Hot property investments, as safe as houses - dirty dealings and grubby grifters

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The Prologue

In what could be described as being straight from a Hollywood script the NSW Land Titles Office was victim of one of the largest cases of fraud perpetrated by a group, when many Sydney homeowners unwittingly lost their property after the titles office issued replacement certificates of titles to solicitors and others involved in an alleged scam.

The first some of the homeowners knew of their loss was when officers from the NSW Fraud Squad contacted victims of the "sting" and for some homeowners caught up in a scam involving millions of dollars in property dealings, the only thing they did wrong was to have a particular surname (Lamont 2006).

The scam was initiated when a Queensland couple responded to an advertisement placed in a Brisbane newspaper by a businessman. The businessman supposedly had debts and required a loan and after discussion with the couple the businessman learned of their extensive interstate property interests. The scam was purportedly put into action after some forward planning and then implemented.

The scam relied upon title searches of unemcumbered properties owned by people with a particular surname (after a person responded to the advertisement, some personal details were obtained and the target surname was thus identified). A Queensland lawyer told the committal hearing he had been sentenced to two years jail in November 2005 for his involvement in signing and witnessing documents for a loan scheme raising approximately $14 million and how he put his signature as witness on fraudulent documents and at a pitch meeting to investors, it was explained they could lend money as a short-term loan, secured against the properties, and receive high interest returns (Lamont 2006).

Properties in Sydney were used as security by a Queensland company to siphon approximately $14 million from investors before being discovered by

officers of the NSW Titles Office. Details of the scam unfolded at a committal hearing at a Sydney local court in March 2006 when a number of individuals were committed for trial on offences involving the making, and/or use of false instruments when fraudulent caveats, transfers and mortgages were taken out on the properties. The property portfolio put together by the scam artists expanded to 35 properties before the scheme collapsed (Lamont 2006).

The parties to the scam either innocently or by deliberate participation included a Sydney solicitor recruited to handle the documentation in Sydney, a deregistered Queensland lawyer, a sole director and signatory of Direct Money Corporation Pty Ltd, a personal assistant in law firms in Queensland, the chief executive officer of Direct Money Corporation Pty Ltd and husband of the lawyer, another man whom provided character references and even relatives of some of the original owners. Some of the duped parties included finance companies, mortgage brokers, NSW Land Titles Office staff and obviously the investors

Details of the scam were initially made public in 2003 through a case in the New South Wales Supreme Court, *CHALLENGER MANAGED INVESTMENTS LTD v DIRECT MONEY CORP. P/L* [2003] NSWSC 1072Caselaw NSW, Reported Decision: 59 NSWLR 452. These proceedings arose out of forgeries of mortgages and other documents in the Torrens System and frauds perpetrated on the NSW Titles Office registrar-general and other persons.

In *Challenger v Direct Money 2003* the case was generally summarized as follows:

Torrens System

- Investor owned property in Sydney
- Fraudsters impersonating the investors obtained new certificates of title for many parcels of land owned by the investors on false applications under *s.111 Real Property Act (NSW*) 1900. Applications for new certificate of titles for properties in Sydney were lodged in 2002. The applications were supported by statutory declarations purportedly made by the investors contending that the certificates of titles had been lost when a house in North Queensland in which they were stored was destroyed in a cyclone some years ago.
- Fraudsters borrowed money from a finance company which registered mortgages over the property.
- A second finance company advanced monies on fraudulent application for loan by persons claiming authority from the investors and paid the first finance company the amount to discharge the registered mortgage.
- The registrar-general refused to register mortgage to the second finance company as it was forged.
- Outside of the judgments relating to the finance companies it was held that the investors were entitled to compensation from Torrens Assurance Fund under *s.129 Real Property Act 1900.*

The perpetrators and breadth of the fraud was primarily exposed when the transfer of instruments in the dealings became excessive and beyond the control of the perpetrators.

