



Real Estate Report to Plenary May 2019

BACKGROUND

At the November 2013 Plenary, the Presidents unanimously passed a resolution that urged FOLA to ask the Law Society to establish a working group or committee, including the direct involvement of LawPRO, to examine the state of real estate practice and any problems faced by the real estate bar, with the objective of developing a plan to address identified problems in the long-term interest of the public of Ontario.

At each Plenary since then, we have reported on the progress of our work and we are pleased to report on the continued progress on real estate issues.

COMMITTEE INVOLVEMENT

Real Estate Action Committee

The Real Estate Action Committee (REAC) is a committee of FOLA and the Ontario Bar Association, chaired by Meredith MacLennan, which meets to set the agenda and develop a unified position on issues impacting the real estate bar for discussion at the Real Estate Liaison Group.

Real Estate Liaison Group

The Real Estate Liaison Group (RELG) was created in 2014 in response to the unanimous resolution passed at the November 2013 Plenary and is a committee of the Law Society, comprised of Benchers, Law Society staff, LawPRO, FOLA and OBA members. It is as a forum for the bar to work with the Law Society and LawPRO to discuss issues impacting the real estate bar. We have been concerned of late with the lack of experienced real estate lawyers on staff at the Law Society and continue to push to have that experience reflected in Law Society staff.

Working Group on Real Estate and Lawyers

The Provincial Working Group on Real Estate & Lawyers was created in 2003 with members from the OBA, FOLA and the now defunct Ontario Real Estate Lawyers' Association (ORELA). This group is chaired by Randall Johns and was created to raise awareness amongst all stakeholder groups about the valuable legal advice and representation lawyers provide to consumers/lenders and to assist the bar in developing a viable practice while maintaining the high standards which the public is entitled to expect. This Working Group has taken the lead on a number of issues, including obtaining access to the standard OREA forms for lawyers, publishing a suggested fee schedule for residential transactions and developing a set of standardized real estate closing documents. See the Working Group website [here](#) for further details.

UPDATE ON CURRENT ISSUES

We have been busy since our last Plenary Report and have been trying to keep everyone updated through our real estate updates sent to the local real estate representatives.

1. Proposed reforms for Commissioners / Notaries

Technology allows us to communicate with clients in a variety of methods. Email has replaced traditional letters or faxes in most cases, and video and chatting tools are readily accessible on smart phones and computers.

We have received several inquiries about remotely meeting with clients. Can lawyers provide legal advice via skype or facetime? Can they witness documents signed by a client on the other end of a video chat? Can a document be commissioned by a lawyer who is not physically present when it is signed by the deponent?

As we have previously reported, we asked the Law Society last year to provide guidance to the profession on these issues. To date the Law Society has not yet clarified its position though we continue to push for such guidance. We look forward to continuing to work with the Law Society to provide clarity to the bar on this matter.

The Ministry of the Attorney General is considering proposed reforms to the *Commissioners for taking Affidavits Act* and *Notaries Act*. We met with Ministry staff in March 2019 to discuss the proposed reforms and submitted written comments to the Ministry in April 2019. Unofficial verbal direction from MAG suggests that its position is that remote commissioning/notarizing is not permitted under current legislation. We have also met with Law Society staff to discuss this issue, and concerns relating to fraud and undue influence.

A copy of our submissions to the Ministry of the Attorney General can be found [here](#).

2. Review of the *Real Estate and Business Brokers Act, 2002*

We responded to the government's request for comments on the *Real Estate and Business Brokers Act, 2002*. Our response can be found [here](#).

3. *Planning Act* proposed amendments

We have reviewed and endorsed proposed amendments to the *Planning Act*, which we are very excited about. These proposed amendments passed first reading in March 2019. We are monitoring the situation and will advise if the amendments are approved.

