



## **Real Estate Report to Plenary November 2021**

### **BIG CHANGES**

For the past 8 years FOLA has been extremely fortunate to have Merredith MacLennan as the Chair or Co-Chair of the Real Estate Committee. Her tireless commitment to advancing the profile of solicitors and real estate issues has been a benefit to all who work in real estate in Ontario. She has lobbied and educated regulators and government, helping to avoid negative changes and creating positive developments for the bar. She has been the face of FOLA at countless meetings and CPD events working to spread the word of rule changes and new processes, particularly with her detailed updates during the COVID pandemic.

It is with great regret that the FOLA Board accepted the resignation of Merredith from her role effective as of the November Plenary 2021. We know Merredith will continue to be an influencer and a great resource, just not in an official capacity with FOLA.

Change is always difficult but by being proactive one can often lessen the impacts. While everyone involved will miss Merredith greatly, her role will be filled by former President of the Hamilton Law Association and Real Estate Specialist, Mark Giavedoni. Mark is a passionate solicitor. He is a partner at Gowlings with a broad practice in real estate. For more information or to contact Mark click here [Mark Giavedoni | Gowing WLG](#).

We welcome Mark and look forward to working with him.

### **COMMITTEE INVOLVEMENT**

#### ***Real Estate Liaison Group***

FOLA has been active with the Real Estate Liaison Group (RELG) since its creation in 2014. RELG began as a 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. Among other issues FOLA continues to push the LSO to have real estate experience reflected in Law Society staff.

A Zoom meeting was held by RELG on November 2, 2021. The current topics for discussion included:

1. Surefund
2. Mortgage discharge protocols
3. Electronic signature guidelines
4. Remote client verification guidelines
5. Digital ID's
6. Electronic funds transfers – issues with delays
7. Ontario Business Registry

## ***Working Group on Real Estate and Lawyers***

The Provincial Working Group on Real Estate & Lawyers was created in 2003. A wonderful resource for the bar, this group 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**

Change has continued its rapid pace since May of 2021. As FOLA Real Estate Chairs we have been trying to keep everyone updated through our real estate updates sent to the local real estate representatives. All our past updates are available on the FOLA website [here](#).

### **1. Virtual Reality: Virtual Notarizing is Likely to Become Reality**

Virtual Commissioning was temporarily permitted last year when the global pandemic caused by the spread of the Covid-19 virus forced many into isolation or remote work environments. [O.Reg 431/20](#) came into force on August 1, 2020 permitting virtual commissioning on a permanent basis. See our prior update [here](#) for further details.

Now, the provincial government has indicated its intention provide for virtual notarizing. FOLA has participated in the consultation process. The new regulations will likely permit remote Notarization similar to the current rules involving remote commissioning. There may also be new rules permitting the remote notarizing of physical and/or electronic documents.

### **2. Law Society Review of “Lending Client”**

Following lengthy consultations and lobbying by FOLA and others the Law Society passed amendments to clarify the meaning of ‘finance company’ in the Rules of Professional Conduct. The amended Rule 3.4-13 can be found [here](#).

In essence, the Rules now confirms that in order to be considered a “lending client” for the purposes of having the same lawyer act for the lender and borrower, the lender must be a bank, trust company, insurance company, or credit unit, or a publicly traded finance company whose material business involves lending money, or a corporation or partnership that has been designated as an approved lender under the National Housing Act (Canada), or a Community Futures Development Corporation, a federal, provincial or municipal corporation or agency affiliated with or funded by a federal, provincial or municipal government.

Commentary has also been added to confirm that a mortgage investment company it not considered a finance company unless it satisfies the criteria in Rule 3.4-13. At the same time the \$50,000 monetary limit requiring two lawyers was increased to \$75,000 in Rule 3.4-14.

### 3. Updated DRA

FOLA and the OBA worked with Ray Leclair from LawPRO for many months and revised the Document Registration Agreement (DRA). It is new and now approved! The proposed updates to the DRA and multi-party DRA reflect current practices, including the requirement to exchange closing documents following closing and to correct documents returned for correction. Practice Guideline 4 which deals with Electronic Closings and the DRA can be found [here](#).

### 4. Planning Act Amendments

Bill 276, *Supporting Recovery and Competitiveness Act, 2021* has now been passed but is not yet in force. Schedules 23 and 24 contain the proposed changes to the *Planning Act*.

