

# FOLA 2020 REAL ESTATE TALKING POINTS

## ISSUES TO BE DISCUSSED

### **1. The Value of Lawyers in Real Estate and Access to Justice**

Lawyers have, for the past 100 + years been a valuable ally to the government in ensuring that the public has confidence in the Land Registry System in Ontario. The role that lawyers play in limiting incidents of fraud and abuse are well documented. Both individuals and businesses benefit from a stable and reliable system.

An underappreciated benefit to having lawyers interact with the public on all land transactions (save for the re-financing of mortgages) is that these lawyers often provide the only direct contact point for the public with the justice system. Lawyers, particularly in smaller and more remote communities, tend to have active real estate practices. Experience, and overwhelming anecdotal evidence confirms that clients buying, selling or borrowing use the interaction to seek input on many other important legal issues including wills, power of attorneys, matrimonial questions, and business or other matters. Once introduced to their real estate lawyer members of the public feel comfortable in future to reach out to “their lawyer” to make inquiries. Those lawyers may then assist or be able to direct people to government or other resources and/or to experts in a particular field.

### **2. Proposed changes to the *Commissioners for Taking Affidavits Act***

Bill 161, the [Smarter and Stronger Justice Act 2019](#), proposes over 20 Statutory and Regulatory changes - including the *Commissioners for Taking Affidavits Act*. The proposed amendments set the framework for virtual or remote commissioning of documents. Draft regulations have not yet been provided, but FOLA has concerns about fraud and the ability to verify the identity of deponents. Our written submissions to the Ministry of the Attorney General from April 2019 can be found [here](#).

Section 9 of the *Commissioners for Taking Affidavits Act* currently reads:

Every oath and declaration shall be taken by the deponent in the presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration who shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration.

Bill 161 proposes to repeal this section and replace it with the following:

Administration of oath, declaration:

*In person*

9(1) Every oath and declaration shall be taken by the deponent or declarant in the physical presence of the commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration.

*Not in person*

(2) Despite subsection (1), if the regulations made under this Act so provide and the conditions set out in the regulations are met, an oath or declaration may be taken by a deponent or declarant in accordance with the regulations without being in the physical presence of a commissioner, notary public, justice of the peace or other officer or person administering the oath or declaration.

*Duty of commissioner, etc.*

(3) A commissioner, notary public, justice of the peace or other officer or person administering an oath or declaration shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant and shall administer the oath or declaration in the manner required by law before signing the jurat or declaration

## **2. *Planning Act* amendments**

When Doug Downey was the Parliamentary Assistant to the Minister of Finance, he tabled amendments to Ontario's [Planning Act](#) relating to subdivision control. The amendments will clean up some anomalies and update the legislation in keeping with the underlying planning principles. They will ensure certainty for Ontarians wishing to subdivide or develop land and will reduce needless red tape and costs.

Members of all three parties in the house spoke in support of the Bill. Over 300 members of the public reached out to their MPPs to urge them to support this bill.

This Bill died when he became the AG but it now sits in the Ministry of Municipal Affairs and Housing (MMAH). FOLA strongly supports the amendments and feel that they should be reintroduced without delay. You can read FOLA's endorsement letter [here](#).

## **3. *Conveyancing and Law of Property Act* amendment**

FOLA would like to see the government introduce legislation to reverse the common law on positive covenants.

Currently only negative covenants continue to affect land once it is resold to a future owner. If there is an agreement on title that includes positive covenants, the positive covenants are not binding on future owners unless the future owners specifically assume them. These positive covenants are becoming much more common and are important to the owners of other properties and to municipalities. For example, if there is a joint use and maintenance agreement that gives you a right to use common/shared property or services and requires you to pay your proportionate share of the upkeep, the

right to use the common/shared property or services will run with the land and be binding on future owners but the obligation to pay maintenance fees will not.