

## Question 7 – Document Registration Agreement (DRA)

1. Is the DRA: (select one of the 5 options)
  - a. \_\_\_ signed by the lawyer;
  - b. \_\_\_ signed by the clerk; or
  - c. \_\_\_ entered into via exchange of letter of requisition
  - d. \_\_\_ entered into via protocol (exchange of specific letters)
  - e. \_\_\_ never use it.

**Results:** 65% of respondents indicated that the lawyer signed the DRA and another 35% indicated they confirmed the use of the DRA via an exchange in the letter of requisition.

**Working Group (WG) comment:** This is excellent and the desired approach. The DRA is an undertaking by the lawyer and as such should be signed personally by the lawyer or dealt with in a letter signed by the lawyer (letter of requisition).

2. Do you ever change the terms of the DRA?
  - a. \_\_\_ Yes
  - b. \_\_\_ No
  - c. How? \_\_\_\_\_

**Results:** 63% of the respondents confirmed that they make changes to the DRA.

**WG comment:** The WG agrees that the DRA is a standard precedent to be used as a basis for every transaction and that it needs to be tailored as required. Some commented they change the release time, note additional documents to be registered and add parties. Also see question No 4.

3. Do you make the DRA control (subject to) the registration of the:
  - a. Transfer – Yes or No
  - b. Mortgage – Yes or No
  - c. Other, and if so, what? \_\_\_\_\_

**Results:** Respondents indicated that their DRA is controlled by the registration of the Transfer (72%), the charge (50%) and other documents (61%). Other documents included discharges, powers of attorney and priority agreements.

**WG comment:** The DRA is usually subject to the registration of the transfer. There is debate as to whether the DRA should be subject to the registration of the charge. Some argue this is only a purchaser's responsibility. Others argue that realistically

without the registration of the charge, the purchaser has no money to complete the transaction. This debate fuels the argument as to whether the vendor should agree to this requirement. The WG does not take a position on this debate. However, there may be documents which the parties agree are required to be registered before or to which the transaction is subject (see some noted above) and it is proper for the parties to agree that the registration should proceed listing the priority of the documents to be registered.

4. Are you aware of the multi-party DRA approved by the LSO?
- a.  Yes
  - b.  No - See [https://www.lsuc.on.ca/uploadedFiles/.../eRegistration/DRA%20Three-Way\\_2017.pdf](https://www.lsuc.on.ca/uploadedFiles/.../eRegistration/DRA%20Three-Way_2017.pdf)

**Results:** 79% of respondents were aware of the multi-party DRA.

**WG comment:** This is a recent development and the WG is pleased to see this level of awareness. Anyone who has not become familiar with this new document is invited to visit the above link.

5. If you received keys in advance, do you release them to your client before the registration under any situation?
- a.  Yes
  - b.  No
  - c. If yes, give an example: \_\_\_\_\_
  - d. If the keys are released to your client before the registration under any situation, is it done with the consent of the Vendor's solicitor:
    - i.  Always;
    - ii.  Sometimes;
    - iii.  Never

**Results:** 60% of respondents indicated they would never release keys to a client prior to registration contrary to the DRA. Of the 40% who indicated they would, 93% indicated it was only on consent of the other side.

**WG comment:** The DRA sets out in writing the terms of the escrow agreement between the parties, one based on trust and an undertaking by the respective lawyers. It is essential to preserve this trust amongst the Bar if we are to have a convenient and efficient protocol to close transactions. In addition, the Rules provide that a lawyer must respect his/her undertaking. One should always follow the wording and spirit of the DRA. If there is a need to divert, the lawyer would be wise to consult with the other side and to document it.

6. If you receive a DRA to sign, do you verify that it is in the LSO standard form?
- a.  Yes
  - b.  No
  - c.  Assume it is a replica of the LSO template

**Results:** 58% of respondents verify that the DRA they receive is in the form approved by the LSO. 42% assume it is a replica of the LSO template.

**WG comment:** These results reinforce the importance of the trust that lawyers place on the lawyer on the other side not to make changes to an approved document without noting or pointing out the change.

7. Would you expect to see on the DRA a statement that it is the version adopted by the LSO and posted on its website?
- a.  Yes
  - b.  No

**Results:** 84% of respondents expected to see on the DRA they receive a statement that it is in the version adopted by the LSO.

**WG comment:** The document on the website already has this statement and it would be important not to remove it when it is being prepared for a transaction.

8. If you receive a DRA with an ineligible signature, would you investigate further?
- a.  Yes
  - b.  No
  - c.  Assume it is the signature of the lawyer whose name is on the document
  - d.  recognize the lawyer's signature from previous dealings

**Results:** 55% of respondents assume the signature is that of the lawyer whose name is on the DRA. 20% would investigate further, while the other 25% do not if they recognized the lawyer's signature.

**WG comment:** Again this reinforces the level of trust lawyers have and expect of the other side in a real estate transaction. The trust and respect for each other is a hallmark of our profession and with the ever growing degree of incivility, the real estate Bar should cherish and enhance this spirit of cooperation. Deals are much more efficient when there is a trusting relationship on which it can proceed.

9. Do you normally insert a time to create an alternate Release Deadline (paragraph 4(b) of the DRA) or simply rely on the 6:00 pm time reference in, for example, the OREA APS?
- a.  Yes

b. \_\_\_ No

c. If yes, what time to you normally insert: \_\_\_\_\_

**Results:** The respondents were evenly divided on this question.

**WG comment:** OREA has commented that the reason for the 6:00 pm Release Deadline is to permit time for the parties to decide what happens in the event that registration could not be completed by the closing of the registry office. It permits the party who could not register in time to reach the other side before the Deliveries are released. There is no right or wrong time as long as everyone knows and agrees to the rules they are playing by.