The Sting

Early in 2002 the titles office was approached with a tale of natural disaster. Eleven certificates of title for Sydney properties were purported to have been lost in 1986 when Cyclone Winifred destroyed the North Queensland house where they were supposedly stored. The certificate of title's were neither lost nor destroyed and were safely in storage with solicitors in Queensland. Not content with these properties, another twenty three Sydney properties were drawn into the scam and these properties all belonged to people with the same surname as the surname of the multiple victims of the fraud.

The applications for new certificate of titles were completely bogus and the investors knew absolutely nothing about the application for replacement certificates of title. The certificates of title were not lost and were in the custody of solicitors on behalf of the investors. The investor's signatures were forged on the applications for new certificates of title and on the accompanying statutory declarations. The circumstances and details referred to in the applications and the statutory declarations were untrue, as would have appeared if searching inquiries were undertaken (*Challenger v Direct Money 2003*). However the NSW Land Titles Office acted on the applications and statutory declarations, and issued duplicate certificates of title. Justice Bryson specified in the court transcript that at that time officers of the Land Titles Office had no information about the investors, their land or the applications for duplicate certificates which would have generated suspicion (*Challenger v Direct Money 2003*).

The duplicate certificates of title were used to register first mortgages over the properties to a finance company purportedly by the investors to secure a loan. The proposed interest rate or fee was set at 15% for the short term of the loan. Again the purported signatures of the investors on the mortgage were forged. The investors had nothing to do with the mortgages and there was no contention from any source that the finance company knew that the loan transaction and the mortgage were fraudulent (*Challenger v Direct Money* 2003).

At this stage for this particular set of properties the perpetrators bizarrely chose to take out a second mortgage on the properties with another finance company with the purpose of either escalating the scale of the fraud or to establish the bonafides of the persons involved as representatives of the investors and may have used the first mortgage to be taken with a company where due diligence may not have been as thorough as some other finance companies.

Mortgage brokers were used to refer an individual whom purported to represent the investors, whom were very wealthy, owned many properties in Sydney and were seeking to refinance the Sydney properties with a view to

obtain a loan for the investors. The following day a representative of Direct Money contacted the mortgage brokers stated they would be assisting the investors with the loan. The representative of Direct Money gave particulars of the requirement for a loan of a substantial amount (millions) to refinance and unlock equity in ten properties owned by the investors. The information provided to the mortgage brokers included a list of properties, statutory declarations by a solicitor, information about the investors from a taxation agent, a character reference and a statement about the investor's affairs in a letter from a tax agent. All these documents were fabricated and the individuals and the information provided had nothing to do with the investors.

The mortgage brokers introduced the application to a second finance company with a view to refinancing the properties and the individual purporting to represent the investors provided information designed to discourage inquiry including that the Investors were very private and wealthy people whom did not wish their tenants to be disturbed by property valuers and had very large incomes, owned a property portfolio of 256 properties and were prepared to allow registration of mortgages over the properties listed as security. Apparently Indications that the loans proposed were relatively small to the borrowers were later enhanced, after approval of a larger loan had been given, by a request to draw down only a part of that loan by giving security of part only of the property portflolio. A loan for a substantial amount was approved but not exceeding a tight appraisal of the current market value of the security at current market interest rates with a number of other conditions. A letter of acceptance was sent back purportedly signed by the Investors. The second finance company was also given various purported authorities and other documents associated with the loan. The second finance company obtained valuations and offered the loan. The second finance company was then told that the Investors wished to reduce the amount borrowed limited to only a couple of properties as security.

Settlement was arranged including what was purported to be a mortgage from the Investors over the land with the duplicate certificates of title. A conveyancing firm represented or purported to represent the borrowers and the duplicate certificates of title were received, the first mortgage was discharged and cheques to effect the settlement included amounts to a NSW land survey practice and to Direct Money whom attended with what purported to be an authority from the Investors to collect the cheque. A cheque was handed to a representative of Direct Money Corporation. The payments were supported by what purported to be authorities by or on behalf of the investors, all of which were forged. The conveyancers had no actual authority from the investors.