You can help - this is currently a private member's bill and it needs public support. Here is the [link](#) to the names and emails of the MPPs in Ontario. Find yours and send him or her an email and tell them that you think that Bill 88, the *Planning Amendment Act, 2019* introduced on Monday March 25, 2019 is in the best interests of Ontarians, that you support it and hope

that the MPP will do the same. Copy Doug Downey, a former real estate lawyer and now sitting MPP who introduced the bill, at Doug.Downey@pc.ola.org.

4. Condominium Document Sub-Committee

The Working Group on Lawyers and Real Estate established a sub-committee to consider the work undertaken in the purchase of a condominium and has drafted standard documents to assist with the purchase of a condominium. We are part of the sub-committee conducting a final review of these drafts, which will be available to practitioners shortly.

5. OREA Clause review Sub-Committee

We are also participating in the Working Group on Lawyers and Real Estate's sub-committee that is reviewing the standard OREA clauses available for insertion in an agreement of purchase and sale, with a view to providing comments to OREA this spring.

6. 2019 Bencher Election

Solicitors are historically underrepresented in our governing bodies, including Convocation at the Law Society. We have been actively encouraging solicitors to run in the 2019 Bencher Election since shortly after the 2015 election ended, and have been encouraging real estate lawyers to vote for the solicitor candidates in this election.

At the time of writing this report, the Election is still ongoing and the results are not known, but we are hopeful that solicitor representation will increase.

7. Electronic Funds Transfers

FOLA has been consistently advocating for a reliable, accessible, timely and irrevocable system of moving funds between lawyers. While it is clearly desirable and perhaps even necessary for a more efficient process to be developed, we have been disappointed by the response of the financial services industry to this market need.

We were pleased to learn that the Law Society has written a comprehensive submission to the Payments Canada requesting improvements to allow for real time, irrevocable funds transfers to accommodate residential real estate transactions. Payments Canada is made up of the major financial institutions in Canada involved in funds transfer.

Payments Canada is modernizing its entire system, and while the real estate bar and the Law Society were not originally consulted, the Law Society reports that Payments Canada is taking its suggestions seriously and that there seems to be a genuine desire to develop an electronic funds transfer system for real estate that involves large sums of money. It appears that this modernization process will be a multi-year project, and it is driven entirely by the banks and other payment companies who are responding to market demand, so it would be premature to expect immediate or short-term changes, but we are pleased that our ideas are being heard and that progress is being made.

Given the realities of closing today, we have asked the Law Society to review the practice guidelines regarding the payment of mortgage funds in real estate transactions that were last updated in 1992.

We will continue to work with the Law Society and LawPRO in trying to find solutions for the real estate bar in dealing with closing funds.

8. Standard Closing Documents

The Ontario Standard Closing Documents have been updated as of **February 28, 2019** by the provincial Working Group on Lawyers and Real Estate and are available in French and English on its [website](#).

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

9. Three Party Document Registration Agreement (DRA)

When electronic registration was first introduced in Ontario, an escrow closing procedure was developed to deal with the delivery of purchase funds, keys and off title documents. The Joint Committee on Electronic Registration of Title Documents¹ adopted a form of Document Registration Agreement (DRA) that has been published on the Law Society website and referenced in the Law Society's Practice Guidelines for Electronic Registration of Title Documents [here](#).

This DRA has routinely been amended for use when there are three or more lawyers involved (when there is a private mortgage or when there is a separate lawyer representing the lender), and we requested that the standard form of Three Party DRA be endorsed and published by the Law Society in the same way the DRA has been.

We are pleased to report that following a review by LawPRO and the other members of the Real Estate Liaison Group, the Law Society has approved a standard form of [Three \(or more\) Party DRA](#) and it is now posted on the Law Society website in both [PDF](#) and [MS Word](#) format.

10. Local real estate representatives

We have been on a mission to confirm a local real estate rep in each county and district. If a local real estate representative has not been designated or identified in a particular county or district, all real estate information and requests for assistance is sent to the President of the association. If the real estate representative for your association has changed, please let us know. You can contact Merredith MacLennan at merredith.maclennan@stewart.com or Kelly Lovell at kelly.lovell@fola.ca. We will be contacting those identified and asking for their specific commitment to assist us in reaching the real estate bar in a timely fashion.

