



Real Estate Report to Plenary November 2018

BACKGROUND

At the November 2013 Plenary, the Presidents unanimously passed a resolution that urged FOLA to ask the Law Society to establish a working group or committee, including the direct involvement of LawPRO, to examine the state of real estate practice and any problems faced by the real estate bar, with the objective of developing a plan to address identified problems in the long-term interest of the public of Ontario.

At each Plenary since then, we have reported on the progress of our work and we are pleased to report on the continued progress on real estate issues.

NEW CO-CHAIR

We are pleased to announce that Eldon Horner, past FOLA Chair, has agreed to join Merredith MacLennan as a Co-Chair of our Real Estate Committee. Eldon has a general practice with a focus on Real Estate, Wills and Estates, Municipal Law and Corporate/Business matters. Eldon has worked with Merredith for the past five years on real estate matters for FOLA and took the lead on FOLA's response to the Law Society on Title Insurance Incentives.

COMMITTEE INVOLVEMENT

Real Estate Action Committee

The Real Estate Action Committee (REAC) is a committee of FOLA and the Ontario Bar Association, chaired by Merredith MacLennan, which meets to set the agenda and develop a unified position on issues impacting the real estate bar for discussion at the Real Estate Liaison Group.

Real Estate Liaison Group

The Real Estate Liaison Group (RELG) was created in 2014 in response to the unanimous resolution passed at the November 2013 Plenary and is a committee of the Law Society, comprised of Benchers, Law Society staff, LawPRO, FOLA and OBA members. It is chaired by Bencher Ross Earnshaw, and is as a forum for the bar to work with the Law Society and LawPRO to discuss issues impacting the real estate bar.

Working Group on Real Estate and Lawyers

The Provincial Working Group on Real Estate & Lawyers was created in 2003 with members from the OBA, FOLA and the now defunct Ontario Real Estate Lawyers' Association (ORELA). This group is chaired by Randall Johns and was created to raise awareness amongst all stakeholder groups about the valuable legal advice and representation lawyers provide to

consumers/lenders and to assist the bar in developing a viable practice while maintaining the high standards which the public is entitled to expect. This Working Group has taken the lead on a number of issues, including obtaining access to the standard OREA forms for lawyers, publishing a suggested fee schedule for residential transactions and developing a set of standardized real estate closing documents. See the Working Group website [here](#) for further details.

UPDATE ON CURRENT ISSUES

1. Law Society review of Title Insurance Incentives

The Law Society's Advertising and Fee Arrangements Issues Working Group is currently examining practices involving the payment of fees and offering of benefits by title insurers to real estate lawyers or their staff and is considering whether additional regulatory measures involving these practices are required. The Working Group issued a call for comment by real estate lawyers and other stakeholders by October 31, 2018.

A significant proportion of the practicing bar in Ontario consists of solicitors who practice real estate law on a full time or part-time basis. FOLA consulted widely with the bar via our local real estate representatives and provided comments to the Working Group, a copy of which can be found [here](#).

2. Review of OREA clauses – committee members needed

The provincial Working Group on Lawyers and Real Estate is establishing a committee to review the Ontario Real Estate Association (OREA) standard clauses available to real estate agents and needs a few members. The Working Group has a good working relationship with OREA, who welcomes comments and recommendations from the Working Group.

This review committee will meet via telephone conference call and/or email, as necessary. If you or someone from your association is interested in joining this committee, please contact Meredith MacLennan at merredith.maclennan@stewart.com.

3. Remotely Witnessing Documents

Technology allows us to communicate with clients in a variety of methods. Email has replaced traditional letters or faxes in most cases, and video and chatting tools are readily accessible on smart phones and computers.

We have received several inquiries about remotely meeting with clients. Can lawyers provide legal advice via skype or facetime? Can they witness documents signed by a client on the other end of a video chat? Can a document be commissioned by a lawyer who is not physically present when it is signed by the deponent?

We have asked the Law Society to provide guidance to the profession on these issues and look forward to working with them on this matter.

4. Electronic Funds Transfers

FOLA has been advocating that a reliable, accessible, timely and irrevocable system of moving funds between lawyers is desirable and necessary for a more efficient operation of the real estate transaction market, but have been disappointed by the response of the financial services industry to this market need.

