxford economics, through measuring 35 macroeconomic and financial indicators with a banking sector risk tool, finds that 16 major economies have an 18-20 percent chance of suffering a housing crisis in the near future. As shown in the chart below, Canada is among the five most vulnerable nations.¹⁸



The UBS Global Real Estate Bubble Index, a report that assigns an index score to major world cities based on the risk of a market collapse, has also cautioned that Toronto has the highest housing bubble risk in the world while Vancouver is the second most at-risk

¹⁷ Ibid, 8.

¹⁸Chart by Oxford Economics cited in Heaven, 2023.

city in North America.¹⁹ With housing prices skyrocketing and the possibility of a housing crash, fraud prevention in the real estate industry becomes more important than ever.

Canada's investment environment

Before making an investment, it is of utmost importance for investors to understand the country they are about to make the investments in. The last thing an investor wants is to not be able to extract their funds or have to pay a lot of taxes, thus eroding their gain. The World Development Report 2005 published by the World Bank listed several factors that facilitate a good investment climate:

- Stability and security
- Regulations and taxes
- Finance, infrastructure, and labor market²⁰

A study conducted by The World Bank ranks Canada as 35th in political stability for the period of 1996-2021.²¹ Canada, along with two other countries lead the G20 for fiscal soundness.²² Canada's combined federal-provincial statutory corporate income tax rate of 26.2% in 2021, is one of the lowest in the G7.²³ Canada's banking system is ranked

¹⁹Alghoul, Fares, "Toronto now has the highest housing bubble risk in the world, international report finds," Toronto Star, October 12, 2022, <https://www.thestar.com/business/2022/10/12/toronto-now-has-the-highest-housing-bubble-risk-in-the-world-international-report-finds.html> Accessed on May 4, 2023.

²⁰The World Bank, (n.d.) "World Development Report 2005," Accessed on May 12, 2023 from <https://openknowledge.worldbank.org/server/api/core/bitstreams/a3923346-4bc1-5ef0-904c-75601eae4994/content>

²¹The Global Economy.com, (n.d.) "Political stability - Country rankings," Accessed on May 30, 2023 from [https://www.theglobaleconomy.com/rankings/wb_political_stability/accessed/#:~:text=Political%20stabil ity%20index%20\(%2D2.5,available%20from%201996%20to%202021.](https://www.theglobaleconomy.com/rankings/wb_political_stability/accessed/#:~:text=Political%20stabil ity%20index%20(%2D2.5,available%20from%201996%20to%202021.)

²²S&P Global, April 2021, as cited in Government of Canada, 2022.

²³OECD Tax Database, September 2021, as cited in Government of Canada, 2022.

second in the G20 and sixth among 141 countries.²⁴ Canada has the most educated talent pool in the OECD, where 60% of labour force between the ages of 25 and 64 has received tertiary level education.²⁵ These facts demonstrate that Canada is stable, secure, country with a low tax rate, a good financial infrastructure, and a dependable labour force, a suitable country for investors to invest in.

Investing in Canadian Real Estate

In 2006, worldwide real estate investments were \$900 billion, where \$283 billion of that was invested in North and South America.²⁶ While the majority of the investors at that time invested in American real estate, being the neighbor to the north, Canadian real estate slowly began to see more action as well.

Over the past 50 years, the inflation-adjusted returns for real estate properties in Canada mirrored that of equities, but with much less volatility than the stock markets. In addition, as income is a big portion of real estate's total return, capital employed by investors for these investments decreased over time and further reduced the risk bore by investors.²⁷ Being a suitable country for investor to make investments, coupled with the fact that investors can obtain a reasonable return on capital with lesser risk than investing in other assets, Canadian real estate became a very popular investment vehicle. Total residential

²⁴ World Economic Forum, Global Competitiveness Index 2019-2020, as cited in Government of Canada, 2022.

²⁵ OECD, Education at a Glance, September 2021, as cited in Government of Canada, 2022.

²⁶ Tellechea, Albert F., "Economic crimes in the capital markets," *Journal of Financial Crime*, Vol. 15 No. 2, (2008): 214-222.

²⁷ McCullough, Michael, "Buying an investment property in Canada: Risks, taxes, regulations and lower-cost alternatives," January 19, 2023, https://www.theglobeandmail.com/investing/article-real-estate-investment-property-canada/?utm_source=Offsite&utm_medium=PaidSearch&utm_campaign=traffic_mkt&utm_term=rob&utm_content=Real_Estate&gad=1&gclid=EAIaIQobChMI56LXwsyO_wIV1HxvBB3HqQKJEAMYASA AEgITUvD_BwE Accessed 5/23/2023 Accessed on May 8, 2023.

housing investment in Canada reached \$248.7 billion in 2021, a 30.9% increase from 2020.²⁸

While an upward trend in Canadian real estate is favourable for law abiding investors, it can also attract the attention of criminals. As noted above, real estate makes up 13% of Canada's GDP, which means that real estate fraud will not only have a significant impact on investors, but also on those whose livelihood is dependent upon the industry as well. Therefore, we must all educate ourselves to identify, avoid, and prevent real estate fraud in order to protect ourselves and our loved ones.

What is Fraud

Financial crimes are committed with the use of deception for illegal gain. It usually involves a breach of trust and concealment of the true nature of the activities. The terms financial crime, white-collar crime and fraud are used interchangeably.²⁹

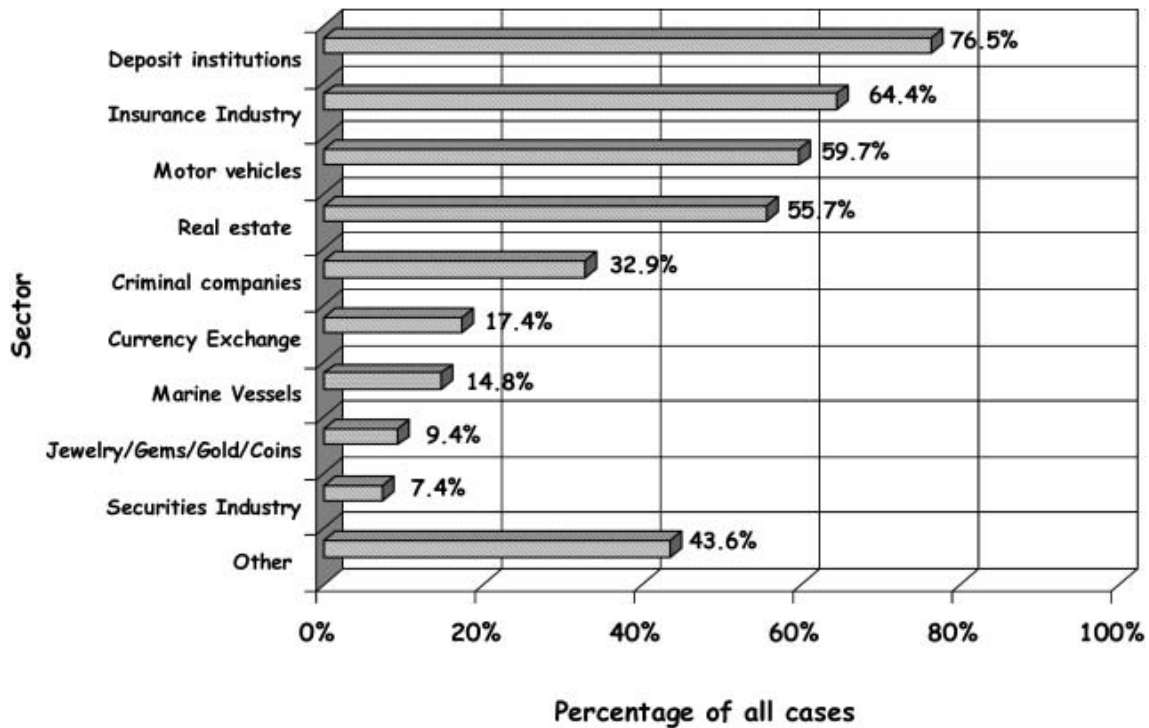
Real estate has many attributes that make it attract criminal proceeds. First of all, it is a place the perpetrator can live in. It can also be used to house a wide range of illegal activities, such as illegal gambling, prostitution, drug production, counterfeiting, and the manufacturing and distributing of other contraband to further criminal gains. Secondly, it can be used as a money laundering vehicle.³⁰ Nominees, fake mortgages, solicitor-client privilege, and legal trust accounts are common tactics used in real estate transactions to mask the source of funds and the identity of the beneficial owner, the two key elements in