11. Real Estate Resources

We have found the following resources to be helpful for real estate practitioners:

a) **A Lot from the DOT** – [click here](#)

Notices from the Director of Titles can now be found on the Teraview® website under the "News and Info" tab. Current Notices include:

- Timing and Sequence Matters: A Case Study
- Password Protection in Teraview®
- How to Check the Certification Status of Instruments on Teraview®
- MGCSA Bulletin 2018-04 OnLand Application Release
- Practice Management Tips from the Land Registry Office

b) **AvoidAClaim** - [click here](#)

AvoidAClaim is LawPRO's blog that offers regular insights on claims prevention and practice management, and warnings about current frauds targeting lawyers.

¹ The Committee was comprised of members representing the Law Society, OBA, CDLPA (now FOLA), ORELA and LawPRO – see [here](#) for further details.

c) **CCLA weekly newsletter** - click [here](#)

The weekly email newsletter regularly contains a “Did You Know” section from the CCLA Real Estate Lawyers Committee. You don’t need to be a CCLA member to subscribe to the newsletter.

d) **Condominium Forms** – [click here](#)

Find prescribed forms under the *Condominium Act, 1998*.

e) **Electronic Registration Procedures Guide** – [click here](#)

Electronic Registration Procedures Guide published by the Ministry of Government and Consumer Services.

f) **Land Registry Bulletins** – [click here](#)

Bulletins issued by the Ministry of Government and Consumer Services, ServiceOntario, Regulatory Services Branch.

g) **Mortgage Discharge Escalation List** - click here

The Canadian Bankers Association updated the contact list for matters involving mortgage discharges as of January 28, 2019.

h) **OnLand** – [click here](#)

Teranet, in partnership with ServiceOntario, has built this web portal to deliver key statutory services relating to land and property ownership in Ontario to land registry professionals and the public.

The first phase of the web portal offers customers the opportunity to test out the historical land registration book search and view option only. Customers will still be required to visit a land registry office to print any records. For more information on Historical Books, please [click here](#).

This feature is useful to confirm prior concession lots for unregistered hydro searches.

The second phase, introduced in December 2018 added a new process for communicating with the Land Registry Office - submitting pre-approvals, override requests and PIN correction requests. Under the “Support” tab, select “Contact Us” and then “Request Forms”. See LRO [Bulletin 2018-04](#) for further details.

i) **Sid Troister’s email updates** – click [here](#)

If you aren’t already on his list, send Sid an email or subscribe on the website and ask to be added to his real estate update list. He periodically circulates useful and interesting information about real estate matters.

j) **Teraview Issues** – click [here](#)

The provincial Working Group on Lawyers and Real Estate maintains a list of matters which are brought to its attention regarding Teraview® and/or Land Registry Office procedures. The Working Group brings these matters to the Director of Titles, the government and/or Teranet and posts updates as it receives further information. The latest list of issues and updates is on the Working Group [website](#).

k) **Teraview Newsletters** – [click here](#)

News and information from Teraview.

j) **Teraview Search Tools** – [click here](#) (select Search Tools)

- City/Town cross reference list
- Instrument prefixes
- Condo PINs

k) **Working Group on Lawyer and Real Estate** – [click here](#)

The provincial Working Group on Lawyers and Real Estate has updated its website. Check it out for the latest version of the Ontario Standard Closing Documents, access to the OREA standard forms, suggested fee schedule and much more.

l) **Working Group on Lawyers and Real Estate – Mentoring Initiative** - [click here](#)

The Working Group launched this 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.

Respectively submitted,



Merredith MacLennan
FOLA Real Estate Co-Chair

Eldon Horner
FOLA Real Estate Co-Chair