FOLA has been monitoring the process and continues to push for the changes to take effect. The Ministry has advised that new or amended regulations were required that go hand in hand with the *Planning Act* to reflect the amendments including the repeal of two regulations involving criteria for validations and approvals that applied to mortgagee applications. The regulation regarding the content of consent applications also needed revision. Details can be found at the government's [website](#).

Our best information is that the regulations will be finalized and the Act proclaimed in force very early in 2022.

### 5. Surefund

On September 9, 2021 Teranet Inc., announced the pilot of SureFund™, an online platform designed to facilitate secure and contactless real estate funds transfer. Teranet has indicated that the SureFund™ digital fund management system will allow real estate legal professionals to manage, transfer, and track closing funds securely from anywhere. A link to the announcement is [here](#).

FOLA continues to investigate this latest development and to seek clarification around the transfer of client's trust funds to a third party who is not a registered bank. There are also answers to be obtained regarding insurance coverage for lawyers who may choose us this new system.

It is suggested that lawyers consider the following before engaging with any third-party payment processor:

- a) What are a lawyer's obligations regarding trust monies?
- b) What sort of consent is required from a client to provide client funds to an unrelated third-party?
- c) What sort of indemnity is being provided if funds do not arrive at their intended destination?
- d) Who is responsible for additional interest resulting from delays in delivery and how will such interest payment be handled?
- e) Can an undertaking to discharge a mortgage be provided if funds are being provided to an unrelated third-party?

## 6. News from the Director

We met with the Director of Titles last month and he shared some speaking notes with us on 21 Things for 2021. Please note that this is a summary list – you may hear further details about each during a CPD program.

1. Volumes are up, delays are up, manage client expectations! Learn how to convey on the parent PIN because splits aren't being certified any time soon (think 90 days!)
2. Self-to-self cost sharing agreements, party wall agreements, reciprocal agreements, infrastructure sharing agreements, etc. will not be certified!
3. Ontario Business Registry: New digital OBCA and Corporations Act "Ontario Business Registry" starting on October 19, 2021 – do all corporate filings digitally!
4. Annual November Price Increases: Come November 1, prices will go up by half of CPI. Registrations will be \$78.79 and a simple, one-page PIN will be \$33.82.
5. Simplification of Many Teraview® Statements: We notice that a lot of typos and returns arose from data fields that did not need to be there, so we're amending them all.
6. Power of Attorney, Part One: We've gone from asking the attorney about bona fides to asking for the solicitor's "best knowledge and belief" of bona fides!
7. Power of Attorney, Part Deux: Personal information (S.I.N.s, passport details, driver's license details, bank accounts, etc.) cannot be in any power of attorney. Zero tolerance.
8. Power of Attorney, Part Trois: You can no longer use a dissolved corporation's power of attorney, even if it is "coupled with an interest". You will need a court order!
9. Vendor's Liens and Purchaser's Liens: Both will be prohibited. The Vendor's Lien will be discontinued as a document type and the Purchaser's Lien prohibited as a 71 Notice.
10. Accidental Discharges of Mortgages: You used to be able to get an accidentally registered discharge of mortgage withdrawn before certification. No more. Be careful!
11. Vesting Orders: New law statement confirming that all relevant parties were a party to the cause of action or evidence showing that all parties are bound by the order.
12. Vesting Orders, Part Deux: Reminder that vesting orders still attract a writ search and, if the vested-out owner is subject to writs, the new title will be subject to writs.
13. Requests for T/W and S/T: Any request to modify the T/W and S/T notations have to come by way of Application (not PIN Correction) with complete evidence of entitlement to do so.
14. Bad Writ Clearing Statements: Some bad apples have been carelessly (or corruptly) clearing writs with either inapplicable statements (e.g. 607 and 608) or simply by lying!