²⁸ Ibid, 6.

²⁹ Pickett and Pickett, (p.3).

³⁰ Schneider, Stephen, "Organized crime, money laundering, and the real estate market in Canada," *Journal of Property Research*, June 2004, 21(2) 99-118.

money laundering. Schnieder conducted a survey of RCMP cases that involved money laundering and found that out of the 149 proceeds of crime cases, 83 of them involved property transactions, making up 55.7% of all cases (see chart below). 60 out of the 83 cases that involve property transactions involve the purchase of a single-family residential property.



This demonstrates how popular real estate is to criminals for money laundering and why real estate transactions need to be regulated. Given the large monetary transactions, the significant social impact, and the many cases in which money laundering or terrorist financing have been detected, real estate investments require close monitoring.³¹

³¹ Financial Action Task Force, “Money laundering & terrorist financing through the real estate sector”, FATF/OECD, June 29, 2007 Accessed on May 11, 2023 from www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf

Canadian Fraud Statistics

The Canadian Anti-Fraud Centre (CAFC) operates through a partnership of the Royal Canadian Mounted Police, the Ontario Provincial Police and the Competition Bureau Canada. It's Canada's central repository for information about fraud. In their 2021 Annual Report, CAFC recorded 29,500 reports of identity fraud, compared to 20,400 in 2020, representing a one year increase of 45%.³² In 2022, the Canadian Anti-Fraud Centre received fraud and cybercrime reports totaling \$530 million in victim losses, almost a 40% increase from the unprecedented \$380 million in losses in 2021. Sadly, CAFC estimates that only 5 to 10% of people report fraud.³³ Seeing how more and more people are falling victim to fraud, and higher and higher dollar amounts are involved, it is imperative that all Canadians are educated on the importance of identifying, avoiding, and preventing fraud to prevent more people from becoming victims.

Types of Real Estate Fraud

There are many types of real estate frauds other than the Fortress fraud case mentioned earlier, where the investments was misrepresents, investors funds were misused, and investment risks were not properly communicated. The Government of Canada lists two types of real estate fraud, foreclosure fraud and title fraud, as frauds that result in

³² Canadian Anti-Fraud Centre, (n.d.) Annual Report 2021, Accessed on May 11, 2023, from <https://www.antifraudcentre-centreantifraude.ca/annual-reports-2021-rapports-annuels-eng.htm>

³³ Royal Canadian Mounted Police, "Fraud Prevention Month 2023: Fraud losses in Canada reach another historic level," February 27, 2023, Accessed on May 8, 2023 from <https://www.rcmp-grc.gc.ca/en/news/2023/fraud-prevention-month-2023-fraud-losses-canada-reach-historic-level>

financial losses.³⁴ A Chartered Professional Accountants (CPA) Canada publication cautions Canadians against three types of real estate fraud³⁵:

- Foreclosure fraud
- Title Fraud
- Mortgage Fraud

“Former RCMP investigator Chris Mathers called real estate fraud ‘an absolute epidemic, a huge problem in the developed countries, especially here in Canada.’”³⁶ For the purpose of this paper, we will examine foreclosure fraud, title fraud, mortgage fraud, as well as pre-construction fraud in depth by reviewing what they are, how the deception unfolds, what recourse the victim has, and what preventative measures can be employed.

Purchasing Real Estate

Before we dive into the different kinds of real estate fraud, it is important to understand the steps involved before making a real estate purchase.³⁷

1. Financial situation assessment-Before anything is done, you should first assess your financial situation to determine whether you can afford to purchase a property. There are many costs associated with the purchase other than the

³⁴ Government of Canada, (n.d.) Real Estate Fraud, Accessed on May 8, 2023, from <https://www.canada.ca/en/financial-consumer-agency/services/real-estate-fraud.html>

³⁵ De Lajarte, Mathieu, “3 types of real-estate fraud to be on the lookout for,” April 30, 202, Access on May 8, 2023, from <https://www.cpacanada.ca/en/news/canada/2020-04-30-real-estate-scams>

³⁶ “New law protects homeowner from real estate fraud,” CBC News, December 13, 2006, <https://www.cbc.ca/news/canada/toronto/new-law-protects-homeowners-from-real-estate-fraud-1.594763> Accessed on June 4, 2023.

³⁷ CMHC, “home buying step-by-step: Your guide to buying a home in Canada,” 2022, Accessed on May 30, 2023, from <https://assets.cmhc-schl.gc.ca/sites/cmhc/consumers/buying-a-home/homebuying-step-by-step-guide/homebuying-step-by-step-guide-en.pdf?rev=37af6dbf-580a-4de8-aba9-353eba4c022f>

purchase price, such as insurance, utilities, repairs and maintenance, and property taxes...etc. that need to be taken into account as well.

2. Getting Financing-After you have established that your financial situation allows you to make this purchase, you need to determine the price range you are willing and able to offer on a property. The best way to do this is to obtain a mortgage pre-approval. A mortgage pre-approval presents you with the highest amount you are able to borrow from the bank, which can be used as a basis to determine the maximum purchase price you are able to offer on a property. It also takes away the stress of securing financing after you make an offer, so closing can go smoothly.
3. Finding a property- After determining the price range of the property, we then need to establish what types of properties is suitable for you.. What is the purpose of your purchase? What needs are you looking to meet? Through assessing your needs and goals, it will be easier to identify the types of properties that will meet your requirements. After deciding on the type of property and the price range, the next step is to find an experienced real estate agent. While hiring a real estate agent can seem time consuming, having the right agent can help make your property purchasing process smoother and your realtor is obligated to protect your rights and interests as they negotiate your Offer. As a purchaser, you are not responsible for paying your real estate agent. An executed Confirmation of Cooperation and Representation is a legal agreement between two realtors and their brokerages that the commissions will be paid according to the agreed upon

percentage or dollar amount. The real estate agent receives their commission from the listing agent who has a Listing Agreement with the Seller.

