

# Client Newsletter

Dibble & Miller, P.C.

March 1, 2013 – No 067

www.dibblelaw.com



**D&M<sup>P.C.</sup>**

From the  
Law Offices of

**Dibble & Miller, P.C.**

55 Canterbury Road  
Rochester, NY 14607

Tel: (585) 271-1500  
Fax: (585) 271-0118

## Real Estate Document Fraud—A Growing Problem!!

Technological advances in communication, banking, printing, and information storage and retrieval, have changed the landscape of many businesses, none more so than the real estate business. While these advances have improved efficiency, they have also presented the unscrupulous with new opportunities for fraud and theft, creating the need for increased vigilance by all who are involved in real estate transactions.

Document reproduction technology is so good it is hard to distinguish between a copy and the original. This is why cautious lawyers now insist that original documents be signed in blue, rather than black, ink.

In some senses, the real estate system is a fragile system, dependent on good faith. In the “old days,” lawyers submitted all the documents in the real estate system, and were trusted. Now, virtually anyone can prepare and submit documents for recording. And people are submitting fraudulent documents.

Documents can be compromised in two ways: either by a direct fraud (someone fraudulently executing a document they have no right to execute); or an indirect fraud (the proper person is signing the document, but makes false statements in the document).

### Indirect Fraud

The potential for indirect fraud has always been present. Judgment and bankruptcy affidavits are commonly used in real estate practice. If a seller has a common last name, there will undoubtedly be judgments and bankruptcies shown on the title search. In a judgment and bankruptcy affidavit, a seller states that judgments or bankruptcies disclosed on the title search (the abstract of title) are not against the seller, but are against names similar to the seller's. It has always been possible for a fraudulent judgment and bankruptcy affidavit to “slip through” the system, with the result that the purchaser of real estate did not receive good title and his or her ownership of the property might be subject to liens or other claims of third parties.

### Direct Fraud

The new technological assault on real estate practice comes from direct fraud exacerbated by identity theft.

By recording a fraudulent mortgage discharge, the criminal who has stolen the homeowner's identity can then use the stolen identity to obtain a new mortgage on the homeowner's property and abscond with the money. The homeowner may not be aware of the theft until the new bank notifies him or her that he or she is in default on his mortgage.

A driver's license is commonly used for identification in the real estate system. A criminal can obtain a fraudulent driver's license. A clerk at the county clerk's office reviews mortgage discharges before accepting them for recording. Because the clerk has no personal knowledge of the bank officer signing the discharge, or that officer's signature, or even who has authority to sign for the bank, the fraudulent mortgage discharge will be accepted for recording.

### “Social Engineering”

Another means of assault on the real estate system is known as “social engineering.” Homeowners are being sold these social engineering systems with the promise that the social engineer will free the homeowner from his or her mortgage obligation.

In one such scam, the social engineer sends notices to the lender, demanding a response, and when no response is received from the lender, the homeowner's social engineer files a document purporting to discharge the mortgage, alleging a violation of some law. The social engineer then transfers the homeowner's property into a trust that the social engineer controls (and uses to collect income from the property) and places the social engineer's own mortgage on the property. The result is a calamity which will cost the homeowner time and significant expense to undo.

### Fraudulent Checks

Technology now permits criminals to produce fraudulent checks that are extremely difficult to detect. Often, the only way to be certain that a check is genuine is to verify with the issuing bank that the issuing bank actually issued the check and that there are still sufficient funds in that account to pay the check.

### Protect Yourself

One should always be alert and vigilant to avoid being defrauded.

Dibble & Miller, P.C. is alert to the problem of fraudulent checks and bank drafts and banks placing stop payments on checks and drafts and has taken specific steps to ensure that client funds are fully protected in all real estate transactions.

Dibble & Miller, P.C. provides protection from fraud by advising clients to purchase fee title insurance. Fee title insurance insures the owner's interest in the property. The owner usually acquires the fee simple absolute ownership interest in the property (which is the totality of ownership), thus “fee” title insurance. There is also mortgagee title insurance which protects the interest of the lending institution. Title insurers generally take the risk of fraud in the transaction so long as the insured is not a party to the fraud, or has knowledge of the fraud, thus protecting the homeowner from schemes like those described here.

Title insurance not only insures the quality of title, but also provides a legal defense if one is necessary. Dibble & Miller, P.C. strongly recommends that purchasers obtain fee title insurance in every case.

*One of the attorneys at Dibble & Miller, P.C. is an examining counsel for several local title insurers. That means that the title insurers recognize Dibble & Miller, P.C.'s abilities to examine title, determine what title objections exist, what curatives are necessary to resolve those objections and to collect the proper curatives to resolve title objections. Title examination is an art that Dibble & Miller, P.C. practices as examining counsel.*

*There is a sense that technology may be outpacing the practices in the real estate system. Do not let yourself become a victim of that situation. Consult Dibble & Miller, P.C. for your real estate needs.*

# DIBBLE & MILLER, P. C.

ATTORNEYS AT LAW

55 CANTERBURY ROAD, ROCHESTER, NEW YORK 14607

PHONE: 585-271-1500 FAX: 585-271-0118

WEB SITE: [www.dibblelaw.com](http://www.dibblelaw.com)

WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney and Estate Planning and Administration*
- **Family Law** — *Divorce, Custody, Visitation, Child Support, Paternity, Pre-Nuptial Agreements, Separation Agreements, and Family Mediation*
- **Litigation** — *Civil, Business, Contract, Commercial, Corporate, Real Estate and Stockholder and Partner Disputes*
- **Personal Injury** — *All Types, including Car Accidents, Slip and Fall, Physical and Sexual Abuse, Assaults and Work Accidents*
- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
  - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
  - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
  - *Resolution of Tax Levies, Liens and Income Executions*
  - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
  - *Preparation, Filing and Negotiation of Offers in Compromise*
  - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
  - *Innocent & Injured Spouse Defense*

**\*\*\* IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION \*\*\***

We Are A Full Service Law Firm – Free Initial Consultation – Attorney Advertising