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

June 15, 2021

Dear Real Estate Representatives, Presidents and Library Staff,

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.

LRO Updates

The Director of Titles has recently posted 3 articles that real estate lawyers should review:

June 1, 2021 Registering "Paper Documents" in Teraview – available **here**

June 8, 2021 Teraview Experiencing Record Volumes – available **here**

June 10, 2021 Data Retention Reports for Registry Non-Convert PINs – available **here**

Planning Act Update

Sid Troister recently circulated commentary on the amendments to s. 50 of the Planning Act, which received Royal Assent on June 3, 2021 but have not yet been proclaimed, so are not yet in force. With his permission, his email is attached. **Every lawyer practicing real estate in Ontario should be aware of these impending changes.**

We are grateful to Sid for all his efforts in proposing these amendments and encouraging their enactment, as well as to Ray Leclair from LawPRO who pressed the government for these amendments and, of course, to the Ontario Attorney General Doug Downey who first brought the amendments to the legislature as a private members bill and encouraged his fellow MPPs to see the amendments become law.

If you have not signed up for Sid's period email updates, we encourage you to do so.

Standard Closing Documents

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 Lawyers and Real Estate.

The Standard Closing Documents are available in French and English on the Working Group's website.

We strongly believe that the real estate bar benefits greatly from working with a set of standardized closing documents for residential real estate transactions.

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.

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.

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.

Merredith MacLennan

From: Sidney H. Troister, LSM <stroister@torkinmanes.com>
Sent: June 6, 2021 3:50 PM
To: Sidney H. Troister, LSM
Subject: Real estate bulletin June 6, 2021-Planning Act amendments get Royal Assent

Bill 276 on which I reported previously containing amendments to section 50 of the *Planning Act* received Royal Assent on June 3, 2021. Once again, my thanks (it should be our collective thanks) to Doug Downey who was prepared to sponsor these amendments in the legislature with his private Bill 88 and then press the issue with the Ministry of Municipal Affairs and Housing to see the amendments become law. On this and so many other things he has accomplished as MPP and AG, count on a real estate lawyer to make things happen.

The only remaining issue is proclamation which is when the amendments will actually be law.

The good news is that the amendments were enacted. The less than good news is when it will be effective and what it means for retroactivity.

There are two aspects to the amendments: the legal ones (that affect good title) which should be effective immediately and the procedural ones that may require consenting authorities to adjust and reconsider their internal practices.

I have been trying to impress on the Ministry that the amendments relating to compliance with the *Planning Act* should be effective now and not be deferred since they do not affect the operations of the consenting authorities but we shall have to wait and see what they do. In the meantime, there will be more *Planning Act* errors and issues arising that could be avoided between now and a delayed proclamation.

Second, the question is retroactivity. The Ministry took the view with me that legislation is generally not retroactive. Rather than have them specify that it was not retroactive, (their preference, in response to my request that retroactivity be specified), I chose to take that off the table and keep the legislation silent. Like the retroactivity of subsection (12), the "once a consent always a consent" provision and its applicability to pre 1979 consents, it may be better to simply allow lawyers to make their own decision on retroactivity of the new amendments (because they are all so logical) and complete a transaction signing the *Planning Act* statements. That is my view at least.

You can be your own planning and compliance decision maker given that in all likelihood, there is no breach of planning principles involved in your doing so. Put another way, if you find in your historical search of title an apparent contravention of the *Planning Act*, you can make your own decision on whether the act speaks with a curative intention and a logical result. Given that the Ministry has recognized that the prohibitions in the act should not apply to certain specific situations, it would be logical that whether they happen or happened before or after the amendments become effective should make no practical difference. The past contraventions of the act were unintended consequences and of no relevance to planning principles. That is my view—practical, common sense. Lawyer it as you see fit.

What are the amendments?

The legal amendments that affect title and the validity of documents:

1. The *Acchione* problem is fixed. Land abutting land previously conveyed with consent is a separately conveyable parcel of land.

2. Land abutting a condominium plan is a separate parcel of land regardless of the ownership of units in the condominium.
3. "Retained land" as defined in the act is a separate parcel of land.
4. No merger on the death of a joint tenant. Finally, fairness and logic.
5. No consent required for outdoor leased spaces adjacent to a long term lease of part of a building or structure.
6. Clarification of the effect of a transfer with the 3 Planning Act statements.
7. Compliance with zoning and official plan is not mandatory for validation of title applications under section 57.

The procedural amendments:

1. Amendments can be made to applications for consent up until decision. No new application is required.
2. Consent conditions must be satisfied within 2 years of decision instead of one year. (This is an adjustment from the original act which allowed an applicant to apply for a further one year extension. Now, it is an automatic two years to satisfy conditions.) This should help with delays in getting conditions satisfied
3. An applicant is entitled to a consent certificate for both the severed land and the retained land. This is big. Probably unnecessary in most cases where severed properties will be sold to third parties, but sometimes advisable. No need to do work arounds with 1% transfers, etc.
4. A previously given unstipulated consent can be canceled by a consenting authority on application by an owner. This will facilitate in rare cases, lot addition consent applications, and cross lot developments where one part was previously conveyed with consent. This avoids the *Re Furlong* work around of conveying one square foot to a municipality.
5. Purchasers under agreements of purchase and sale can apply for consent.
6. Life leases of parts of buildings don't require consents.

The amendments are set out in schedule 24 to the *Supporting Recovery and Competitiveness Act, 2021*.

Most important, while they received Royal Assent, they are not yet effective and won't be until proclaimed. Hopefully, sooner rather than later.

Do I think that other amendments to section 50 of the *Planning Act* that will assist us real estate lawyers and the public are possible*?* Considering that it took 21 years since the amendments were first suggested and the persistence of the Attorney General Doug Downey to introduce his private members bill and then as Attorney General to get the Ministry of Municipal Affairs and Housing to pay attention, I would say the likelihood of more changes to the planning regime as it affects titles in Ontario is highly remote.

Is there more to be done? Absolutely. The Provincial Policy Statement that overrides planning needs revision to recognize that the *Planning Act* affects title and land ownership and in that regard, it should give discretion to consenting authorities to grant consents where it is fair to do so and where a merger has inadvertently occurred due to an error in conveyancing. It needs to recognize that every consent application is not an application to create new parcels of land and that sometimes, consent applications are needed to reinstate existing *de facto* separate properties. Every title merger does not eliminate separately existing properties. Legal non-conforming uses should be stated to comply with the *Planning Act* and zoning bylaws to avoid the necessity of minor variance applications where no development is occurring and yet validation or consent is required. Will such amendments happen? I will be surprised unless there is a political will to make it happen. It took only 21 years to do what was right, fair, sensible and logical. I am not so sure that I will be around for another 21 years to see more changes. :)

To all my readers, keep healthy, get your shots, have a safe summer.

Once again, my disclaimer: The issues raised in this email bulletin are for information purposes only. My comments should not be relied upon to replace specific legal advice. Readers should investigate all matters independently before acting on the basis of material contained herein. I reserve the right to be wrong and to change my mind. Use at your own risk.

You receive these emails because you asked to be put on my email list. If you don't want to continue to receive my email bulletins, email me back. If you want to pass it on, feel free.

Sidney H. Troister, LSM
Legal services provided through Sidney H. Troister Professional Corporation
Tel: 416-777-5432
Fax: 1-888-312-0072
stroister@torkinmanes.com
VCard

Torkin Manes LLP
Barristers & Solicitors

Ranked the #1 Ontario Regional Law Firm by Canadian Lawyer

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7
torkinmanes.com

An international member of Ally Law