



May 15, 2020

Dear Real Estate Representatives, Presidents and Library Staff,

Fortunately, the pace of change in the midst of the pandemic has slowed slightly and these updates have been spaced out somewhat. We are still endeavouring to keep the bar up to date with recent developments that may impact their practice.

Remote Commissioning

More and more lawyers are utilizing the emergency measures in place and witnessing/commissioning documents via video conference. On May 12, 2020, in the first of what are now “regular” sittings in the Ontario Legislature (“regular” because they will only sit on Tuesdays and Wednesdays and there are only 42 Members each day), the government passed Bill 190, COVID-19 Response and Reforms to Modernize Ontario Act. It makes some changes to the Commissioners for taking Affidavits Act, the Notaries Act, a number of Acts respecting corporations and partnerships, and the Condominium Act. The link, with explanation notes, is [here](#).

Solicitors should take the time to review the legislation. With respect to commissioning and/or notarizing documents the legislation completes the changes which had been moving forward prior to the state of emergency. Regulations to implement new procedural requirements will be forthcoming and we expect that FOLA will participate in the consultation process regarding the regulations.

Wire Transfer Fees

FOLA has been receiving a great number of inquiries and reports relating to wire transfer fees as more and more lawyers choose to move funds for closing in this manner. There is at the present time no mandatory process for dealing with wire fees charged by most banks and financial institutions, however there seems to be growing consensus that wire transfers are acceptable and that each lawyer should be responsible for the fees or charges imposed by their own bank.

We suggest:

- 1) determine early in the process if funds are to be exchanged via wire;
- 2) consult your own financial institution to confirm their processes and fees;
- 3) ensure that your financial institution will not collect wire fees by taking them from your trust account (we have many reports of this happening across the province); and
- 4) if three fees are not absolutely certain, consider a “holdback” from the client until the final wire fees are determined.

Solicitors should also be aware that there can be delays with wire transfers for multiple reasons. The Delayed Escrow Closing Agreement which is part of the Standardized Closing Documents can be accessed [here](#). This document provides an excellent starting point if closing is to be delayed.

Working Group – Mentoring Survey Question

The latest Working Group mentoring survey question is available [here](#). Please take a few minutes to respond when you can.

The Working Group launched its mentoring 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.

LDD Remote Signing Platform

As we previously advised, Lawyer Done Deal has launched a Remote Signing Platform which is available to all lawyers free of charge. It allows lawyers to post documents to clients, host virtual closing meetings and view client signing activity. More details about the platform can be found [here](#). A **short video** regarding the new platform is now available on the OBA website [here](#).

New FOLA Chair and Executive

As many of you will be aware FOLA held its first ever “virtual Plenary” yesterday. Congratulations to new FOLA Chair Bill Woodward and the rest of the FOLA directors and appointees on their election during these trying times.

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.