

March 16, 2020

Dear Real Estate Representatives, Association Presidents and Library Staff:

FOLA has been receiving calls from real estate lawyers wondering what to do about upcoming real estate closings in light of the unprecedented circumstances we are in. Please forward this information to the real estate lawyers in your association.

Like you, we have been monitoring the situation very closely. The situation is fluid, with information and protocols changing rapidly.

**Here is what we know:**

1. Land Registry Offices remaining open for now

As far as we know there are no plans to close the LROs. This may change if the Ministry of the Attorney General decides to close all of its spaces (the courts are suspended right now, but the courthouses are still open). Like other businesses, the LROs may be working with reduced staff, and will likely prioritize services required for closings (over-rides, pre-approvals, PIN corrections, etc.). The LRO office webpage can be found [here](#).

2. Banks remaining open for now

All of the major banks have indicated an intention to remain open. Like other businesses, the banks may be working with reduced staff or locations and there may be delays in processing requests.

3. Tarion

Tarion issued an Advisory on Friday confirming that the builder repair period has been suspended until April 13, 2020, and that homeowners may refuse access and builders may refuse to perform after-sales services during the Covid-19 pandemic without penalty. All conciliations, inspections, common element meetings and other in-person meetings scheduled for the next month will also be postponed. The Tarion Advisory can be found [here](#).

Tarion issued a further Advisory today regarding pre-deliver inspections and delayed closings, which can be found [here](#) and [here](#).

“Unavoidable Delay” is defined in the Tarion Addendum as *“an event which delays Closing which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused by or contributed to by the fault of the Vendor”*. The World Health Organization characterized Covid-19 as a pandemic on March 11, 2020, and accordingly, construction delays resulting directly from this pandemic may be considered unavoidable delays for the purposes of delayed closing compensation.

#### 4. Client meetings

There may be issues with clients not being able to meet with lawyers (due to illness or self-isolation). Remote meetings could be held (by phone or video conference) with undertakings to provide any required sworn documents at a later day. If meetings do proceed, lawyers and clients should follow health authority recommendations – don't shake hands, sit as far apart as possible, etc.

#### 5. Municipalities

There have been recommendations that people limit in-person interactions, work from home if possible, and not go out for 'non-essential' reasons. It is now very possible that municipalities may close their offices or work with reduced staff and that delays in receiving compliance information, permits and municipal agreements may be experienced. We have heard that some municipalities are suspending inspections, meaning that no occupancy permits will be issued for new construction.

#### **What does this mean for your closings?**

If either the LRO or the banks close, then real estate transactions will not be able to proceed. You will need to seek extensions wherever possible. The good news is that everyone is in the same situation. The bad news is that there is no right in most re-sale agreements to insist on an extension. You will have to rely on the goodness of others and common law principles to extend the transaction.

Some things to consider:

- a) If your clients are not able to meet with you in person to complete the transaction, are you able to meet with them remotely (by phone or video) to get the necessary documents signed? Will the other lawyer accept an undertaking to provide originally signed/commissioned documents as soon as possible? Can you adequately verify the identity of your clients remotely?
- b) If your clients need an extension or are asked for an extension, advise your clients to exercise compassion and consider what a court would say if an extension is not granted.
- c) If clients tell you they are sick or have travelled out of the country in the last two weeks, consider the health and safety of yourself and your staff and the possibility of rescheduling the meeting or making alternate arrangements for signing documents.
- d) Consider whether funds can be wired or otherwise transferred electronically to reduce the amount of in-person interactions required.

- e) If you are otherwise ready, willing and able to close, but are unable to register, is there GAP coverage available under a title insurance policy?
- f) The Working Group on Lawyers and Real Estate have a “Lawyers’ Delayed Closing Escrow Agreement” available on its website [here](#).
- g) If the transaction is a new home from a builder, the *Ontario New Home Warranties Plan Act* will govern delays in occupancy or closing.

For more information from FOLA, please visit our COVID-19 webpage [here](#).

Regards,

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FOLA Real Estate Co-Chairs