We were pleased to learn that the Law Society has written a comprehensive submission to the Payments Canada requesting improvements to allow for real time, irrevocable funds transfers to accommodate residential real estate transactions. Payments Canada is made up of the major financial institutions in Canada involved in funds transfer.

Payments Canada is modernizing its entire system, and while the real estate bar and the Law Society were not originally consulted, the Law Society reports that Payments Canada is taking its suggestions seriously and that there seems to be a genuine desire to develop an electronic funds transfer system for real estate that involves large sums of money. It appears that this modernization process will be a multi-year project, and it is driven entirely by the banks and other payment companies who are responding to market demand, so it would be premature to expect immediate or short-term changes, but we are pleased that our ideas are being heard and that progress is being made.

Given the realities of closing today, we have asked the Law Society to review the practice guidelines regarding the payment of mortgage funds in real estate transactions that were last updated in 1992.

We will continue to work with the Law Society and LawPRO in trying to find solutions for the real estate bar in dealing with closing funds.

5. Standard Closing Documents

FOLA strongly believe that the real estate bar benefits greatly from working with a set of standardized closing documents for residential real estate transactions. At the May 2017 Plenary, a unanimous resolution was passed approving and endorsing the use of the standard closing documents prepared by the Working Group on Real Estate & Lawyers.

The resolution read as follows:

BE IT RESOLVED THAT:

The Federation of Ontario Law Associations approves and endorses for use in residential resale transactions in Ontario the following Standard Closing Documents as posted on www.lawyersworkinggroup.com:

- a) *Vendor's Closing Certificate;*
- b) *Purchaser's Undertaking and Direction Re: Title;*
- c) *Lawyer's Undertaking;*
- d) *Lawyer's Direction Re: Funds; and*
- e) *Lawyer's Delayed Closing Escrow Agreement.*

BE IT FURTHER RESOLVED *that FOLA and each Local Law Association promote the use of the documents to solicitors in their Association and community.*

BE IT FURTHER RESOLVED that the FOLA Real Estate Committee Chair liaise with OREA and the Working Group on Lawyers and Real Estate on an ongoing basis to amend the recommended documents if required.

The idea is to end the repetitions in the old forms and to eliminate any statements, warranties or declarations that were not required to be provided in the agreement of purchase and sale. Vendors, and their lawyers, should not be delivering anything that is not required under the agreement of purchase and sale, as doing so creates liabilities that are not required under the agreement. In addition, the use of standard closing documents can reduce the time a lawyer spends reviewing, revising and negotiating closing documents.

The following additional benefits are noted by the Working Group in the [Rationale Document](#) for the standard closing documents:

1. Less paper, no repetition and more efficiencies, as the content of the documents can easily be confirmed as being either unamended or modified;
2. Less time needed to negotiate the content of closing documents;
3. Adherence to province-wide standards;
4. Client's rights and obligations are protected based on the agreement of purchase and sale;
5. Either party can easily prepare the documents for the other side; and
6. No need to delete inapplicable paragraphs as they are worded conditionally.

These documents are available in English and French on the Working Group [website](#).

Notwithstanding their clear utility to the lawyer and the clients, the standard closing documents have not been fully adopted across the province, and FOLA has agreed to promote their use by all counties and districts in the province.

Letters of Support for this initiative from [LawPRO](#) and the [Director of Titles](#) for the Province can be found at these links.

We are calling on the local real estate representatives of each county and district to encourage the use of the standard closing documents within their association and to notify us once their association has adopted the documents for use.

6. Three Party Document Registration Agreement (DRA)

When electronic registration was first introduced in Ontario, an escrow closing procedure was developed to deal with the delivery of purchase funds, keys and off title documents. The Joint Committee on Electronic Registration of Title Documents¹ adopted a form of Document Registration Agreement (DRA) that has been published on the Law Society website and referenced in the Law Society's Practice Guidelines for Electronic Registration of Title Documents [here](#).

¹ The Committee was comprised of members representing the Law Society, OBA, CDLPA (now FOLA), ORELA and LawPRO – see [here](#) for further details.

This DRA has routinely been amended for use when there are three or more lawyers involved (when there is a private mortgage or when there is a separate lawyer representing the lender), and we requested that the standard form of Three Party DRA be endorsed and published by the Law Society in the same way the DRA has been.

