



CLOSING REAL ESTATE DEALS DURING A PANDEMIC

March 20, 2020

This is the third update this week, and I apologize for contributing to your email clog. I have received over 1000 emails this week and I'm struggling to keep up myself, but I continue to receive calls and email from real estate lawyers looking for some guidance.

Here is what we know:

1. Upcoming Law Society Webinar for Real Estate Lawyers

The Law Society is scheduling a free webinar for real estate lawyers for Friday, March 27 from 12:00pm to 2:00pm to address the issues that real estate lawyers are facing right now. Keep your eye out for further details.

2. There are no plans to shut down Teraview®

Several lawyers have reached out to let me know that their local Land Registry Office is closed. Apparently some small LROs and some co-located within ServiceOntario centres have, in fact, closed. However, I have been advised that notwithstanding these closures, it is still business as usual for land registration and documents can continue to be registered via Teraview®.

If your local LRO is closed, you will not be able to register any paper documents (e.g. *Registry Act* documents, certain Land Titles documents that must be submitted in paper, plans, etc.). They cannot be submitted via OnLand or sent to another LRO. Registration of paper documents in these LROs will not be accepted for registration or deposit until that LRO office reopens.

If an LRO has closed, there is no access to ROSCO computer terminals, and full-size white prints of plans will not be available through the LRO or Teraview®.

If you have a paper deal in an LRO that is closed, you will need to explore workarounds (e.g. title insurance gap coverage, escrow agreement, postponement, etc.).

3. Banks remain open and mortgages are funding

There don't seem to be any bank closures, and mortgages continue to be funding. I have been advised that certain branches will be closing – in Ottawa we've been told that only bank in each zone will remain open. I don't know how big a zone is, or how many zones there are, but I'm assuming that there will be delays in getting money to and from the bank if cheques or drafts are involved.

4. Tarion acknowledges that unavoidable delays are likely

Builders are sending out delay notices to purchasers. If you have upcoming purchases from a builder, check with your client to confirm if they have received a notice of delay.

Tarion issued an Advisory on Friday confirming that the builder repair period has been suspended until April 13, 2020, and that homeowners may refuse access and builders may refuse to perform after-sales services during the Covid-19 pandemic without penalty. All conciliations, inspections, common element meetings and other in-person meetings scheduled for the next month will also be postponed. The Tarion Advisory can be found [here](#).

Tarion issued a further Advisory on March 16 regarding pre-delivery inspections and delayed closings, which can be found [here](#) and [here](#).

5. Working remotely

Many lawyers and law firms are closing their offices and working remotely. My office gave all the lawyers and staff the option to work from home and equipped everyone with the tools to make this possible. (My partner had the foresight to purchase 25 chromebooks two weeks ago and then had vpn software installed on each of them.)

This week, however, we closed the office entirely as a precautionary measure to safeguard the wellbeing of our lawyers and staff. It was a difficult decision, because most people cannot work as efficiently from home. Fewer, smaller screens. No popping by a colleagues' desk to ask a "quick" question. But it had to be done.

If you and/or your staff need to work remotely, here are some things to consider:

a) Use technology to your advantage.

If the other lawyers and staff in your office have laptops, tablets or phones with cameras and microphones, consider video conferencing with them from time to time.

There are several good video conferencing applications that will allow you to connect and collaborate with your colleagues and staff. Video conferences can yield better results than phone calls. Some video conferencing technology allow you to share your screen, so that you can collaborate more effectively. It can also make you feel less isolated.

You can also take advantage of text messaging or instant messaging to cut back on your email clog.

Send as much as you can by email. I know, I've mentioned email clog twice already and now I'm suggesting more email. But it is practical. Just remember that email is not secure, so you may want to encrypt certain documents before emailing them (Word, Excel and most PDF programs have encryption by

password built into them – it's simple to do. Just don't send the password in an email – call the recipient with the password).

b) Think about your accounting needs.

My firm instituted a “wire transfer only” (or direct deposits for incoming funds) policy. We wanted to cut back on the need for paper cheques for two reasons – one, if the firm had to close and operate remotely, cheques become more difficult since two partners need to sign all trust cheques; and two, electronic banking means fewer hands touching the money and spreading germs. We set up a remote accounting office, within close proximity to two partners' houses, so cheques can be printed, couriered to the partners for signature, and then sent to the recipient. It will definitely take more time than when we are down the hall from one another, but it works for those times when we can't wire funds into the recipient's account.

If you don't have the ability to wire directly from your desktop, speak to your bank about getting it. It's a game changer. Unfortunately, it might take a while at this point, as banks are likely working with reduced staff and high volumes right now.

c) Client meetings

Many law firms whose offices are still open are restricting access. Drop-ins are discouraged and client meetings are strictly by appointment only.

If you are meeting with clients in person, lawyers and clients should follow health authority recommendations – don't shake hands, sit as far apart as possible, disinfect the space regularly, etc. When making the appointment and before meeting with them, ask your clients if they are experiencing any symptoms, if they have been in contact with someone who is sick, has tested positive for Covid-19 or if they are self-isolating for any reason. If the answer is yes, consider the health and safety of you and your staff and determine if the meeting can be postponed or conducted remotely.

Some lawyers are having clients place documents on a table or counter rather than handing them to another person directly. If your office has the technology, you can meet with clients remotely within your office. The clients can be in one meeting room and the lawyer in other, meeting by video or telephone to review the documents. The lawyer can go into the clients' room to witness the signature from a healthy distance, and sign as witness or commission once the clients leave.

If you are meeting with clients remotely, review the Law Society's [Corporate Statement](#) on Covid-19 that includes information on remotely identifying and verifying identity of clients and virtually commissioning documents. Be aware of your legal obligations and document your file well. Most title insurers are confirming coverage even for deals signed up remotely – check with your preferred title insurer for details.

You can also refer to the attached “Basic Approach for Remote Signing”, which includes a Video Conference Checklist.

6. Fraudsters love chaos

Be alert to fraud. The bad guys take advantage of vulnerable people and vulnerable situations. Keep your spidey senses on high alert. Some of the key red flags to watch out for are:

- i) last minute changes in payment instructions
- ii) instructions to send funds to unrelated third parties
- iii) rush deals with new clients
- iv) the sale or refinance of mortgage-free or vacant land
- v) deals involving elderly or vulnerable individuals or people who are not receiving a benefit from a refinance transaction
- vi) emails offering a covid antidote

7. Off title search results may not be available

Some off-title search results may be delayed and may not be available in time for your closing. Check with your title insurer to confirm if coverage is available. Understand what coverage will be available if the search result comes back following closing and reveals deficiencies. Communicate well with your client.

Be proactive. Be patient. Responses will take longer as more and more people work remotely and offices have fewer people available due to illness, quarantine, self-isolation, or childcare issues.

Deals will be more difficult to close. But we are all in this together. Encourage compassion and reasonableness. Consider how a court will be likely to respond to hardline responses to issues relating to or resulting from this pandemic.

Sid Troister sent out a great email bulletin yesterday, where he said “My unauthoritative advice is to make sure that when these decisions have to be made, you explain to your clients the options and implications fully, ensure sure that you have documented both the advice and options you gave your client and the instructions you received including sending them confirmation. Make sure that advice to clients is in plain language. You don’t want them saying that they did not understand because it was all too technical. As I say, deals may be much harder to complete these days so you need to have a good record of the steps taken to protect yourself and in so doing, you will also be protecting your client.”

For more information from FOLA, please visit our COVID-19 webpage [here](#).

Merredith MacLennan
FOLA Real Estate Co-Chair

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