



FOLA COURTS+ UPDATE

April 20, 2022

Summary

SUPERIOUR COURT OF JUSTICE UPDATES

Notice to Profession - Divisional Court: The revised Divisional Court Notice to the Profession is now available on the Superior Court's website [here](#).

This notice was amended to address new processes regarding mode of hearings (in person or virtual), CaseLines updates, and other changes. It also incorporates the text of the previously free-standing Notice to Profession for Appeals from the Landlord and Tenant Board.

ESTATES - MODEL ORDERS: Members of the Ontario Estates Bench and Bar Liaison Committee have created sample Court Orders to assist practitioners in estate matters. These Orders can be accessed at the Superior Court of Justice website by following this [link](#).

ONTARIO COURT OF JUSTICE UPDATES:

No updates this week

COURT OF APPEAL FOR ONTARIO UPDATES:

No updates this week

BONUS SECTION:

REBBA PHASE 2

The Minister of Consumer and Business Service has filed Phase 2 regulations to support the implementation of the Trust in Real Estate Services Act, 2020 (TRESA, 2020). TRESA, 2020 amends the Real Estate and Business Brokers Act, 2002 (REBBA), the legislation that governs real estate brokerages, brokers and salespersons (registrants) in Ontario, setting rules for how they conduct business and interact with the public.

The following key changes will take effect on April 1, 2023:

- The Real Estate and Business Brokers Act, 2002 will be renamed the Trust in Real Estate Services Act, 2002 (TRESA, 2002).

Code of Ethics Regulation (Code)

- A new Code of Ethics regulation will replace the current Code of Ethics regulation, which articulates registrant requirements in relation to matters such as integrity, quality of service and conflicts of interest.
- The technical and procedural requirements (other than the provisions related to the procedures of the discipline committee and appeals committee) from the current Code will move to the General

regulation and the Educational Requirements, Insurance, Records and Other Matters regulation under REBBA.

Offer Process

- A registrant will be permitted to conduct an open offer process and disclose the details of competing offers at the seller's direction. This will give the public more choice in the real estate trade process.
- Registrants will be prohibited from disclosing any personal information or identifying information through this process.

Information and Disclosure Obligations

- The amendments in TRESA, 2020 and regulation changes will:
 - Improve the information registrants must provide to buyers, sellers and others in relation to providing real estate services.
 - This is intended to help the public understand their choices for engaging or interacting with a registrant, as well as the different obligations registrants have under the different forms of engagement or interaction.
 - Require the Registrar appointed by the Real Estate Council of Ontario (RECO) to publish an information guide. Registrants will be required to provide the guide and explain its contents to a person before providing them with services or assistance.
- Furthermore, to enhance consumer protection, the following general requirements will apply to all disclosures under the Act and regulations made by registrants to the public:
 - A disclosure, consent or acknowledgement must be written in plain language that is clear and concise and it must be presented in a manner that brings to the person's attention the information that must be conveyed;
 - A disclosure must be identified by the prominent placement of the word "disclosure".
- In addition, other specific requirements will be prescribed for certain mandatory disclosures (e.g., in relation to multiple representation; property interest in real estate; material facts about real estate).

Real Estate Council of Ontario (RECO) Powers and Tools

- The amendments in TRESA, 2020 along with the regulation changes will help RECO operate more efficiently and focus its compliance and enforcement efforts where they are most needed and most effective, by:
 - Updating the rules about the information RECO's Registrar must make publicly available;
 - Specifying the purposes for which the Registrar can require registrants to provide transactional data and related information to the Registrar; and,
 - Providing the Registrar with additional authority over administrative matters related to certain advertising, record-keeping and notice requirements.

Discipline Committee Composition and Procedures

- A new regulation dealing with the rules and procedures of the discipline committee will be in place, incorporating the relevant provisions currently found in the Code and General regulation. In addition, the new regulation includes certain updated provisions in relation to committee composition, appointments and processes.

The regulations will be available on the [Ontario e-Laws website](#) soon.

The ministry's proposal to add a condition to the existing exemption for auctioneers generated a significant amount of feedback during the consultation process. As a result, the ministry will continue to consider this issue in Phase 3 of regulation development.

Preliminary work on Phase 3 of regulation development is expected to begin later this year and will also include proposals for the development of an administrative penalties regime and consideration of a specialty certification program.

If you have any questions, please contact the ministry at REBBA@ontario.ca

QUESTIONS/CONCERNS?

Law Association members are welcome to send any issues/concerns related to the above Court Updates to FOLA by emailing Katie at katie.robinette@fola.ca. We will address them in as timely a manner as possible. Please also note that FOLA cannot assist in issues related to a specific case and the Courts will NOT provide clarification on any Notice to the Profession.