Instructions were given to stamp the mortgage and lodge the documents for registration. The documents included applications for registration of changes of name which arose from discrepancies in the forenames of the investors on the register and on documents to be registered. The applications for changes of names were not found acceptable by the NSW Land Titles Office which required further particulars relating to the changes of name and the identities

of persons involved. The documents were rejected for registration when first lodged and following correction they were re-submitted.

The Titles Office Strikes Back

Events intersected with another chain of events in the Land Titles Office and the whole scheme started to unravel (*Challenger v Direct Money 2003)*.

The basis for the scam relies on NSW titles office practices for replacing a lost certificate of title. Pursuant to *s.111 Real Property Act (NSW) 1900*:

- Where a certificate of title of land under the provisions of this Act is lost, mislaid or destroyed, the proprietor of the land may apply in the approved form to the Registrar-General for the issue of a new certificate of title
- An application under subsection (1) shall be supported by such evidence as the Registrar-General may require.

Apparently the standard practice for issuing a lost certificate of title is for the registered owner to swear a statutory declaration about how the original certificate of title had been lost, mislaid or destroyed and to produce a rates notice. However solicitors purporting to act for a registered owner need only produce a statutory declaration and a certificate issued pursuant to the *Local Government Act (NSW) 1993* (which can be obtainable by any member of the public). A certificate issued under s.603 of the *Local Government Act (NSW) 1993* certifies:

> (1) A person may apply to the council for a certificate as to the amount (if any) due or payable to the council, by way of rates, charges or otherwise, in respect of a parcel of land.
> (2) The application must be in the approved form and be accompanied by the approved fee.
> (3) The council is to issue a certificate to the applicant stating:
>
> > (a) the rates, charges or other amounts due or payable to the council in respect of the land and when they became due or payable, or that no such rates, charges or other amounts are due or payable, and
> > (b) the balance of any special rate waived, under section 565, and the period for which it is waived, and
> > (c) the work carried out on the land by the council and the cost that may be recovered from the owner or occupier for the work, or that no such work has been carried out, and
> > (d) the name of the person shown in the council's records at the date of the certificate as the owner of the land, if the person acquired the land under Division 5 of Part 2 of Chapter 17.

The applications for the new certificates of title were lodged at the Land Titles Office by solicitors claiming to act on behalf of the investors supported by a statutory declaration, purportedly by the investors before a Commissioner for Declarations in Queensland, a certificate issued under *s.603 Local Government Act (NSW) 1993* relating to the land, and the consent of a caveator in a caveat given by a solicitor as solicitor for the caveator. The applications were recorded, lodged, and certificates of title were printed and made available for collection by the solicitors. In issuing the certificates of title, the registrar-general acted under *s.111 Real Property Act 1900* dealing with lost certificates of title.

Justice Bryson heard that it was the practice of the registrar-general to require that an application be supported by a statutory declaration by the registered proprietor explaining the application and showing how it was that it was claimed that the certificate of title had been lost, mislaid or destroyed. It was also departmental practice, although not required by the express terms of *s.111 Real Property Act 1900* or by any regulation, to require the application to be accompanied by a current local council rate notice. The practice of requiring a rate notice was indicated in forms used in the department. The printed and electronic form of application for a new certificate of title bore a note which said, 'The following evidence must accompany the application when lodged: (a) Current Local Council rate notice …'. The departmental practice where an application for a new certificate of title was lodged by a solicitor, a certificate under *s.603 Local Government Act (NSW) 1993* was acceptable, but where it was not lodged by a solicitor a current rate notice was required to be produced. The Department's Dealing Registration Manual, which is the manual of practice for Examination Officers in effect at the time stated: It must be evident and be stated in the accompanying statutory declaration that the rate notice, certificate under *s.603 Local Government Act (NSW) 1993*, water rates notice, or a certified copy thereof, is for the subject land and must be in the name of the registered proprietor (*Challenger v Direct Money 2003*).

