

# Now you have it... and now you don't

A recent spate of property theft scams in Australia has highlighted the ease with which someone can sell a property you own outright from under you without your knowledge. We explain how it works and what you can do to avoid becoming the next victim. **CAROLINE JAMES**

It reads like the script of a romping celluloid thriller.

Imagine handing over the front door keys of your Aussie investment property to a trusty real estate agent, then jetting overseas only to later discover that in your absence your bricks and mortar nest egg has been sold without your knowledge!

Sound too far-fetched to ever happen in real life? Prepare for a shocking plot twist.

It has happened in Australia – not once, but at least twice – and some industry experts believe there's every chance it will happen again... and soon.

Today's challenge for every investor is to ensure they don't end up the star of their own property theft horror story.

## HOW DOES IT HAPPEN?

"Digital technology certainly means you have to be more creative than walking down a graveyard picking up names from gravestones (if planning to sell someone else's property)," property lawyer Rob Balanda says.

"But if you find a property without a mortgage on it – which is easy to do via government records – and an agent who doesn't know the property, it's quite possible to steal somebody's property using fraud and forgery."

Recent history proves Balanda's comments are based on fact as much as theory.

Western Australian investor Roger Mildenhall's property – in the northern Perth suburb of Karrinyup – was stolen while Mildenhall was living in South Africa in August last year.

It was reported Mildenhall discovered, via a neighbour, that his Australian nest egg, which was vacant while he was overseas, had been listed and sold without his knowledge. Mildenhall's Perth property was mortgage-free and its illegal sale represents a loss worth the hefty sum of \$485,000.

Disturbingly, an apparent copycat property theft involving another Perth property with absentee owners made news in August this year when a couple returned home from overseas to inspect their investment

and discovered their brick house, in Ballajura in Perth's northeast, had been sold in April without their consent.

A real estate agent told investigators he was contacted by phone in February, by a man claiming to be the home's owner.

The agent later received an urgent request to sell the property by a caller, who allegedly claimed funds were needed for a petrochemical business investment. The house was sold within six days of its market listing and sale funds of \$410,000 were deposited into a Chinese bank account, as requested by the fake owner.

## WHAT'S BEING DONE ABOUT IT?

WA police, in conjunction with Consumer Protection and the WA land titles office Landgate, have launched an investigation to find who's behind the sophisticated internet-enabled scam, Detective Senior Sergeant Pete Davies from the Major Fraud Squad says.

It appeared the deceit originated in Nigeria, he noted.

"We're conducting a full criminal investigation with the view to try to identify and bring to justice those responsible," Davies says.

"It's difficult with the overseas connection but we'll do everything we can."

In September another investor narrowly avoided falling victim to a similar property con when he discovered his \$1 million Sydney apartment was scheduled for auction.

The owner exposed the scam when he was contacted by the agent that sold him the luxury two-bedroom property in 2004, wishing him well with the upcoming sale.

Investigators have traced emailed correspondence from the thieves back to Africa and enquiries are ongoing.

All WA property transactions made since September last year – about 280,000 transfers – are now under review by the state's land titles office amid fears more buyers and sellers may have been unwittingly caught up in the international fraud scheme.

Mildenhall is reportedly seeking compensation for his losses under WA's *Transfer of Land Act*, whereby if fraud is proven and the defrauded owner is not part of the fraud, the owner may be entitled to payment, Landgate's registrar of titles Bruce Roberts explains.

Balanda says Queensland's *Land Title Act* also contains reference to compensation for those found to have suffered financial loss because of fraud.

Real estate agents Australia-wide are shocked by the property thefts, with peak bodies including the real estate institutes of WA, New South Wales, Queensland, Victoria and South Australia issuing notices to members urging them to vigorously check identification (ID) and property ownership documents and stay vigilant when contacted via email by absentee landlords and owners requesting changes to addresses and contact details.

Property managers have also been warned about tactics scammers are using, including emailing requests for tenancy information and basic details of the property.