15. Easements Created in Condo Declarations: The Section 20 easements cannot bind third party lands no matter what and must have some connection to the condominium property!
16. E-Notification is Coming: Soon, no more dreaded phone call from the LRO, but even with email notification, your response times need to be prompt or you will be withdrawn!
17. Working 9 to 5: Teraview registration hours are currently 8:30 to 5:00 but almost nothing gets registered early, so the hours will be changed to 9:00 to 5:00 shortly.
18. DocuSign®: You can use DocuSign® for some attachments, but any document that is an LRO form requires a “moist signature” (scanned “wet signatures” submitted in .pdf).
19. Description of NOSI Collateral: Gone are the days of vague, GSA-esque collateral descriptions. NOSIs now require detailed collateral descriptions with no “future acquired goods”!
20. Condo By-law Reforms: Clean-up those “bloated” condo PINs. You can now actually delete expired condominium by-laws from the PIN so that only the current ones remain.
21. Large Investment Co-Tenancies to be Eliminated from Land Titles: It has become logistically impossible to administer the large co-tenancies and they will no longer be permitted.

## **7. Payment of Wire Transfer Fees**

The Law Society has echoed FOLA's position that absent an agreement to the contrary, each lawyer is responsible for the wire transfer fees deducted by their own financial institution. Anecdotal reports now suggest the recommendation is generally being followed by most real estate lawyers.

The Law Society FAQs are available [here](#) and [here](#).

## **8. Teraview® Updates**

French language documents may now be registered in every jurisdiction in the province through Teraview®. Although some jurisdictions previously had this ability, this feature now applies to all counties and districts across the province.

You can now submit documents to be registered under the Registry Act and other documents required to be registered in paper via Teraview®. See the Electronic Registration Procedures Guide [here](#) for further details.

## **9. Mortgage Discharge Protocols**

A committee has been working hard on revised mortgage discharge protocols for use across Ontario. The proposed revisions are to be formally submitted to the LSO for review and hopefully adoption at some point in 2022.

## 10. Standard Closing Documents

This is not new information but we continue to try to educate real estate lawyers and advise that the Ontario Standardized 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 many benefits of these documents 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;
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 Presidents and 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.

## 11. Local real estate representatives

We continue to work toward having active local real estate reps 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](mailto:kelly.lovell@fola.ca).

## 12. 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:

- Land Registration Announcement – Plan Preview
- Continuing Record Volumes and Splits
- Data Retention Reports for Registry Non-Convert PINS

**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) Condominium Buyers Guide**

Effective January 1, 2021, purchasers of new construction condominiums must be provided with Ontario's Residential Condominium Buyers' Guide, published by the Condominium Authority of Ontario (CAO). See [here](#) for further details.

**d) CPD – Free Law Society CPD**

The Law Society of Ontario has a series of practice related CPDs available on demand for free at [CPD Assists](#). Titles include:

- Managing Your Practice and Avoiding Emotional Burnout (20 min professionalism credit)
- Working Virtually: Levelling the Playing Field with Big Firms (50 min professionalism credit)
- Tips for Maximizing Work/Life Balance (50 min professionalism credit)
- How to Run a Home-Based Practice (50 min professionalism credit)
- Simple Tech Solutions to Accelerate your Practice (50 min professionalism credit)
- It Could Happen to You: Disaster Planning for Your Practice (50 min professionalism credit)
- Protect Your Digital Law Practice (50 min professionalism credit)
- Your Real Estate Practice and the COVID-19 Pandemic: What You Need to Know Right Now (2 hour professionalism credit)

**e) CPD – Free LawPRO CPD**

LawPRO has a number of on demand CPD recordings available on its [practicePRO website](#), including:

- Tips for real estate lawyers in the Covid residential purchase, refinance and home renovation markets
- A Discussion: Continuing to Manage – Mental Health, Resilience and Resources
- Working Together, Remotely – Managing and Leading Through COVID and Beyond

There is also a link to the upcoming program on **December 2, 2021** on Avoiding the wire fraud nightmare – what you need to know to protect yourself and your clients.

**f) Electronic Registration Procedures Guide - [click here](#)**

Electronic Registration Procedures Guide published by the Ministry of Government and

Consumer Services.

**g) Land Registry Bulletins - [click here](#)**

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

**e) Mortgage Discharge Escalation List - [click here](#)**

The Canadian Bankers Association updated the contact list for matters involving mortgage discharges as of August 19, 2021

**f) 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.

**g) 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.

**h) 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](#).

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

News and information from Teraview.

**j) 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](#)

n) **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.

o) **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.

We encourage you to share this report with the real estate lawyers in your associations. Copies of our Real Estate Updates are available at <https://fola.ca/real-estate-law>.

Respectively submitted,



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FOLA Real Estate Co-Chair



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