Justice Bryson in his findings intimated that there was no indication that the information provided was unreliable or that the applications for certificates of title were irregular. The applications were lodged by a prominent firm of solicitors and the accompanying consents of caveators were signed on behalf of the caveators by a solicitor from that firm. The certificates issued under *s.603 Local Government Act 1993* showed that by Local Government records the registered proprietors were the owners of the land. Justice Bryson stated that these circumstances could reasonably be seen as giving some assurance that the applications were in order and certainly they gave no indication otherwise, the applications and the information in the Statutory Declarations which, if accepted on face value, fully justified the applications (*Challenger v Direct Money 2003*).

However, Justice Bryson tempered his findings with regard to the department by stating that with the benefit of hindsight it can be clearly seen that if a process of investigation and inquiry had been brought to bear on the

applications it could well have produced reasons for refusing them, or for delay in acting on them (*Challenger v Direct Money 2003*).

Evidence provided by a legal officer employed by the Department of Lands showed how it came to be understood in the Land Titles Office that dealings with the properties were irregular based upon two reports by solicitors about irregular dealings with land. At first these reports appeared to be unrelated when a solicitor acting for a registered proprietor of some land reported to a legal officer in the Land Titles Office that the registered title to the land had been transferred to a company without knowledge by the owner and then transferred back. The solicitor's concern arose out of the fact that after the re-transfer the owner referred to on the certificate of title was clearly not his client as the owner was resident in Queensland and the certificate of title could have referred to another person with the same surname. The solicitor wished to have the title rectified.

The second report was made by another solicitor who reported concerns because when acting on behalf of an intending mortgagee handling a proposal for a mortgage of land owned by the investors had looked at a registered document bearing a signature which did not appear to match the current signature of the owner on the loan documents. The property was not one of the properties subject to the duplicate certificates of title.

The legal officer investigated information available in the Land Titles Office and observed that the participation of a certain solicitor was a factor common to both reports. The legal officer perused the records in the Land Titles Office searching for new Certificates of Title in which the solicitor was involved and identified about 11 or 12 of them that had been lodged on behalf of the Investors in a period of some months. The fact that there were a number of such applications was not necessarily suspicious in view of the explanation given that the titles had been kept together and destroyed by cyclone. Each of the applications had been supported by *s.603 Local Government Act (NSW) 1993* certificates. The legal officer compared signatures on the documents but the documents were some 20 years apart in time and the officer did not consider this to be a reliable comparison of a signature and did not arrive at any particular conclusion on the signatures, despite they were not identical.

The legal officer instituted a meeting with the Law Society where some concerns over the general pattern of dealings lodged by the solicitor should be investigated. The Law Society Council decided to appoint an investigator to examine the affairs of the solicitor, meanwhile the principal of the prominent law firm that engaged the solicitor had asked the police to investigate the matter. The legal officer arranged for "registration stoppers" to be placed on the titles for about 11 or 12 parcels of land owned by the investors. The registration stoppers were placed on the titles prior to the settlement date for the properties. The legal officer explained the registration stoppers as being 'an electronic flag that may be entered into the titling data base operated by the registrar-general and known as the Integrated Titling System (ITS) so as to ensure that dealings with that land are referred to the person directing the

notification for further investigation, and possibly for requisition, prior to registration. This notification is used as an administrative tool where the Registrar General has concerns about possible transactions but does not have the evidence to warrant the placement of a registrar-general's caveat under *s. 12(1)(e) Real Property Act 1900*. A registrar-general's caveat would prohibit the registration of any dealings with the land whereas the "registration stopper" requires that dealings be further investigated prior to being registered. A "registration stopper" does not appear on a search of the Register folio (*Challenger v Direct Money 2003*). The public could not find that the "registration stoppers" existed by searching the register and they do not prevent a dealing from being registered.

The results of the Law Society investigation were made known just prior to registration of title for the properties indicating that fraudulent dealings had occurred with land owned by the investors and also with land owned by other persons. A Warning Notice was circulated by email, by the president of the Law Society warning that transfers of land have been effected and mortgage loans were made using illegally obtained title documents where the mortgagor has taken over the identity of the Registered Proprietor.