4. Make an offer-After touring countless properties, you finally find the property that fits your needs! An offer is prepared by your agent to be submitted to the seller's realtor. It will include the purchase price, items to be included in the sale, the closing date, and any other special terms. Your agent will also be responsible for negotiating on your behalf in order to strike a deal. A lawyer should also be retained for the property purchase at this point as they can give you valuable inputs for making the offer and perform due diligence on your behalf so you don't encounter future legal issues with the property.
5. Close the deal-Your offer has been accepted and preparations to close the deal need to be put in motion. First of all, you need to notify your bank about the purchase so they can fund the deal. Some people go to a mortgage broker to see if there are better mortgage rates available to them. After securing financing, the next step is to notify your lawyer that the deal is firm. Your lawyer will be responsible for communicating with your lender to ensure funding will be in place for closing. He or she also needs to correspond with the seller's lawyer to arrange for the transfer of title and possession-of the property. Lastly, insurance coverage should be arranged for your property. Title insurance is highly recommended for reasons we will discuss in more depth in the title fraud section below. Mortgages often require title insurance and lawyers will push for title insurance, since after spending so much money to purchase something, it would only make sense to protect that purchase. (Title insurance is not mandatory in Ontario.)

There are several professionals involved in the purchase of a property, such as lawyers, mortgage brokers, real estate agent...etc., where their integrity and independence can easily affect the direction of the transaction. Thus, regulators and governing bodies have put rules and restrictions in place to ensure that these professionals do not deviate from what their profession asks of them. We will discuss this in more depth in the different fraud sections reviewed below.

Foreclosure Fraud

Foreclosure fraud typically occurs when the homeowner is having trouble making mortgage payments and is already behind. Fraudsters posing as a debt consolidator willing to help, then deceives the homeowner into transferring the property title over to them in exchange for a loan.³⁸ The payments homeowners make to the fraudsters for the “consolidated loan” is usually kept by the fraudster and never makes its way to the mortgage lender. Then, when the mortgage goes into default, the fraudsters will resell or refinance the property while the homeowner is left with nothing. Fore closure fraud usually affects individual home owners.

Lately, another version of foreclosure fraud has become prevalent. While it uses the same concept as the traditional foreclosure fraud, it is executed in a much more sophisticated manner. First, the fraudsters come and offer the homeowner equipment rental contracts such as HAVC, water softeners, digital thermostats...etc., or home renovations. Once the homeowner agrees to these services, the fraudsters put a lien on the property and offers the homeowners a loan to pay for the work done. Unbeknownst to the homeowners, what

³⁸ Ibid, 34.

they had just agreed to is in fact a one-year high interest rate mortgage. Since no payments are due until the mortgage matures, many homeowners do not find out about the mortgage until they receive the foreclosure notice.³⁹

Out of the three cases reported by CBC, an investigation has revealed that all three of the victims' mortgages went through the same mortgage broker and two of them went through the same lawyer's office. While it is not clear whether the brokerage or the lawyer are participants of this fraud, had either party exercised their professional duties, done some due diligence, upheld their integrity and independence, they would have raised the alarm to their client, as a mortgage with 25% interest is hardly normal.

Prevention and Detection of Real Estate Scams

Participant	Red Flag	Preventative Measures
Purchaser		Do a land title search with your provincial or territorial land registry office to find out if the seller is indeed the homeowner. ⁴⁰
Homeowner	<ul style="list-style-type: none"> When you haven't received your mortgage bill in a while. 	<ul style="list-style-type: none"> Contact your mortgage lender if you're having trouble making your mortgage

³⁹ Taylor, Caitlin, Stephanie Kamph, David Common and Katie Swyers, "Elaborate scam' leaves seniors with high-interest mortgages they didn't want or understand," *CBC News*, March 31, 2023, <https://www.canada.ca/en/financial-consumer-agency/services/real-estate-fraud.html> Accessed on May 8, 2023.

⁴⁰ A title search shows the property owner name and any mortgages or liens registered on the title.

	<ul style="list-style-type: none"> • When unsolicited personnel try to sell you service contracts and offer you a loan for home renovations. 	<p>payments instead of debt consolidators or financial reorganization companies who promise to help you by offering you a loan.</p> <ul style="list-style-type: none"> • Consult your lawyer before signing away the right to deal with your home or other assets to others.
Mortgage Lenders	<ul style="list-style-type: none"> • Clients that are already behind on their mortgage • Clients that want to register a high interest rate mortgage. 	<ul style="list-style-type: none"> • Monitor client situations and offer them a payment plan • Perform due diligence and verify the deal.
Lawyers	<ul style="list-style-type: none"> • Clients who have several mortgages registered and suddenly want to sell their property. • Clients that want to register a high interest rate mortgage. 	<p>Perform due diligence and verify the transaction.</p>

Potential role for Investigative Forensic Accountants (IFA)

While foreclosure fraud usually affects individual homeowners, given the amount involved, it may not be financially feasible for the homeowners to hire an IFA to assist them in recovering the stolen funds. However, in cases like the newer version of foreclosure fraud reported by CBC, where the fraudsters are an organized crime ring and the proceeds of crime exchange through many hands, IFAs can be of assistance to regulatory bodies conducting the investigation. IFAs are skilled at following the money trail and deciphering layering techniques to uncover where the stolen funds went. IFAs are also trained for investigations and have the expertise to preserve, prepare, and present evidence for trial. They would be most suitable for investigating situations like this.

Title Fraud

Title fraud happens when fraudsters steal the title to your home using stolen identities or forged documents to transfer a registered owner's title to himself/herself or to someone else without the registered owner's knowledge. After taking title, the fraudsters can sell your home or apply for a new mortgage and walk away with the funds.⁴¹ Lately, there have also been cases where fraudsters were posing as homeowners to sell homes that do not belong to them using fake identification (ID).

Title fraud usually starts with identity theft. Identity theft occurs when financial or other personal information is stolen with the intent of establishing another person's identity as the perpetrator's. It involves someone using personal identifying information such as date

⁴¹ Ibid, 34.

of birth, passport number, or credit card number without the owners' permission to commit fraudulent activities.⁴² Criminals have become so adept at making fake IDs that they look like identical replicas of originals along with holograms and other government features. It is difficult for even people that are trained to detect fake IDs to spot them.⁴³ Coupled with fact that everything became virtual after Covid, this makes counterfeit identifications even harder to detect. We will explore the extent of this problem further below.

Title fraud mostly affects individual owners and often times represent the homeowner's life savings. It is a lengthy process to recover title or get rid of the fraudulent mortgage. However, while title fraud victims spend time, effort, and legal fees to recover lost title to their homes; financial lenders and mortgage or title insurers bear most of the financial burden from these frauds.⁴⁴

In January 2006, Lawrence tried to sell her house and buy a new one when she found out she no longer owned the house she was living in. An impostor posing as Susan Lawrence was able to transfer Lawrence's property ownership to another impostor, who in turn obtained a \$291,924 mortgage from Maple Trust.⁴⁵ Lawrence went to court with the mortgagor claiming her rights to her home. A judgment handed out by the 2005 Court of Appeal decision on *Household Realty vs. Liu*, said fraudulent mortgages were legally

⁴²Higgins et al., 2008, cited in Gottschalk, 2010.

