



March 26, 2020

Dear Real Estate Representatives,

In an effort to keep real estate lawyers updated with the ever-changing situation, we have further information to be shared with the real estate lawyers in your association.

### **Law Society CPD**

Our last update included a link to the Law Society free audio webcast on Friday, March 27 entitled “Your Real Estate Practice and the COVID-19 Pandemic: What You Need to Know Right Now”.

We understand that the live program is now full. The Law Society is replaying the program on April 1, 2 and 3. See the LSO CPD calendar [here](#) for more details.

### **Banking Issues**

We have reached out to the Law Society for assistance and we understand that they are contacting the financial industry and federal and provincial politicians regarding the following concerns:

- Most banks are not accepting scanned documents for mortgage closings – and mortgage instructions require lawyers to be in the physical presence of borrowers, so even if we meet remotely, we need to be physically in the same room to sign the documents.
- Lenders are not allowing lawyers to wire mortgage discharge funds, even though many bank branches are closed and those that are open are working on reduced hours.
- Some lenders are now requiring all refinances to go through FCT or FNF, meaning borrowers will not have any legal representation.

There is a global pandemic with health and safety protocols to be followed. Remaining inflexible, requiring people to put themselves at risk and denying borrowers legal counsel is unconscionable.

### **Title Insurance**

We strongly urge lawyers to think about the title insurers they are working with – is your preferred title insurer actively lobbying banks and government to remove lawyers from the real estate transaction? Are they marketing their ability to perform legal services that you ordinarily provide? If so, the premiums you send them are funding these lobbying and marketing efforts.

There are title insurance companies, like TitlePLUS and Stewart Title, who are actively working to keep lawyers involved in real estate transactions, especially during these unprecedented times.

## **DRA**

Section 10 of the Document Registration Agreement (reproduced below) requires original documents to be provided within 2 business days of closing. You may want to consider amending this to either eliminate the need to send originals or extend the time frame.

*10. This Agreement (or any counterpart hereof), and any of the closing documents hereinbefore contemplated, may be exchanged by telefax or similar system reproducing the original, provided that all such documents have been properly executed by the appropriate parties. The party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 business days after the Closing Date, unless the recipient has indicated that he/she does not require such original copies.*

## **Sending Closing Funds**

Because many lawyers are now wiring purchase funds to the other lawyer whenever possible, a separate cheque is not being written to the mortgage lender for the discharge amount - the full balance is being delivered to the vendor's lawyer with reliance on their undertaking to payout and discharge the mortgage.

The Law Society guidelines recommend a separate cheque payable to the lender for the discharge amount to protect against fraud - lawyers who receive the funds but don't pass them along to the lender, and consequently never receive a discharge. You may be aware that there have been a few lawyers over the years who have gotten into some kind of trouble and who did this. It has been rare, but it has happened.

Given the current situation, there may be a greater risk of this happening if deals are not closing and people begin to feel desperate. Bills still need to be paid, and if there are fewer transactions closing, there may be a temptation to "borrow" the money sent for a discharge.

If you are sending the full balance due to the lawyer on closing, you may want to consider amending your closing procedure to request evidence that the funds have been forwarded to the lender.

## **Corporate Amalgamations and Amendments**

We have been advised that the only ServiceOntario office accepting amalgamations or amendments for Ontario companies, which need to be filed in person at the counter, is the Bay Street office in Toronto.

If and when we receive further information of interest to the real estate bar, we will pass it along.

*Merredith MacLennan and Eldon Horner*  
FOLA Real Estate Co-Chairs

Please note: The information provided herein is of a general nature only and is not intended to provide legal advice.