We are pleased to report that following a review by LawPRO and the other members of the Real Estate Liaison Group, the Law Society has approved a standard form of [Three \(or more\) Party DRA](#) and it is now posted on the Law Society website in both [PDF](#) and [MS Word](#) format.

7. Local real estate representatives

We have been on a mission to confirm a local real estate rep in each county and district. If a local real estate representative has not been designated or identified in a particular county or district, all real estate information and requests for assistance is sent to the President of the association. If the real estate representative for your association has changed, please let us know. You can contact Merredith MacLennan at merredith.maclennan@stewart.com or Kelly Lovell at kelly.lovell@fola.ca.

8. 2019 Bencher Election

Solicitors are historically under-represented in our governing bodies. Out of the 48 elected benchers at the Law Society, there are presently 3 with real estate experience.

The FOLA Real Estate Committee actively encouraged and supported solicitors in the 2015 Law Society Bencher Election and was pleased that 19 candidates were lawyers with a solicitor's practice. We will once again be encouraging solicitors, and in particular real estate lawyers, to run for Bencher.

The next Bencher Election is in the spring of 2019. Since the election is province-wide, in my opinion, the best way to get elected is to have name recognition throughout the province. I would be happy to discuss opportunities that FOLA can help to facilitate with anyone who may be interested.

9. Real Estate Resources

We have found the following resources to be helpful for real estate practitioners:

a) **AvoidAClaim** - [click here](#)

AvoidAClaim is LawPRO's blog that offers regular insights on claims prevention and practice management, and warnings about current frauds targeting lawyers.

b) **Bencher Blog** – [click here](#)

Bencher Blog is a resource for Ontario's Lawyers from Jerry Udell, Law Society Bencher.

c) **Condominium Forms** – [click here](#)

Find prescribed forms under the *Condominium Act, 1998*.

d) **Electronic Registration Procedures Guide** – [click here](#)

Electronic Registration Procedures Guide published by the Ministry of Government and Consumer Services.

e) **Land Registry Bulletins** – [click here](#)

Bulletins issued by the Ministry of Government and Consumer Services, ServiceOntario, Regulatory Services Branch.

f) **OnLand** – [click here](#)

Teranet, in partnership with ServiceOntario, has built this web portal to deliver key statutory services relating to land and property ownership in Ontario to land registry professionals and the public.

The first phase of the web portal offers customers the opportunity to test out the historical land registration book search and view option only. Customers will still be required to visit a land registry office to print any records. For more information on Historical Books, please [click here](#).

Full search capabilities are expected to be available on OnLand in late 2018.

When fully implemented, OnLand will allow users to search historical and current property records, anywhere in the province, from the convenience of your home or office, instead of visiting a land registry office.

g) **Ontario Solicitor Network** - [click here](#)

This website was launched in 2015 to deal primarily with getting more solicitors elected as Benchers in the April 2015 Law Society elections and will be updated with information for the 2019 election when candidates have been declared.

h) **Sid Troister's email updates**

If you aren't already on his list, send Sid an email and ask to be added to his real estate update list. He periodically circulates useful and interesting information about real estate matters. His latest update about the 15th Annual Real Estate was also posted [here](#).

i) **Teraview Newsletters** – [click here](#)

News and information from Teraview.

j) **Teraview Search Tools** – [click here](#) (select Search Tools)

- City/Town cross reference list
- Instrument prefixes
- Condo PINs

k) **Working Group on Lawyer and Real Estate** – [click here](#)

The provincial Working Group on Lawyers and Real Estate has updated its website. Check it out for the latest version of the Ontario Standard Closing Documents, access to the OREA standard forms, and much more.

l) **Working Group on Lawyers and Real Estate – Mentoring Initiative** - [click here](#)

The Working Group launched this initiative to mentor real estate lawyers on best practices. Because it does not have the resources to individually mentor, the concept is to create survey questions about various aspects of the work in a real estate transaction and then provide a comment in response to the survey results. It is hoped that this will generate discussion about the practice, encourage ideas to be shared and create an atmosphere to suggest best practices to better serve our clients and possibly create more efficient practice.

Respectively submitted



Merredith MacLennan
FOLA Real Estate Chair