⁴³ Merali, Farrah, "The anatomy of a solen home-and how 3 suspects got caught," CBC News, March 9, 2023, <https://www.cbc.ca/news/canada/toronto/alleged-title-fraud-suspects-caught-1.6771689> Accessed on June 4, 2023.

⁴⁴ Tusikov, Natasha, "Mortgage fraud and organized crime in Canada: strategic intelligence brief," *Trends Organ Crim*, (2008) 11:301-308.

⁴⁵ Freed, Dale Ann, "Mortgage Fraud Victory," *Toronto Star*, February 7, 2007, https://www.thestar.com/news/2007/02/07/mortgage_fraud_victory.html Accessed on June 4, 2023.

binding once registered, Lawrence had initially lost her case. However, the Court of Appeal reversed the decision and ruled in her favour.⁴⁶

CBC Toronto reported that over 30 homes in the greater Toronto area (GTA) have been fraudulently sold or mortgaged without the owner's consent where title of the home was stolen using identity theft. Karen Decker, senior vice president of Stewart Title, also confirms that there have been many cases of homes sold without the homeowners' knowledge. Brian King, CEO of a private investigating firm hired by a title insurance company, states that the investigation is very painstaking as these crimes are committed by organized crime groups and the whole scheme is very sophisticated. The proceeds from these schemes are usually transferred out of the fraudulent bank accounts within seven days and converted into cryptocurrency or gold bullions and shipped out of the reach of Canadian authorities.⁴⁷

While it is unclear whether the real estate agents, mortgage brokers, or lawyers involved in these cases were participants of the fraud, had any one of these professionals been more alert, the fraud could have been discovered. A lawyer representing the sellers in a real estate deal received a call from the bank asking him to verify the identity of his clients as mandated by the Federation of Law Societies of Canada (FLSC). There were two red flags that raised the bank's suspicion: a permanent resident card used as ID that

⁴⁶ CBC News, "Court gives woman home back in rare ruling reversal," February 7, 2007, <https://www.cbc.ca/news/canada/toronto/court-gives-woman-home-back-in-rare-ruling-reversal-1.652169#:~:text=A%20Toronto%20woman%20who%20lost,decision%20on%20a%20previous%20case> Accessed on May 23, 2023.

⁴⁷ Lancaster, John, Nicole Brockbank and Farrah Merali, "How organized crime has mortgaged or sold at least 30 GTA homes without owners' knowledge," *CBC News*, January 23, 2023, <https://www.cbc.ca/news/canada/toronto/organized-crime-groups-behind-gta-home-sales-mortgages-without-owners-knowledge-1.6719978> Accessed on May 21, 2023.

could not be verified, and the bank account that was used to receive the proceeds of the sale was new with no prior transactions. The bank was unwilling to release the funds until they received reassurance from the lawyer. The request made the lawyer suspicious as he was professionally trained to identify counterfeit IDs and he was not in the least suspicious when he accepted his client's ID. To investigate further, this lawyer decided to perform some due diligence by scouting out the property and its surroundings and talking to the neighbors. He was shocked to uncover that the property he had just closed was misrepresented by fraudsters as the homeowner. The bank and the police were notified, and the fraudsters were arrested and charged.⁴⁸ This case clearly demonstrates how well criminals can now forge IDs, where even trained eyes cannot distinguish the real from the fake, and in part explains why title fraud is on the rise.

As mentioned above, real owners and buyers are protected from title fraud through title insurance, where the insurance company will pay for the legal expenses to re-establish the homeowner's right, but as these fraud claims skyrocket, title insurers worry about the sustainability of this insurance. Title fraud claims have gone from zero to many dozens a year and claim amounts have reached more than \$200 million in the past few years. Authorities need to provide more guidelines in response to current situations to govern parties in the real estate industry in order to reduce title fraud occurrences.

⁴⁸ Ibid, 41.

Prevention and Detection of Real Estate Scams

Participant	Red Flag	Preventative Measures
Purchaser		Buy title insurance to protect yourself against losses from title fraud.
Seller		<ul style="list-style-type: none"> • Keep your mortgage information in a safe place. • Shred old documents. Don't throw them in the trash. • Don't share your personal information on the phone, through email or text unless you initiated the communication. • Follow up with creditors if your bill doesn't arrive on time. • Remove anything in the mailbox as soon as possible. • If you move or change your address, make sure to have your mail forwarded. • Safeguard items with personal information. Identity thieves

		<p>will go through garbage and recycling bins, so tear or shred receipts, copies of credit applications, insurance forms, physician statements and credit offers received in the mail.</p> <ul style="list-style-type: none"> • Check your credit report regularly. A credit report can reveal if unauthorized financial accounts are opened in your name.
Real estate agents	<ul style="list-style-type: none"> • A property that is vacant or tenanted and thus unavailable for inspection.⁴⁹ 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client. • Ask for original pieces of identification and do not just blindly accept electronic copies.

⁴⁹ Crosariol, Beppi, "Home title fraud presents new dangers for real estate lawyers," *The Globe and Mail*, August 2, 2004, <https://www.theglobeandmail.com/life/home-title-fraud-presents-new-dangers-for-real-estate-lawyers/article745019/> Accessed on May 11, 2023.

Mortgage lenders	<ul style="list-style-type: none"> • A property that is vacant or tenanted and thus unavailable for inspection.⁵⁰ • Properties that have a lot of equity in them become targets for criminal groups looking to take out fraudulent mortgages through identity theft.⁵¹ 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client. • Ask for original pieces of identification and do not just blindly accept electronic copies.
Lawyers	<ul style="list-style-type: none"> • Borrowers in a rush and lack paperwork, such as a recent land survey drawing. 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client. • Ask for original pieces of identification and do not just blindly accept electronic copies.

Potential role for IFAs

The biggest problem with title fraud, other than its timely detection, is how to track down the beneficial owner and recover the fraudulently stolen funds. This is where having an IFA can be useful. An IFA is trained to follow the money trail, wherever it leads and

⁵⁰ Ibid, 49.

⁵¹ Ibid, 46.

whatever form it takes. IFAs also has an investigative mindset and has the expertise in preserving and preparing evidence for trial. However, an IFA comes with a hefty price tag. Given the amount that could be recovered for individual mortgages, it may not be economically feasible for individual owners to proceed in this manner. To a title insurance company, however, this could be financially feasible. Just like how they hired a private investigative firm to invest the title frauds and to retrieve the funds, they can also hire an IFA to investigate several cases at a time or even keep them on payroll.

Mortgage Fraud

The most common form of mortgage fraud involves fraudsters acquiring a property and consequently artificially increasing the property's value through a series of sales and re-sales between the fraudster and someone working with them. A larger mortgage is then secured on the property based on the price that has been artificially inflated.⁵² Other mortgage frauds involve using fake documents to obtain a mortgage that would not otherwise be available to the purchaser. Mortgage fraud schemes undertaken by organized crime groups have become increasingly sophisticated through the use of technology, such as going to black-market websites to obtain stolen or counterfeit financial information of victims.⁵³ Nonetheless, unlike how title fraud usually affect individual owners, mortgage fraud usually affects financial institutions that lend money for mortgages against a property.