The legal officer also prepared a departmental dealing available to be seen by all staff who searched the register. The notification according to the case transcript said, 'All dealings to be referred to Legal Services (Leg 10) re. 2002 M30(4))' (*Challenger v Direct Money 2003*). This warning appeared on the register but to enable the properties to be referred for registration the registration stoppers were removed and then applied again immediately afterwards, questioning the purpose and operation of the electronic flags. However the registration stoppers meant that any document lodged would not be registered without being considered by the legal officer and there was no sensible possibility that the legal officer would have allowed the documents to be registered.

Judgment Day

Justice Bryson questioned the department's ability to adequately investigate dealings where there are doubts about the validity of documentation, 'if an active inquiry had been initiated, the Registrar General would have probably contacted the investors themselves and obtained information from them, with some investigation and with no great difficulty' (*Challenger v Direct Money 2003*). The legal officer responded by stating, 'the Land Titles Office does not have an independent investigative capacity' (*Challenger v Direct Money 2003*), and indicated that it was not the practice to make such inquiries. Justice Bryson found this to be a reasonable response given the fact that the police were investigating and that both the Law Society and police were in a more powerful position, in terms of legal powers and investigative ability to investigate whether there had been fraudulent dealings (*Challenger v Direct Money 2003*).

Justice Bryson stated that on the facts presented the intention of the second finance company was to have security over the property for the money

advanced is unmistakably clear because their intention to obtain security was the basis of their involvement and fortuitously the security still existed as a registered and undischarged first mortgage. The second finance company did not intend the first mortgage to continue to exist and made firm preparations to discharge the first mortgage, which didn't occur due to the registrar-general's intervention. The investors were bound by that registered mortgage, having regard to the operation of *s.42 Real Property Act (NSW) 1900* and the first finance company was protected by section because it was not involved in the frauds which brought the first mortgage into existence and brought about its registration. The intervention of the second finance company and the payment of the mortgage debt due to fraudulent conduct, in which a sum of the second finance company money has gone to relieve the investors of an obligation charged on their land (*Challenger v Direct Money 2003*). However Justice Bryson stated, 'It would be unconscionable of the investors to take advantage as against the plaintiffs of the discharge of their land from that obligation, however unjust to the Investors were the circumstance in which that obligation was earlier charged on their land' (*Challenger v Direct Money 2003*). Justice Bryson considered that given the circumstances of the investors it is unjust that any liability should be charged on their property, but the finance companies are not involved in the frauds which make the circumstances unjust, and subrogation (Author's note: substitution of liability) should be addressed in a narrower frame (*Challenger v Direct Money 2003*).

The *Challenger v Direct Money 2003* the case transcript quoted a Speech in the NSW Legislative Assembly on 3 May 2000 by Mr Yeadon, the then Minister for Information Technology who said:

> The great advantages of the Torrens System over the common law title, also known as the Old System, are the relative speed, simplicity and low costs of conveyancing procedure. To a large extent these are made possible by the State guarantee of title and the related compensation provisions recorded by the *Real Property Act (NSW) 1900*, the two major elements of the Torrens System of land title. The provision of compensation by the State is an essential component of the State guarantee of land title. Unlike the common law situation where a land owner may recover his or her land by legal action against a current owner who acquired the land through a forged or fraudulent instrument, under the Torrens System the registered proprietor's ownership cannot be disturbed unless he or she was a party to the fraud. In the case of Torrens Title, where an owner loses land as a result of forgery or other frauds, his or her right to recover the land is converted to right to compensation. The difference is that, under the Old System, the owner recovers the land and the innocent purchaser forfeits the purchase price, while under the Torrens System the innocent purchaser retains the land and the former owner is compensated financially. The Torrens Assurance Fund provides monetary compensation not only to a person who is deprived of land by the operation of the

> Torrens System but also to a person who suffers loss through a mistake in the Land Titles Office or through an error, omission or misdescription in the register of titles. The benefit of the compensation scheme is that it reinforces public confidence in the State guarantee and in the integrity and accuracy of the Register of Title. Moreover, the compensation provisions are so deeply ingrained in the Torrens System that without such a scheme there would be significant and detrimental repercussions in conveyancing costs and practices.

