

## **Identity Thieves Now Stealing Equity In Property**

*By Gordon P. Gitlen, Esq.*

IDENTITY THEFT, "ONE OF THE FASTEST GROWING CRIMES IN THE UNITED STATES," ACCORDING to U.S. Attorney General John Ashcroft, has infiltrated Los Angeles County at an astonishing rate. The Privacy Right Clearinghouse reports that about 500,000 to 700,000 cases of identity theft occur annually. In Los Angeles County alone, the number of cases reported has overwhelmed an already taxed law enforcement agency.

When the first permutations of the crime of identity theft first appeared in the early 90s, it typically involved the use of the victim's credit card account number. Thieves presented the victim's credit card number via the Internet to make faceless virtual purchases. As the incidences of reported credit card fraud grew, however, and as credit card companies began to intervene when the purported purchaser requested that the merchandise be shipped to a new and different address, thieves looked for new and uncharted ground.

The thieves became more inventive. Why not use the stolen identities to draw upon the greatest asset a person has: his or her own real estate! Older victims were more desirable victims. The equity was sizable. And then the thieves discovered a gold mine: the paid-off mortgage.

Loan brokers got involved. Loan brokers accessed the databases of public records. They found the names and addresses of property owners who had paid off their homes and had no existing mortgage. The equity in that property was a free ticket to a "no-docs" loan.

Almost no documentation is required. No income tax returns. No employment verification. The loan is based, not on the borrower's income, but on the substantial equity in the property. A fraudulent loan application is filled out, using the victim's name, property address, and information obtained from a credit report, such as date of birth and social security number. A private mailbox is opened in the victim's name. The private mailbox address is used on the application. A fraudulent cell phone account and bank account is opened, also in the victim's name. The "no-docs" loan is quick and easy and ripe for fraud.

In one of the most heinous schemes, the property is sold out from under the victim. Some involve rental properties. Last month the U.S. Attorney's Office in Detroit filed several such cases. The cases involved both fraudulent sales and loans of various properties. In each case, the homeowners had paid off the mortgage and owned the homes for decades.

Sound far-fetched? This is exactly the case of one of our clients. Despite misspellings of the victim's name on the loan application (who among us misspells our own name?), inconsistencies in the application itself (In one place he is described as "retired;" in another "self-employed in sales and investments") and obvious forgeries of his signature, the loan was processed and funded.

How did the victim find out about the fraud? He started receiving mortgage statements from a lender. He called the lender and said it must be a mistake. His home is paid off. He received another statement, then another. Late fees were added. He wrote letters, got lost in the lender's ubiquitous voicemail system. The monthly statements kept coming.

The law has not yet caught up with this new criminal enterprise against targeted property owners. For example, in a case alleging negligence against a bank, escrow company and lender brought by the homeowner victim, a judge ruled that the defendants did not owe a "duty" (one of the elements of a cause of action for negligence) to the homeowner victim, and thus the action for negligence was dismissed.

To whom is the duty owed? To the thief? That is not consistent with common sense and that is not what the law intended. Until our legislature passes new laws to protect property owners and other consumer victims of identity theft, your assets and your good credit are in jeopardy. What's worse is that you may be left with no remedy.

You may have an excellent case, that is, you may have documented proof that you never applied for the fraudulent loan, that the signature is forged, but you may be defeated in court because you were not in fact the person who applied for the loan. Some judges are refusing to accept the sound and rational argument that only one person has your name, your date of birth, your social security number and your property. If indeed a bank, an escrow company, a loan

broker use that identifying information without your knowledge or consent, and they do not exercise reasonable care to determine that the person applying for the loan is in fact you, shouldn't they be stopped from denying that you are the person to whom they owed a duty?

Until this issue is raised on appeal, the rulings in the trial courts will be inconsistent. Some judges are quite adamant that the law does not protect those who fraudulently take and use another's identity. Others do not.

***What should the property owner do?***

Consumers, and property owners in particular, must be extremely vigilant. If a person is taking photographs of your home, demand a business card. Ask who sent them. Don't respond to any unsolicited calls or mail from loan brokers. If you wish to apply for a loan, ask someone you trust for a referral. Finally, place a "fraud alert" on your credit reports. No loan or account can then be opened in your name, unless you are notified first.

If you do not receive your regular mail or if you see unusual activity around your property (even something as small as an unauthorized person cutting the grass), be aware of possible theft.

Get involved. If the police will not help, seek legal advice. Ask questions. Obtain your credit report periodically to check that the information reported is entirely accurate.

In our case, the loan broker was held liable for damages as he "arranged" the loan when the jury verdict was announced; "coincidentally" the loan officer transferred his real estate to another person as a gift on that same day. When the court discovered this obvious fraud on a creditor, the court set aside the transaction and ordered the property conveyed to the Plaintiff homeowner in partial satisfaction of the judgment. The court file is open to the public for inspection. See *Hodson vs. Justin Chuka*; and *Jucuby Realty and Financial Services*.

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