⁵² Service Ontario, (n.d.) "Victims of Real Estate Fraud," Accessed on May 11, 2023, from <https://www.ontario.ca/page/victims-real-estate-fraud>

⁵³ Ibid, 42.

In *R. v. Mac Mullin*, Mac Mullin, a real estate business man, and Elander, Mac Mullin's lawyer, were charged with fraud over \$5,000 for their involvement in mortgage fraud schemes where they provided financial institutions with false information to support mortgage applications. In some cases, "straw buyers"⁵⁴ would lend his or her name to be the purchaser of a property without any intention of ever owning the property. In other cases, the homeowner would participate in the scheme in order to extract more equity by selling to the straw buyer. Fictitious real estate purchase contracts would show higher sales amounts than what the buyer and seller actually agreed to, in order to take out a larger mortgage, and a majority of these transactions were not at arm's length. Both Mac Mullin and Elander were found guilty by the Court.

In 2015, Home Capital Group Inc. began suspending mortgage brokers after its board of directors received a letter from an anonymous whistle-blower pointing it to problems with some of its mortgages last fall. Home Trust revealed it hired an external investigator and launched a probe into its mortgages, finding evidence that some borrowers had submitted fake employment letters. In many cases, the borrowers actually do work at the companies listed in their mortgage applications, but claimed they made more money than they actually did, which allowed them to qualify for a larger mortgage at lower interest rates. Home Capital said it had cut ties with 45 brokers, a majority of them from just two brokerages. The two brokerages contributed more than \$960-million to the company's

⁵⁴ A straw buyer is an accomplice who provides counterfeit documentation for employment and income verification.

mortgage originations last year, with the bulk of the business in the company's portfolio of insured mortgages.⁵⁵

Another form of mortgage fraud takes place in pre-construction projects, where fake documents are submitted to obtain a mortgage, except funding is not required until the pre-construction unit is complete. While lenders who provide financing to a developer for construction projects generally require them to confirm buyers will have the ability to close, it is no secret among industry insiders that these requirements are not properly enforced. Mr. Jaggi, a real estate broker, says the practice is ridiculous. “‘It’s a joke. It’s a complete joke. People are getting these letters from their friends. Half of those preapproval letters are not authentic,’ he says.”⁵⁶

A real estate broker and mortgage broker conducting both mortgage and real estate business provided a pre-approval letter to the developer indicating that the buyers had been pre-approved for a mortgage, but the developer was not satisfied with the letter as it was not drafted from a financial institution. The developer notified the real estate broker that the letter was not sufficient, and the real estate broker promptly redid the pre-approval letter with the letterhead of a financial institution. Due to the abnormalities in this letter, including odd looking bank letterhead, incorrect phone number and staff name,

⁵⁵ McMahon, Tamsin, “Whistle-blower prompted probe into Home Capital mortgage fraud allegations,” *The Globe and Mail*, July 30, 2015, <https://www.theglobeandmail.com/real-estate/the-market/home-capital-suspended-mortgage-brokers-after-anonymous-tip-last-fall-company-officials/article25776197/> Accessed on May 11, 2023.

⁵⁶ Ireland, Carolyn, “Looking for blood: Condos nearing completion with mortgage appraisals less than investors paid,” *The Globe and Mail*, April 27, 2023, https://www.theglobeandmail.com/real-estate/toronto/article-looking-for-blood-condos-nearing-completion-with-mortgage-appraisals/?utm_medium=email&utm_source=Real%20Estate&utm_content=2023-4-29_9&utm_term=Looking%20for%20blood%3A%20Condos%20nearing%20completion%20with%20mortgage%20appraisals%20less%20than%20investors%20paid%20&utm_campaign=newsletter&cu_id=SqF0Gx9nC24jOVIrmxzBIOz9UOY2HZk Accessed on May 22, 2023.

the developer believed that the real estate broker had fabricated a falsified mortgage pre-approval letter. RECO's discipline panel found that the real estate broker breached sections 37, 38 & 39 of the Code of Ethics by creating a falsified mortgage pre-approval letter and submitting it for use in a real estate trade.⁵⁷

The difficulty with pre-construction is that the buyer's situation could change drastically during the construction period. Even though the buyer is able to afford the mortgage when they make the purchase, they may not be able to four years down the road. With interest rates rising so rapidly, buyers who were able to afford a mortgage with interest rates under two percent can no longer qualify for a mortgage with interest rates over four percent. This is a fraud that is very hard to battle as there are too many unknowns.

A report from the Law Society of Upper Canada published in 2005 pointed out that mortgage fraud is increasing, costing both lenders and insurers millions of dollars each year. In 2001, the amount involved was about \$300 million, a huge jump from the \$75 million in 2000.⁵⁸

There are four factors that contribute to the emergence of mortgage fraud:

- The anonymization of property purchases-lenders and borrowers no longer need to meet in person or establish a business relationship as documents and funds can be transferred electronically.

⁵⁷ RECO, "Falsifying documents result in disciplinary action," May 17, 2023, Accessed on May 18, 2023, from <https://www.reco.on.ca/professionals-news/falsifying-documents-result-in-disciplinary-action/>

⁵⁸ The Law Society of Upper Canada, Report to Convocation, "Mortgage Fraud," March 24, 2005.

- Easy access to information on properties and homeowners-the electronic land registry system introduced in Ontario in 1999 has made accessing information regarding a property easier, opening doors for mortgage and identity frauds.
- Increased competitiveness in the mortgage industry-The availability of more money and more lenders has increased the competitiveness between mortgage brokers as consumers now have more choices when applying for financing.
- Increased pressure to close a deal-the increased competitiveness in the mortgage industry means consumers can expect faster turn arounds for their mortgage applications. In order to close the deal quickly, purchasers may bypass hiring a lawyer to perform due diligence, inadvertently creating a great opportunity for fraudsters.

Prevention and Detection of Real Estate Scams

Participant	Red Flag	Preventative Measures
Purchaser		<ul style="list-style-type: none"> • Never misrepresent information in a mortgage application. • Never guarantee a loan or have your name added to a mortgage unless you intend to purchase the property.

		<ul style="list-style-type: none">• Only deal with licensed mortgage and real estate professionals.• Never sign any document before reading them thoroughly and agreeing with the terms.• Always get independent legal advice from your own lawyer or notary for any transaction.• Contact your provincial land titles office and get the sales history of the property you want to buy.• Have a professional inspect and appraise the property.• When giving a deposit, make sure the funds are payable to the seller's realty company or a lawyer or notary, and that it's held "In Trust".⁵⁹
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⁵⁹ Ibid, 36.

