



March 19, 2020

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RE: REQUEST TO REVISE REGULATIONS – RESPONSE TO PANDEMIC RESTRICTIONS

In consultation with the Real Property and Commercial & Real Estate Sections of the Canadian Bar Association (BC Branch), we respectfully request that the Minister consider a revision to the “Land Title (Transfer Forms) Regulation”, B.C. Reg. 53/90 (the “Regulation”) under the *Land Title Act*, [RSBC 1996] c. 250 to allow for witnessing of land title forms by videoconference during the COVID-19 pandemic.

In the coming weeks and perhaps months where social distance, and for some individuals, self-isolation, becomes the new normal, we foresee instances where it will be very difficult or impossible for a lawyer acting in a conveyance to meet with their client in person to witness the execution of the land title forms necessary to complete the transaction. In our view, if implemented carefully and for a limited time, videoconferencing is a technology that can assist in balancing the interests of public health against the role of lawyers as one of the gatekeepers against fraud and other nefarious practices in our land title system.

On March 17, 2020, the British Columbia Registrar of Land Titles released a statement entitled “*L TSA Guidance on Execution Requirements in Light of COVID-19*” which provided guidance on the execution of the forms prescribed by the Regulation. The Registrar advised that:

1. as an alternative to the execution of an instrument before an officer, the Registrar will accept for registration an instrument executed by the transferor along with an affidavit of execution sworn under section 49 of the *Land Title Act*;
2. the Registrar will accept for registration an instrument wherein the transferor and the officer have executed separate but identical copies of the instrument; and



3. remote or videoconference witnessing of execution of an instrument is not permitted.

We recognize that the Registrar's guidance is rooted in the terms of the *Land Title Act* and judicial treatment of those terms. In particular, the prohibition on remote or videoconference witnessing of execution of instruments is derived from the decision of the British Columbia Supreme Court in *First Canadian Title Company Limited v. The Law Society of British Columbia*, 2004 BCSC 197 ("*FCT*"), wherein the Court held that requirements for the witnessing of an instrument set out in sections 42, 43 and 44 of the *Land Title Act*, cannot be met through the use of interactive videoconferencing, in part because of the difficulty in properly verifying the identity of the transferor through videoconference.

In our view, the use of either an affidavit of execution sworn under section 49 of the *Land Title Act* or separate copies of the same instrument executed by the transferor and the officer do not achieve an appropriate level of social distance demanded by the COVID-19 pandemic because affidavits must be sworn in person and separate copies of instruments must still be handled and compiled by the officer.

The Law Society of British Columbia issued a Notice to Profession dated March 17, 2020, which relaxes the general prohibition on verification of the identity of a client through videoconference. The notice sets out:

"In unique circumstances where lawyers unable to avail themselves of any other verification method, the Law Society will take a reasonable approach in its compliance activity, if the lawyer verifies identification by using video-conference technology. Lawyers who verify a client's identification using video conference technology should be able to demonstrate that they:

- are reasonably satisfied that the government issued identification is valid and current;
- were able to compare the image in the government issued identification with the client to be reasonably satisfied that it is the same person;
- record (with the applicable date) the method used to verify the client's identification;
- treat the transaction as a high risk transaction and continue to monitor the business relationship as a high risk transaction; and
- document the efforts that were made to verify the client's identity in accordance with the existing rules and the reasons why they were unable to verify the client's identity in accordance with the existing rules."

We propose that in and for the limited context of social distance during the COVID-19 pandemic, provided that the officer can satisfy himself as to the identity of the client pursuant to, and with the restrictions set out in, the Notice to Profession referenced above,



and provided that the officer takes adequate steps to ensure that the document they have witnessed via videoconference is the same as that submitted for registration, execution of instruments set out in sections 42, 43 and 44 of the *Land Title Act* should be permitted by videoconference.

Given the Court's decision in *FCT*, such permission will need to be granted by regulation, setting out that "appeared before" in section 43(a) of the *Land Title Act* includes appearance by videoconference. We request that the regulation be amended to allow for this method of executing documents due the serious concerns for public health safety.

Yours respectfully,

Kenneth Armstrong
CBABC President 2019/2020

cc: Connie Fair, President and CEO, Land Title and Survey Authority of British Columbia
Don Avison, Q.C., Executive Director and CEO, The Law Society of British Columbia
Richard Fyfe Q.C., Deputy Attorney General
Ron Usher, General Counsel, Society of Notaries Public of BC