Conceptions central to the Torrens System of title by registration relate to the primacy afforded to the Register, the indefeasibility of title and requirements that where the operation of the Torrens System imposes loss or damage, compensation should be made available by the State. An indefeasible title is created on the recording of the particulars of a lot in the freehold land register and indefeasibility is then determined by the current particulars in the register with regard to a lot (*Land Title Act (Qld) 1994).* Similar legislation relating to compensation exists both in Queensland and New South Wales such that compensation is payable by the State or Torrens Assurance Fund when a person (the claimant) is deprived of a lot or interest in land under a prescribed set of circumstances including and not limited to fraud, errors in the register or errors by staff in the land registry (*Land Title Act (Qld) 1994, Real Property Act (NSW) 1900*).

Justice Bryson reconciled the discharge of the duties by departmental officers stating, despite the care and skill exercised by public officers in the registration of title and maintenance of the register, the workings of the Torrens System will from time to time impose loss and damage and no matter how competent and well-intentioned the public officers are, from time to time they will make mistakes which will have consequences in the register and will cause loss and damage. The word “Assurance” is used as opposed to “Insurance” so as to refer to provision made for events which will certainly happen, in contrast with insurance as provision against events which contingently may happen (*Challenger v Direct Money 2003*). The time consuming, expensive and possibility for error through examination of each transaction of title which characterised general common law or Old System title are replaced by a system in which title registration is based on entries in the register. The possibility there may be causal loss or damage through errors in public administration of the register and the payment of compensation are essential precepts of the Torrens System.

Justice Bryson in his summation found that the principal facts in the causation of the investors’ loss are the issue of the new certificate of title and the registration of the forged mortgage. Both are events within *subs.129(1) Real Property Act (NSW) 1900* which give rise to a claim for compensation. The Investors are obliged to pay to the second finance company the principal sum to discharge the first mortgage, as a matter of registration mechanics, this discharge can be brought about by registration of the as yet unregistered discharge of mortgage given by the first finance company, already lodged for registration. The amount so payable by the investors to the second finance

company becomes the principal element in the compensation which they are entitled from the Assurance Fund. The primary cause is in the events in which applications for new certificates of title supported by falsehoods and that the registrar-general decided to issue new certificates of title. Without the new certificates of title the first mortgage could not have been brought into existence or registered. Other causative events are the fraudulent production of the first mortgage and the first finance company to accepting the first mortgage and offering it for registration, followed by registration. The documents should not have been registered because it was not executed by the registered proprietors. However it is registered and can only be removed by paying the principal to the second finance company. The loss or damage caused by these events constitute loss or damage suffered by the investors' as a result of the operation of the *Real Property Act (NSW) 1900*, and loss or damage which arises from events which fall into several classifications in *para.(a) to (f) of subs.129(1) Real Property Act (NSW) 1900*. Loss or damage arises from acts or omission of the Registrar-General under *para.(a)* and arises from registration of the first finance company as proprietor of the mortgage under *para.(b)* of the Act. Compensation arises out of the investors having been deprived of an estate or interest in the land as a consequence of fraud, by the registration of the first mortgage. Justice Bryson stated, 'It is in my view quite clear that the Investors are entitled to compensation under *s.129 Real Property Act (NSW) 1900*, and that their loss or damage includes payment of whatever sum is charged on their land under the first mortgage; this is just as much so in the present circumstances' (*Challenger v Direct Money 2003*), in which the second finance company are subrogated to rights of the first finance company pursuant to that mortgage for the principal, as it was when the first finance company itself was entitled to enforce the mortgage. The determining element in their compensation is that to discharge their land from the first mortgage they must make a payment of the principal to the second finance company. The Investors are also entitled to compensation in respect of all expenses they have reasonably incurred and will incur in relation to this litigation, and in relation to discharging the mortgage (*Challenger v Direct Money 2003*).