Real estate brokers	<ul style="list-style-type: none"> • A property that is vacant or tenanted and thus unavailable for inspection.⁶⁰ • Personal identifications that look suspicious. 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client. • Ask for original pieces of identification and do not just blindly accept electronic copies.
Mortgage lenders	<ul style="list-style-type: none"> • A property that is vacant or tenanted and thus unavailable for inspection.⁶¹ • Personal identifications that look suspicious. • Abnormal transactions on the bank account (such as no prior transactions). • Many transactions on the same property. 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client. • Ask for original pieces of identification and do not just blindly accept electronic copies. • Perform due diligence and verify the transaction.
Lawyers	<ul style="list-style-type: none"> • Borrowers in a rush and lack paperwork, such as a recent land survey drawing. 	<ul style="list-style-type: none"> • Know your client and investigate them a little before accepting them as a client.

⁶⁰ Ibid, 49.

⁶¹ Ibid, 49.

	<ul style="list-style-type: none"> • Personal identifications that look suspicious • Many transactions on the same property. 	<ul style="list-style-type: none"> • Ask for original pieces of identification and do not just blindly accept electronic copies. • Perform due diligence and verify the transaction.
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Potential role for IFAs

Mortgage fraud, differs from title fraud, and usually affects mortgage lenders instead of individual homeowners. These financial institutions are usually in a better position to conduct investigations and hire professionals to recover the stolen funds and many of these cases go to court. This is where IFAs can prove themselves as a great asset to have. An IFA not only has an investigative mindset, is expert at following the money trail and uncovering the hidden beneficiary and has the knowledge for preparing a report acceptable at trial, they are also independent and impartial, making them great expert witnesses. Similar to how IFAs can be of assistance to a title insurance company, they can also be of assistance to mortgagees.

Others: Pre-construction Fraud

Pre-construction fraud happens when the real estate developer misuses investor funds intended for the development of the real estate project so the project cannot proceed according to plans.

StateView Homes borrowed from several institutional lenders to fund several of their development projects. However, it was discovered that at least \$2.7 million advanced by KingSett Mortgage Corp. to pay for development charges and permits never made its way to the intended recipient. This matter is now before the Courts.⁶² Four men, including the two co-founders of Noble Developments Corp. have been charged by the RCMP with fraud for misusing \$9 million investor funds. In a joint investigation by the RCMP and the Ontario Securities commission, the funds intended for a housing project were being redirected to cover personal expenses and other expenses not related to the construction project.⁶³

Pre-construction fraud also occurs when developers mislead purchasers through false advertising. They lure buyers into purchasing units of a project where the zoning have not been approved or not properly registered.

In the fall of 2021, a 72-townhouse-project in Richmond Hill, Ontario, offered by Ideal Developments, was cancelled after the developer was charged by Ontario's Home Construction Regulatory Authority (HCRA) for operating without a licence. Their licence application was later refused by the provincial oversight body as well. 29 purchasers had already put down a combined \$5.7 million in deposits for this development as Ideal Developments had offered them a \$200,000 discount on closing as an incentive. Unlike

⁶² Dingman, Shane, "StateView Homes lenders demand to be repaid close to \$200-million in loans," *The Globe and Mail*, April 28, 2023, <https://www.theglobeandmail.com/business/article-stateview-homes-lenders-demand-to-be-repaid-close-to-200-million-in/> Accessed on May 22, 2023.

⁶³ O'hara, Clare, "RCMP charges founders of Noble Developments with fraud, alleging misuse of investor funds," *The Globe and Mail*, August 30, 2022, <https://www.theglobeandmail.com/business/article-rcmp-charges-founders-of-noble-developments-with-fraud-alleging-misuse/#:~:text=David%20Bowen%2C%20a%20former%20Noble,charged%20with%20using%20forge d%20documents> Accessed on May 22, 2023.

condos, deposits for freehold homes do not require developers to hold them in trust. Ontario's home warranty program also only protects buyers' deposit up to a maximum of \$100,000. This means the purchasers may lose a combined \$2.8 million in deposits as Ideal Developments goes into receivership.⁶⁴

Contrary to everyone's belief, developers are not the only ones that can defraud a purchaser, lawyers also play an important role in pre-construction sales. In 2012, a pre-construction condo project was cancelled, and the property was sold under a power of sale. However, the original purchaser of the condo complained that they never received their deposit back. Further investigation revealed that the \$13.5 million in deposits which should have been held in a trust fund had been drained from the account long before the project was cancelled, as the lawyer in charge of the trust account had been sending these funds to the developer, believing she was helping to save the project. While her actions were contrary to the rules of the Condominium act, it was her lack of experience that led to this "honest mistake". The lawyer did not benefit from this transaction, and even mortgaged her own home for \$400,000 to save the project. She later had to file for bankruptcy after the developer took off with the funds and was sentenced to three-and-a-half years on one criminal breach of trust charge.⁶⁵⁶⁶

⁶⁴ Brookbank, Nicole, "Homebuyers set to lose unprotected deposits of up to \$150K after GTA developer refused licences," CBC News, May 2, 2022, <https://www.cbc.ca/news/canada/toronto/gta-homebuyers-set-to-lose-millions-unprotected-deposits-1.6435599> Accessed on June 4, 2023.

⁶⁵ Brown, Jennifer, "Lawyer in condo fraud sentenced to 3.5 years in jail," *Canadian Lawyer*, February 13, 2017, <https://www.canadianlawyermag.com/news/general/lawyer-in-condo-fraud-sentenced-to-35-years-in-jail/274172> Accessed on June 4, 2023.

⁶⁶ "Real estate lawyer pleads guilty in \$15M North York condo scam," *City News*, February 23, 2017, <https://toronto.citynews.ca/2017/02/23/real-estate-lawyer-pleads-guilty-15m-north-york-condo-scam/#:~:text=A%20Toronto%20lawyer%20has%20pleaded.,%2C%20south%20of%20Finch%20Avenue> Accessed on June 4, 2023.

Another issue with pre-construction projects is that there is no guarantee the project will go through. In 2018, 4,000 units were cancelled, a huge surge compared to the 1,678 in 2017.⁶⁷ Project cancellations by the developer are usually due to permit delays, project feasibility, rising construction costs or higher house prices. Often times the original purchaser are asked to agree to a higher purchase price or their sales agreement is canceled.⁶⁸ While this practice does not constitute fraud, it certainly does make a purchaser feel defrauded.

⁶⁷ Falcomer. Natalka, "The dangers of pre-construction sales," *Real Estate Magazine*, March 25, 2019, <https://realestatemagazine.ca/the-dangers-of-pre-construction-sales/> Accessed on June 4, 2023.

⁶⁸ Beattie, Samantha, "Some Ontario Builders are giving pre-construction homebuyers 2 choices-pay more or forget it," *CBC News*, December 13, 2021, <https://www.cbc.ca/news/canada/toronto/cancelled-sales-agreements-preconstruction-ontario-1.6278526> Accessed on May 11, 2023.

Prevention and Detection of Real Estate Scams

Participant	Red Flag	Preventative Measures
Purchaser	<ul style="list-style-type: none"> • Developers with bad reputations. • Builders without a licence or permit • Development projects with constant delays. 	<ul style="list-style-type: none"> • Research the developer before buying a pre-construction project.
Mortgage Lenders	<ul style="list-style-type: none"> • Clients that are asking for many mortgages • Clients who have an unstable income or employment history. 	<ul style="list-style-type: none"> • Know your clients • Perform due diligence to verify the deal.
Lawyers	<ul style="list-style-type: none"> • Clients that are asking for many mortgages • Clients who have an unstable income or employment history. 	<ul style="list-style-type: none"> • Know your clients • Perform due diligence to verify the deal.