Real Estate Institute of Australia (REIA) spokeswoman Rhiannon McClelland says in one of the cases the fraudsters had "insider knowledge" of mail that was being sent to the owner of the home "as they had people in the postal system intercepting and opening their mail".

Government regulators say there "may need to be a tightening of rules for agents"; for example a 100-point identity check when buying or selling a home.

## Mildenhall's Perth property was mortgage-free and its illegal sale represents a loss worth the hefty sum of \$485,000.

"Regulators fear there could be properties currently in the transaction phase so have asked all real estate professionals to check their books for properties that they have been asked to sell which may be suspicious," McClelland told API.

### DON'T LET IT HAPPEN TO YOU

The risks of property theft are a real possibility and if it happens to you, it could cost you a very significant sum of money. So what can you do to protect yourself?

The REIA's advice to concerned property

owners is to take out land title insurance and if you have a rental property, engage a property manager and have a clear set of instructions/questions that are to be adhered to before the property is ever sold.

Land title insurance offers financial protection from title risks including transaction fraud for both property buyers and existing property owners, and is offered by various insurance companies.

However, insurance broker Robert Cooper questions whether investor homeowners would be adequately protected by the insurance policies already in existence.

"There's nothing clear cut about protecting yourself against this risk (and) even if cover is readily available", will the public see it as enough of a risk to have insurance protection and part with their cash, and was it a duty of care issue being owed by the professionals involved in the sale?" Cooper,



director of CPR Insurance Services, asks.

“One thing for sure is that it’s more likely the person who bought the property in good faith will suffer this loss and unless it’s a business and they have taken out an appropriate fraud or crime cover, they’re likely to lose their money.”

Chief executive of the Real Estate Institute of WA Anne Arnold says investment property owners who do not occupy the property – and especially those who are remote from the property and who do not regularly visit the property – should take steps to establish an identification procedure with their real estate agent.

“(This is) so that there’s a way of quickly establishing (the identity of) the caller or emailer who contacts the agent to instruct them to sell the property,” Arnold stresses.

She also advises owners to register a caveat on their property, which would ensure the property could not be sold without them being notified.

WA Commissioner for Consumer Protection Anne Driscoll says any owner concerned about recent real estate scams should make it a priority to check with their real estate agent/property manager to ensure they have correct contact information and bank account details on file and haven’t had any recent unauthorised enquiries or requests to sell.

“Absentee owners should also consider setting up a series of security questions with their agent to help verify their identity,” Driscoll says.

“These are questions that only the real owner can answer, such as their mother’s maiden name, name of their first pet or the street where they lived as a child. If possible, nominate a local contact, perhaps a family member or friend, who may be able to assist in the identification process and confirm any changes.

“Make sure your agent has your correct signature on file so that it can be matched when documents are sent.”

Roberts says his office can’t advise property owners other than to remind them to be vigilant to protect their identity and to take steps to ensure their personal information is secure.

“For example, don’t leave mail lying about (and) keep duplicate titles secure,” Roberts says.

**WHAT CAN WE LEARN FROM RECENT PROPERTY THEFTS?**

Balanda, partner of MBA Lawyers, says the spate of property thefts have highlighted two things: one, both properties were unencumbered by mortgages; and two, the challenges created when authorities tran-

**Protect yourself! Don’t fall victim to a property theft scam**

If you own a property that’s completely paid for – that is, you have no mortgage on – and you’re not around to watch it like a hawk, you could be at risk of becoming a target for a property theft scam. If it happens to you, you could lose hundreds of thousands, if not millions, of dollars.

