



# Protecting the public in real estate matters

## *Current and recent initiatives*

Lawyers play an important role in real estate matters and are uniquely positioned to help protect homebuyers and the integrity of Ontario's land registry system.

The Government of Ontario has recognized this by ensuring that a lawyer is involved with the registration of a transfer of a real estate title. Government transfers and transfers of easements are exempt from this requirement. The government will be moving forward with the necessary Regulations to implement their new registration requirements for transfers of title.

The Law Society, on the recommendations of its Real Estate Issues Working Group (see below), has implemented a number of public protection initiatives. These include:

### **1. Amendments to the *Rules of Professional Conduct* requiring that there be two lawyers for transactions involving a transfer of title.**

Following consultations with the profession on new rules for real estate practice, Convocation (the Law Society's Board of Directors) approved Rule 2.04.1 of the *Rules of Professional Conduct* requiring that there be two lawyers for transfers of title, one lawyer for the transferee (buyer) and one lawyer for the transferor (vendor). The two lawyers may practice in the same law firm so long as the general rules on conflicts of interest in Rule 2.04 are observed. The new 'two-lawyer rule' strengthens public protection in the electronic land registration system. The amendments will come into effect March 31, 2008.

In certain limited circumstances one lawyer may represent both the transferor and the transferee in a transfer of title to real property provided there is no violation of the conflicts of interest rule 2.04. These exceptions are as follows:

- a transfer where the transferor and the transferee are the same and the change is being made to effect a change in legal tenure;
- a transfer being registered to give effect to a severance of land prior to the expiry of a consent under the *Planning Act* or pursuant to a municipal by-law;
- a transfer from an estate trustee to a person who is beneficially entitled;
- a transfer where the transferor and the transferee are related persons as defined in section 251 of the *Income Tax Act (Canada)*;
- the lawyer practices law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

In addition no law statements will be required for transfers involving a government body including a municipality or for transfers of easements.

### **2. Insurance changes.**

All lawyers who practice real estate require fraud insurance coverage. Coverage is provided under the LAWPRO policy.

### **3. Residential Real Estate Transactions Guidelines.**

The Real Estate Issues Working Group developed Residential Real Estate Transactions Guidelines that are designed to inform and educate the profession on the generally accepted standards of practice by lawyers involved in residential real estate transactions and to demonstrate the inherent value in retaining a lawyer for real estate transactions.

#### 4. Amendments to *Rules of Professional Conduct* regarding disclosure requirements and reports on mortgage transactions.

Amendments to rules 2.02 and 2.04 of the *Rules of Professional Conduct* require a lawyer acting for a borrower and lender to make full disclosure of material facts to the lender and borrower and to provide final reports to lenders within 60 days of the registration of a mortgage. The amendments were made to reduce the risk of mortgage fraud in real estate transactions.

#### About the Real Estate Issues Working Group:

The Working Group on Real Estate Issues was formed in 2005 to focus on issues arising in real estate practice that relate to the Law Society's regulatory responsibilities and public protection mandate. The aim of the group is to manage real estate matters in a comprehensive way through the united efforts of real estate practitioners, the organized bar (CDLPA and the OBA) and the Law Society. The working group was formalized as a working group of the Law Society's Professional Development and Competence Committee in 2007.

Mortgage fraud, standards of practice and facilitating the public's access to lawyers knowledgeable about real estate law are examples of the issues being addressed.

*Current members of the working group are:*

Bencher Brad Wright – co-chair

Don Thomson – Toronto practitioner – co-chair

Bencher Bob Aaron

Clare Brunetta – County and District Law Presidents' Association (CDLPA)

Sally Burks – Ottawa practitioner

Ray Leclair – Ontario Bar Association

Greg Mulligan – Orilla practitioner

Bencher Nick Pustina

Bencher Alan Silverstein

#### About the Government's new process for access to the Ontario Electronic Land Registration System:

The Government of Ontario is actively responding to the public's concerns regarding real estate fraud with a wide range of consumer protection measures – including new processes and criteria for access for registration purposes to the Ontario Electronic Land Registration System.

The Law Society has been working with the government in support of their initiatives.

The government will be rolling out its new process for the registration of transfers of title. Under the new process, registration of transfers will be restricted – a lawyer will be required to sign transfers for completeness with few exceptions, for instance, government transfers are exempt.

All lawyers engaged in land transactions are required to apply to the Ministry of Government and Consumer Services for authorization to access the system for registration purposes. Lawyers in good standing meet the government's new criteria for access. Application information is available on the Ministry of Government and Consumer Services website.

#### Additional information:

- See the Law Society's *Rules of Professional Conduct*.
- See the [Professional Regulation Committee report](#) to February Convocation for more information on the two lawyer rule.
- Visit the [LAWPRO website](#) for more information on real estate fraud insurance.
- The Residential Real Estate Transactions Guidelines are posted in the [Resource Centre](#) of the Law Society website, under Real Estate Practice Resources.
- More information on the new process for access to the Ontario Electronic Land Registration System is available on the Ministry of Government and Consumer Services [website](#).

For more information about The Law Society of Upper Canada,  
please see our website at [www.lsuc.on.ca](http://www.lsuc.on.ca)