Potential role for IFAs

In pre-construction fraud cases, the amount involved is often in the many millions, which implies that the case will often go to court. An IFA is perfect for these investigations.

First of all, all IFAs have an investigative mindset and are trained to think like a criminal,

which helps with speeding up the investigation. Secondly, an IFA is trained to follow the money trail, and can penetrate all the layers of transactions designed to confuse the investigation. Thirdly, an IFA is familiar with the legal proceedings and has been trained to prepare evidence for presentation at trial. IFAs are also well trained at acting as an expert witness, which ensures that the plaintiff will have a well-built case.

Combatting Real Estate Fraud

Federal

In order to address terrorist financing, Canada amended The Proceeds of Crime (Money Laundering) Act to become the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) in December 2001.⁶⁹ The amendment was “to implement specific measures to detect and deter money laundering and the financing of terrorist activities to facilitate the investigation or prosecution of money laundering and terrorist financing offences, including:

- establishing record keeping and client identification requirements for financial services providers and other persons that engage in businesses, professions or activities that are susceptible to being used for money laundering, and the financing of terrorist activities,
- requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

⁶⁹ House of Commons Canada, “Confronting money laundering and terrorist financing: Moving Canada forward,” November, 2018, Accessed on June 4, 2023, from <https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>

- establishing an agency that is responsible for dealing with reported and other information;”⁷⁰

Gatekeepers, such as accountants, tax advisors, financial advisors...etc., are used by criminals to access financial institutions during a mortgage application, bank account opening, or obtaining other financial products to give their deal more credibility. Non-financial professionals such as notaries, registrars, real-estate agents...etc., are also targeted by criminals for their crucial role in carrying out real-estate transactions.⁷¹ The amendments in PCMLTFA make it mandatory for gatekeepers to adhere to certain reporting requirements. While lawyers objected to following the reporting requirement on the basis that it interferes with solicitor-client privilege and self-governing principals at that time, following the 2007 PCMLTA, amendment, the Federation of Law Societies of Canada (FLSC) decided to introduce and enforce the Client identification and verification requirements.⁷² These reporting requirements were designed to assist in tracing the source of funds and unmasking the true beneficiary of a deal, the two main aspects why real estate deals attract money launderers.⁷³

Provincial-Ontario’s Bill 152 & 136

In order to deal with real estate frauds, the government of Ontario introduced Bill 152, Ministry of Government Services Consumer Protection and Service Modernization Act,

⁷⁰ Government of Canada, “FINTRAC’s Act and Regulations,” Accessed on May 11, 2023, from <https://fintrac-canafe.canada.ca/act-loi/1-eng>.

⁷¹ Ibid, 31.

⁷² Tarantino, Bob, “Pleased to meet you: The new “know your client” regime,” *The Canadian Bar Association*, Accessed on June 4, 2023, from <https://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2009/Pleased-to-Meet-You-The-New-Know-Your-Client-Regim?lang=en-ca>

⁷³ Ibid, 30.

2006,⁷⁴ which emphasizes consumer protection. As mentioned earlier, when homeowners become victims of title fraud, they spend numerous amounts of time and energy to rectify title to their land. Fraudulent mortgages were legally binding once registered (*Household Realty v. Liu*, 2005) until overturned in 2007 by another Appeals Court ruling (*Lawrence v. Maple Trust Co.*, 2007). The Land Titles Act is amended under Bill 152 to better protect consumers by declaring any land titles obtained by fraudulent means, such as falsified mortgages, fraudulent sale, or counterfeit power of attorney, null and void.⁷⁵ It also speeds up financial assistance provided by the Land Title Assurance Fund (LTAF) to victims of fraud, so that in most cases, title is returned, and a decision on compensation is made within three months.⁷⁶

Another attempt by the Ontario government to combat real estate fraud is Bill 136: The Restore The Deed Act, 2006.⁷⁷ Under the new code, only a restricted group of professionals are able to register documents in the land titles system. The Act also requires the Land Registrar to send out notices of new charges, encumbrances or discharges to the former registered owner or the current registered owner. The Registrars are able to refuse to register documents when such refusal might prevent fraud. The Act also implemented a system of Personal Identification Numbers (PIN) for persons registered as owners or mortgagees of property. The PIN is kept by the landowner or

⁷⁴ Legislative Assembly of Ontario, Bill 152, Ministry of Government Services Consumer Protection and Service Modernization Act, 2006, Accessed May 11, 2023, from <https://www.ola.org/en/legislative-business/bills/parliament-38/session-2/bill-152>

⁷⁵ *Ibid*, 36.

⁷⁶ *Ibid*, 49.

⁷⁷ *Ibid*, 73.

mortgagee and would be essential to any further transfer of the property, which is an added layer of protection for property owners against fraud.

In response to these Bills, the Law Society of Ontario has revised the following residential Real Estate Transactions practice guidelines to counter the increased risk in fraud for real estate transactions:

- “the pattern of inactive or deleted instruments on the parcel register and inquire about any suspicious patterns of transfers or discharges;
- the values revealed by arm's-length transfers in the recent past, to determine if there have been any suspicious changes in value.”⁷⁸

Penalties for Fraud

Federal

Under the criminal Code Section 380 (1), “Every one one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

⁷⁸ Law Society of Ontario, Residential Real Estate Transactions Practice Guidelines, Accessed on May 11, 2023, from <https://lso.ca/lawyers/practice-supports-and-resources/practice-area/real-estate-law/residential-real-estate-transactions-practice-guid>

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

The severity of fraud is determined by the value and complexity of the fraud. Fraud over \$5,000.00 is generally more serious as it is an indictable offence. On the other hand, fraud under \$5,000.00 is a hybrid offence in which the Crown can choose to proceed by indictment or summarily depending on the circumstances of the case.

Minimum punishment

(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.

Affecting public market

(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretense within the meaning of this Act, with intent to defraud, affects the public market price of stocks, shares, merchandise or anything that is offered for sale to the

public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.”⁷⁹

Provincial

Under Bill 152, if a person “fraudulently procures or attempts to fraudulently procure a fraudulent entry on the register, an erasure or deletion from the register or an alteration of the register,”⁸⁰ they are guilty of the offence and once convicted, can be liable up to:

“(a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

(b) a fine of not more than \$250,000, if the person is a corporation.”

First, the government developed new restrictions for accessing the electronic land registration system (Murray 2007, 2008). Access to electronic title transfers was restricted to lawyers, and new criteria were established for licensing, including heightened identification requirements, financial solvency and insurance requirements, and a requirement of “good character.”

Under Bill 136, anyone who:

“(a) falsifies, assists in falsifying or induces or counsels another person to falsify or assist in falsifying any information or document relating to the registration of someone or something on the register; or

⁷⁹ Canadian Criminal Code, (n.d.) Accessed on May 11, 2023, from <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-380.html>.

⁸⁰ Ibid, 69.