There are a number of precautions you can take to protect yourself though:

- Have the title deed (a paper document) in your possession once the property is fully owned. You can’t settle a fraudulent sale without the title deed. If it’s voluntary to have it in your state, get one anyway.
- If your property is rented out, engage a property manager and have a clear set of instructions/questions for security that are to be adhered to before the property is ever sold.
- Establish an identification procedure with your real estate agent/property manager. This will ensure there’s a quick way of establishing the identity of the person calling or emailing and instructing them to sell the property.
- Make sure your real estate agent/property manager has the correct contact information for you, your correct signature and current bank account details on file, and that they haven’t had any unauthorised enquiries or requests to sell.
- If possible, nominate a local contact – perhaps a family member or friend – that can be contacted by your real estate agent/property manager to assist in the identification process and confirm any changes.
- Register a caveat on your property. This ensures the property can’t be sold without you being notified.
- Be vigilant in protecting your identity and take steps to make sure your personal information is secure. For instance, don’t leave mail lying around and keep duplicate titles in a safe place.
- Look into getting insurance to protect you, so if you do fall victim to a property theft scam you have some recourse for the money you’ve lost. The Real Estate Institute of Australia advises taking out land title insurance, which offers financial protection from title risks including transaction fraud.

sition from paper titles to paperless title systems.

States including WA, Queensland and the Northern Territory have online land registers containing digital versions of all original land titles and will issue duplicates of title to an owner or mortgage provider on request.

Some states, including SA and NSW, still have original paper title deeds kept by their respective registrars.

“This movement away from actual hard copies of title deeds is one of the reasons this (theft) is becoming more prevalent as it’s easier for someone to forge your signature and at no point (do they) have to produce the title deed,” Balanda says.

“They (scammers) don’t have to get the paper deed from the owner because, quite often, there’s not one in existence.”

Balanda stresses his assessment of recent property thefts is “not a criticism of paperless systems”, which he describes as “extremely robust”.

“What it does mean is we have to tighten up in other ways,” he says. Investors most

vulnerable to real estate theft are those who are absent, mortgage-free and title-deed-free, Balanda says.

Vacant land, non-metropolitan titles and properties held for a long time, with no recent agent involvement, are also more likely to attract unwanted attention from predators.

“If you were a culprit, you’d target these owners because they’re not around,” Balanda says.

“They will not have a mortgage on the property – you don’t want to prompt contact with the real owners – and you want to target people without title deeds so there’s less chance you’ll get caught out.

“The profile of the property would be vacant land because there’s no property agent coming there (and) no inspections of the property; or properties that are regional and/or rural as they’re less likely to have regular contact with the owner; and properties passively held for many years where the original agent who sold the house is probably long gone, are also vulnerable.”

Balanda says there are two key legal issues

to be considered in light of the spate of property thefts that have occurred over the past two years.

The first is the issue of title deeds; the second is state-regulated rules on witnessing of documents.

“The single most important thing is no title deed, because you cannot settle the fraudulent sale without it; it’s a hardcore legal document,” Balanda says.

“That is why the first line of defence for any property owner is making sure they have that paper document in their possession once their property is fully-owned.

“As an investor, always get one (a title deed). If it’s voluntary in your state, get one anyway. Tell your solicitor to order it.

“Another issue is the witnessing of the signature of the owner. If you’re a culprit, you would firstly forge the owner’s signature.

“You would then also forge the witness’s signature, which is easiest to do in those states that don’t require the witness to have

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a qualification, for example a JP (Justice of the Peace) or solicitor.

“Why has WA been targeted? I would say the tyranny of distance. WA is a long way from the rest of us, a long way from the rest of the world. Secondly they don’t have an automatic paper title deed option and thirdly, there’s no requirement that the seller’s witness declares they’ve seen evidence the owner is who they purport to be and owns the property they allege to own.”

Balanda suggests all standard contracts of sale have a requirement that a declaration, signed by the witness, be produced by the seller on settlement.

In this declaration the witness would state that they have verified the ID of the owner and attach copies of the ID evidence, such as a passport, licence, credit cards etc. to the declaration. The declaration could also have attached to it some evidence of ownership including rates and water notices.

In addition, Balanda suggests titles offices make it a compulsory requirement to produce this declaration when transferring a title.

“It would create another layer in the transaction, which creates another very important firewall of protection,” Balanda says. **api**