



FEDERATION OF ONTARIO
LAW ASSOCIATIONS
FÉDÉRATION DES ASSOCIATIONS
DU BARREAU DE L'ONTARIO

October 7, 2020

Dear Real Estate Representatives, Presidents and Library Staff,

With the “second wave” of Covid upon us, we want to highlight some of the key updates we have recently circulated. Please share this information with the real estate lawyers in your association.

Closing of Land Registry Office to the public

On July 6, 2020 the Director of Titles announced the closure of all 54 Land Registry Offices to the public effective October 13, 2020. This means that Friday, October 9, 2020 will be last day the Land Registry Office counter service will be available. Further details can be found in his letter to FOLA [here](#).

New procedures for registration of paper documents after October 13, 2020, including a Paper Document Submission Request are available [here](#).

FOLA hosted a Zoom meeting with the Director of Titles, Jeffrey Lem, on September 24, 2020 to discuss the new procedures once the LROs are no longer accessible by the public. The meeting was approximately an hour long. You can access the link to the video on the FOLA website [here](#).

Virtual Reality: Virtual Commissioning is here to stay

The provincial government passed regulations under the *Commissioners for Taking Affidavits Act* to permit virtual commissioning permanently. [O.Reg 431/20](#) came into force on August 1, 2020 and sets out the conditions under which an affidavit or declaration can be completed remotely.

The regulations include the following conditions:

1. The oath or declaration is being administered by an electronic method of communication in which the person administering the oath or declaration and the deponent or declarant are able to see, hear and communicate with each other in real time throughout the entire transaction.
2. The person administering the oath or declaration confirms the identity of the deponent or declarant.
3. A modified version of the jurat or declaration is used that indicates,
 - i. that the oath or declaration was administered in accordance with this Regulation, and
 - ii. the location of the person administering the oath or declaration and of the deponent or declarant at the time of the administering.
4. In the case of a commissioner to whom section 5 of the Act applies, the information on the stamp required to be used under that section appears on or in the document being signed.

5. The person administering the oath or declaration takes reasonable precautions in the execution of the person's duties, including ensuring that the deponent or declarant understands what is being signed.

They also require every person who administers an oath or declaration remotely to keep a record of the transaction.

The regulations are brief and leave room for interpretation. The Law Society notes in its article on best practices for remote commissioning that it is "important for lawyers and paralegals to note that there is nothing in the Act or its Regulation that obliges a receiving party to accept a document that has been commissioned remotely".

Virtual Signing Resources

The following resources are also available on this topic:

- Ministry of the Attorney [General Guide for Newly Appointed Commissioners for Taking Affidavits](#)
- Law Society of Ontario [Remote Commissioning Information Page](#)
- Law Society of Ontario [Best Practices for Remote Commissioning](#)
- Law Society of Ontario [Remote Commissioning Checklist](#)
- LawPRO Avoid A Claim article [New Rules for Virtual Signing and the Winding Down of Remote Signing of Wills and Powers of Attorney](#)
- LawPRO/PracticePRO [Video Conferencing Checklist](#)
- FOLA – [Sample Authorization for Virtual Meetings](#)

Sample Modified Jurat

If deponent and commissioner are in the same city or town:

Sworn (*or Affirmed or Declared*) remotely by(person's name) at the (City, Town, *etc.*) of in the (County, Regional Municipality, *etc.*) of, before me on(date) in accordance with [O.Reg 431/20](#),

Administering Oath or Declaration Remotely.

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Commissioner for Taking Affidavits

If deponent and commissioner are not in the same city or town:

Sworn (*or Affirmed or Declared*) remotely by(person's name) of (City, Town, *etc.*) of in the (County, Regional Municipality, *etc.*) of, before me at the (City, Town, *etc.*) of in the (County, Regional Municipality, *etc.*) on(date) in accordance with

[O.Reg 431/20](#), Administering Oath or Declaration Remotely.

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Commissioner for Taking Affidavits

Delivering Mortgage Discharge Payments by Wire

LawPRO has posted an up-to-date list of financial institutions that are accepting mortgage discharge payments by wire, including payment instructions. See LawPRO's Avoid A Claim Blog [here](#) for further details.

Wire Transfers

The Canadian Bar Association has been communicating with the Canadian Bankers Association with respect to continued issues and delays lawyers are experiencing with the existing wire transfer system. They are looking for specific details of wire transfer timing problems that they can share with the Canadian Bankers Association in an effort to help resolve the reliability of this service. If you have experienced a delay in the sending or receiving of wire transfers and you are willing to share the details, please send an email to Ray Leclair at ray.leclair@lawpro.ca with details including the banks involved, the amount transferred, the timing and any other details that might be relevant.

Payment of Wire Transfer Fees

It is FOLA's position that each lawyer should be responsible for the fees charged by their own bank with respect to sending or receiving wire transfers. FOLA's position matches that of the Provincial Working Group on Lawyers and Real Estate. Please see our Update of [June 26, 2020](#) for further commentary on this position.

Working Group – Mentoring Survey Question

The latest Working Group mentoring survey question is available [here](#). Please take a few minutes to respond when you can.

The Working Group launched its mentoring 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.

Ongoing Consultations

The following consultations relating to real estate issues are currently on-going:

[Proposed Regulations Under the New Home Construction Licensing Act, 2017, to Support the Overhaul of Ontario's New Home Warranty and Protection Program](#) – Comments are due by **October 19, 2020**

[Proposed Regulations to Support the Overhaul of Ontario's New Home Warranty and Protection Program](#) – Comments are due by **October 19, 2020**

[TARION Consultation](#) regarding:

- A new requirement that vendors attach a Warranty Information Sheet to purchase agreements to provide clear and helpful warranty and other information at the point of sale.
- The evaluation criteria that should have to be met for a home to qualify for enrolment, and for a home to be enrolled, in the Ontario New Home Warranties and Protection Plan so that a vendor or builder can sell or build a new home.

- The provisions that should be included in standard vendor and builder agreements with Tarion.
 - Temporary changes to registration renewal to allow for a seamless transition of this responsibility to the regulatory authority, if one is designated.
- Submissions are due by **October 19, 2020**

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

Stay up to date with FOLA's real estate information at <https://fola.ca/real-estate-law>.

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.