(b) knowingly applies for, assists in applying for or induces or counsels another person to apply for the registration of someone or something on the register based on false information or a fraudulent document.”⁸¹

Anyone convicted of this offence “is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under subsection (2) is liable to a fine of not more than \$250,000.”⁸²

At the provincial level, committing fraud only makes you liable for not more than \$50,000 and prison time of less than two years. At the Federal level, fraud has a minimum punishment of two years only, and only if the value of the subject matter was over one million dollars. For the amounts involved in real estate fraud, especially with higher housing prices today, these penalties do not pose as a deterrent for criminals as the risk and reward ratio is out of balance. Furthermore, it also does not reflect how the lives of the victims are affected. The pain, anguish, suffering, and financial turmoil these victims go through is not properly reflected in the penalties these criminals receive. I believe harsher penalties should be handed down in order for it to act as a deterrent for those looking to break the law.

⁸¹ Legislative Assembly of Ontario, Bill 136, Restore the Deed Act, 2006 Accessed on May 11, 2023, from <https://www.ola.org/en/legislative-business/bills/parliament-38/session-2/bill-136>

⁸² Ibid, 73.

Roles for IFAs

While for each type of real estate fraud, an IFAs' duty and involvement is different, in general, an IFA is a great asset to have for real estate fraud investigations.

IFAs must follow the standard practices for investigative and forensic accounting engagements while working on an engagement and always need to adhere to the standard of Rules of Professional Conduct. This means that an IFA's work must meet a minimum standard of quality, and they must stay impartial and independent at all times. This is an excellent quality for real estate fraud investigations as with so many parties involved in the deal and not knowing who could be working alongside the criminal, it is best to have an objective third party to conduct the investigation.

Seeing that it would usually be title insurance companies and financial institutions that have the means to hire IFAs, we can assume that some of these real estate fraud cases will go to court. There are two main goals for taking a case to court:

- Recover assets misappropriated through illicit activities.
- Establish liability in order to secure a conviction.

IFAs are an excellent asset in these matters as they can properly document all parties involved and their relationships; track down all paperwork related to the transaction; determine the true beneficiary of the transaction; trace the movement of the assets; conduct interviews; prepare a report that can be submitted and accepted by the Court; and testify as an expert witness. IFAs can help the plaintiff build their case by providing a strong and reliable foundation.

With their vast experience dealing with fraud, IFAs can be the best educators. In order to educate people more about real estate fraud, professional regulatory bodies should consider enlisting IFAs' help in producing promotional material and holding educational seminars for their members. Law enforcement agencies and government bodies can also benefit from these activities as well.

Future outlook and recommendations

Different types of real estate fraud affect different parties. Foreclosure fraud, title fraud, mortgage fraud and pre-construction fraud all affect individual property owners; financial institutions and title insurance companies are mostly affected by title fraud and mortgage fraud; lenders, either private or institutional, are affected by pre-construction fraud.

Criminals have evolved and are more proficient at committing fraud these days. They have conceived ways to disguise the same fraud under a different guise. Technology has also assisted in making them more successful through the ease of looking up property ownership and fabricating documents or fake IDs. Authorities need to continue to amend current rules and regulations to respond to criminal advancements and protect law abiding citizens. Professional governing bodies also need to respond to current situations by revising their guidelines and emphasizing the importance of ethical conduct to their members.

IFAs play a great role in investigating these fraudulent activities and putting criminals behind bars. IFAs can also contribute by educating others about fraud through producing promotional materials and holding educational seminars.

While fraud will never disappear, it is the duty of everyone to stay alert and exert caution so we can avoid falling victim to fraud. Thus, we must all educate ourselves to identify, avoid, and prevent real estate fraud to protect ourselves and to protect our loved ones.

Appendices

Appendix 1 - Gross domestic product (GDP) at basic prices, by industry, annual average (x 1,000,000)

Seasonal adjustment	Seasonally adjusted at annual rates				
Prices	Chained (2012) dollars ¹				
Geography	Canada (map)				
North American Industry Classification System (NAICS)	2018	2019	2020	2021	2022
	Dollars				
All industries [T00]§	1,950,424	1,989,633	1,867,451	1,982,398	2,053,808
Goods-producing industries [T002]§	577,653	579,594	545,393	566,923	586,064
Service-producing industries [T003]§	1,371,229	1,407,639	1,329,366	1,412,826	1,464,199
Business sector industries [T004]	1,636,710	1,642,820	1,548,563	1,622,776	1,684,131
Non-business sector industries [T007]	342,342	347,472	338,806	359,194	369,580
Industrial production [T010]§	401,743	402,076	369,871	385,589	400,016
Non-durable manufacturing industries [T011]§	91,026	96,109	86,309	89,717	91,272
Durable manufacturing industries [T012]§	107,535	108,440	93,174	98,112	104,032
Information and communication technology sector [T013]§	92,296	96,442	100,295	105,596	113,994
Energy sector [T016]§	182,715	182,628	168,799	175,749	182,479
Industrial production (1990 definition) [T017]§	295,949	294,894	262,159	278,462	292,665
Public Sector [T018]§	268,772	275,850	264,246	288,668	299,972
Content and media sector [T019]§	14,087	14,251	11,778	12,894	13,590
All industries (except cannabis sector) [T020]§	1,944,291	1,982,252	1,879,692	1,973,702	2,046,612
Cannabis sector [T021]§	6,256	8,073	9,112	10,267	11,216
All industries (except unlicensed cannabis sector) [T024]§	1,944,878	1,984,651	1,882,864	1,977,836	2,049,527
Agriculture, forestry, fishing and hunting [11]	40,946	40,970	41,409	38,650	42,577
Mining, quarrying, and oil and gas extraction [21]	155,552	154,153	141,172	150,794	156,269
Utilities [22]	42,865	43,738	42,683	42,161	43,413
Construction [23]	143,481	144,595	141,862	149,565	151,094
Manufacturing [24-33]	196,531	196,494	179,447	187,791	195,258
Wholesale trade [41]	100,724	104,295	101,356	106,911	107,535
Retail trade [44-45]	99,751	101,788	98,860	105,421	107,021
Transportation and warehousing [48-49]	87,525	96,329	73,456	75,430	82,524
Information and cultural industries [51]	64,275	68,438	67,198	69,748	72,712
Finance and insurance [52]	122,321	126,837	142,804	149,787	152,398
Real estate and rental and leasing [53]	246,930	252,627	257,621	266,451	267,584
Professional, scientific and technical services [54]	115,223	120,345	116,905	124,808	130,932
Management of companies and enterprises [55]	6,734	5,410	3,805	2,803	2,078
Administrative and support, waste management and remediation services [56]	51,975	52,668	45,716	47,567	49,570
Educational services [61]	102,291	105,054	99,751	105,875	109,162
Health care and social assistance [62]	134,866	137,657	133,200	144,860	146,824
Arts, entertainment and recreation [71]	15,254	16,127	9,371	9,666	13,022
Accommodation and food services [72]	42,526	43,900	27,612	31,484	38,543
Other services (except public administration) [81]	36,611	38,803	32,715	35,563	36,977
Public administration [91]	130,651	132,164	121,243	127,795	141,858

Source: Statistics Canada. [Table 36-10-0434-03 Gross domestic product \(GDP\) at basic prices, by industry, annual average \(x 1,000,000\)](#)

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