



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

June 3, 2020

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.

Remote Commissioning

Bill 190, *COVID-19 Response and Reforms to Modernize Ontario Act, 2020* passed first, second and third reading and received Royal Assent on May 12, 2020. Schedule 4 includes amendments to the *Commissioners for Taking Affidavits Act* to permit remote commissioning, subject to regulations made under the Act.

The regulations are currently being drafted and the FOLA Real Estate Co-Chairs will be participating in stakeholder consultations with the Ministry of the Attorney General on June 10, 2020.

Authorization for Virtual Meeting

Many lawyers are now meeting with clients remotely. To ensure that clients understand and consent to the risks associated with virtual meetings, FOLA recommends obtaining written consent from clients to video communications. A sample Authorization for Virtual Meeting can be found [here](#).

Tarion Information Sessions for Lawyers

Tarion will be hosting two webinars for real estate lawyers next week, aimed at sharing information about how the provincial orders related to COVID-19 are impacting the new home warranty.

1. **Real Estate Lawyer Webinar: Impacts of COVID-19 on the new home warranty.**
Thursday June 11, 2020 11:00am - 12:30pm

This webinar is ideal for lawyers who provide services to both new home vendors/builders and new home buyers. During this session, Tarion representatives will discuss:

- The emergency order that suspends all statutory timelines related to the warranty
- How Tarion is handling form submissions, repairs and inspections during this time
- Tarion's advice for buyers on how to conduct the PDI safely in consideration of social distancing
- Potential delays that new home purchasers may be facing

At the end of the short presentation, there will be time for a question and answer session

You can register [here](#).

2. **Real Estate Lawyer Webinar: Understanding the Unavoidable Delay Process**

Thursday June 11, 2020 2:00 – 3:30pm.

This webinar may be of interest to lawyers who represent new home vendors/builders. During this session, members of Tarion's legal team will outline the steps that need to be taken for new home vendors/builders to use the unavoidable delay provisions of the addendum to gain relief from delays stemming from the COVID-19 pandemic. A question and answer session will follow the presentation.

You can register [here](#).

Digital signatures

Many lawyers are asking about the use of digitally signed documents. Some lawyers love them and want to use them exclusively during this pandemic and others will not accept documents signed digitally. Some lawyers also differentiate between documents signed digitally using platforms like DocuSign and documents signed on a tablet in the party's own handwriting.

The Law Society confirms that this is a substantive legal issue to be determined by the lawyer. (see the LSO FAQ on this topic [here](#).)

FOLA is also not taking a position for or against the use of digital signatures, but cautions lawyers to confirm that documents signed in such a manner will be acceptable to the recipient(s) before using digital signing platforms for closing documents. Will the lenders, the other lawyer, CRA, etc. accept the document signed in this manner?

Communication is essential to prevent issues on closing.

Zombie Deeds

A "Zombie Deed" is a transfer that is registered after an owner dies – not by the Estate Trustee, but purportedly by the owner herself. These situations arise when an A&D for the Transfer is signed by the owner, but before the Transfer is registered, the owner dies.

The Director of Titles has spoken out against "Zombie Deeds" in the past and the Courts have recently rendered a decision confirming that such transfers are improper. See the latest A Lot from the DOT [here](#).

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.