



Real Estate Report to Plenary November 2020

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

Our Real Estate Co-Chairs are members of several committees.

Real Estate Action Committee

The Real Estate Action Committee (REAC) is a committee of FOLA and the Ontario Bar Association, chaired by Merredith 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, developing a set of standardized real estate closing documents and condominium guides, and publishing a suggested fee schedule for residential transactions. 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. 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. Further details can be found in his letter to FOLA [here](#).

As a result of the closures there are now new procedures for registration of paper documents after October 13, 2020, including a Paper Document Submission Request are available [here](#). Anyone attempting registrations should now that these processes and the forms are mandatory.

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](#). Contrary to assertions from the DOT we wish to confirm that these closures are not the result of efforts by Eldon Horner!

2. 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.

.....
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.

.....
Commissioner for Taking Affidavits

3. Law Society Review of “Lending Client”

We are working with the Law Society on proposed amendments to clarify the meaning of ‘finance company’ in the Rules of Professional Conduct.

The specific Rules under review provide an exception to the conflict of interest rules by specifying that a lawyer may act for both a lender and borrower where the lender is a lending client. A lender client is currently defined as “a client that is a bank, trust company, insurance company, credit union or *finance company that lends money in the ordinary course of its business*” (Rule 3.4-13 emphasis added).

4. Updating the DRA

We are working on proposed updates to the DRA and multi-party DRA to reflect current practices, including the requirement to exchange closing documents following closing and to correct documents returned for correction. A small sub-group of lawyers from FOLA and the OBA will be working with Ray Leclair on the drafting.

5. 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.

6. 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.

7. 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. We are hopeful that the LSO will soon have guidance available on this topic.

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. 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 by sending an email to kelly.lovell@fola.ca.

10. 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:

- Re-Opening of LTCQ to LT Absolute Plus Applications
- Zombie Deeds are Dead!

- Land Registration During Covid-19
- Do Not Discharge the Mortgage Before Transferring Under Power of Sale

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.

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 June 22, 2020

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.

Through OnLand you can search for historical land registrations and communicate with the Land Registry Office for pre-approval, override or 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.

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

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

m) **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.

n) **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