Once upon a time in Queensland

In Queensland, the registrar must issue a certificate of title to the person stated in the owner's request, if asked in writing by the registered owner. The certificate must be certified by the registrar as an accurate statement of the current particulars in the freehold land register about the lot (*Land Title Act (Qld) 1994).* If the registrar issues a certificate of title for a lot, the registrar may issue a second certificate only if the first certificate is cancelled (*s.43 Land Title Act (Qld) 1994).*

For individuals, an instrument is validly executed if it is executed in a way permitted by law. However, if an instrument is executed by a lawyer authorised by a transferee or a person whose interest is being created, the execution need not be witnessed (*s.161 Land Title Act (Qld) 1994)*! With the lack of proof by witness for execution as allowed by legislation for lawyers, if a

lawyer has fraudulently obtained authorisation then fraudulent witnessing of documents would not represent an obstacle.

If the registrar is satisfied that a registered instrument has been lost or destroyed the registrar may issue a substitute instrument. Upon the issue of the substitute instrument, the substitute instrument becomes the registered instrument instead of the original instrument and has the priority to which the original instrument was entitled (*s.163 Land Title Act (Qld) 1994)*. The registrar may require evidence that a person seeking to deal with a relevant lot is the registered proprietor and that the instrument has either been lost or no longer exists and is not deposited as security or for safe custody (*s.164 Land Title Act (Qld) 1994)*. Hence, the requirement for property that was unemcumbered.

A major component of the scam was the purported representation by lawyers of the registered proprietors. Within *Division 3 s.133 Land Title Act (Qld) 1994* dealing with the power of attorney, the registrar must keep a certified copy of a registered power of attorney and return the original to the person who deposited the power of attorney. A weakness in the legislation that could be suspect to fraud is if the depositor is the donee of the power of attorney and not the donor (the donor should receive a copy, irrespective of who deposits the power of attorney).

Critical to the success of the scam is the evidence required for the issuance of a replacement certificate. The weakness in the NSW legislation lays with the system of checking the identities of applicants for new certificates of title especially the acceptance of *s.603 Local Government Act (NSW) 1993* certificates, which are easily obtainable by any persons for the required fee. The registrar has the power to require evidence and to compel the production of information and departmental practices need to be more stringent than practices exhibited in NSW.

In this case, compensation is payable due to the error in registering the interests in the properties by issuing fraudulent certificates of title. However in both the *Land Title Act (Qld) 1994* and the *Real Property Act (NSW) 1900* it is interesting to read the circumstances with which compensation is or is not payable. Both acts are drafted to define the circumstances in which compensation is payable as a result of the operation of the Act in respect of any land, where the loss or damage arises from the person having been deprived of the land, or of any estate or interest in the land, as a consequence of fraud, and yet compensation is not payable in relation to any loss or damage suffered by any person where it is a consequence of fraudulent acts by any solicitor, licensed conveyancer or real estate agent. The conundrum in the legislation lies with the expectation of restitution or compensation through professional indemnity insurance (which happened with many of the NSW victims) where possible, rather than from taxpayers.

The Conclusion

The tittles office issues a large number of new certificates of title each year and very few of them are fraudulent, a tribute to the effectiveness of the Torrens System. The Torrens System is not immune to fraudulent dealings especially when there are a number of duplicitous parties. Thankfully, fundamental to the Torrens System is the premise that the person who suffered loss or damage arising from the issue of a new certificate of title where the certificate of title had not in fact been lost, mislaid or destroyed is given an entitlement to payment of compensation and the general operational concepts of indefeasibility of title protects interests where those interests are created from properly registered instruments recorded in the land register. Sir Robert Richard Torrens removed the uncertainty surrounding land ownership and created an efficient land conveyancing transfer process with the system generically known as the Torrens Title System, despite those that may attempt to register dirty dealings.

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