



## **THE TWO-LAWYER REQUIREMENT FOR TRANSFERS OF TITLE TO REAL PROPERTY - RULE 2.04.1**

The following Q&A has been prepared to assist lawyers to comply with Rule 2.04.1, the new two-lawyer rule regarding transfers of title to real property.

**1. A vendor and purchaser of real property have signed an agreement of purchase and sale and have asked that I act for both of them in the transfer of title to real property. May I act for both?**

An individual lawyer cannot act for or otherwise represent both the transferor and the transferee with respect to a transfer of title to real property except in certain limited defined circumstances and only if the lawyer is able to comply with Rule 2.04 regarding conflicts of interest [Rule 2.04.1]. These limited circumstances are:

- a transfer where the transferor and the transferee are the same and the change is being made to effect a change in legal tenure [ Rule 2.04.1 (3) (a) and subsection 5(2) of Ontario Regulation 19/99, *Land Registration Reform Act*];
- a transfer where the transferor and the transferee are one and the same and the transfer is being made to effect a severance of land [Rule 2.04.1 (3) (a) and subsection 5(2) of Ontario Regulation 19/99, *Land Registration Reform Act*];
- a transfer from an estate trustee, executor or administrator to a person who is beneficially entitled to a share in the estate [Rule 2.04.1 (3) (a) and subsection 5(2) of Ontario Regulation 19/99, *Land Registration Reform Act*];
- a transfer where the transferor or the transferee is a government body including the Crown in Right of Canada, the Crown in Right of Ontario, a Crown corporation, an agency, board or commission of the Crown or a municipal corporation [Rule 2.04.1 (3) (a) and subsection 5(3) of Ontario Regulation 19/99, *Land Registration Reform Act*. No compliance with law statement is required to register this document to comply with the two lawyer requirement for transfers of title to real property];
- a transfer that is being made to effect the transfer of an easement [Rule 2.04.1 (3) (a) and subsection 5(3) of Ontario Regulation 19/99, *Land Registration Reform Act*. No compliance with law statement is required to register this

document to comply with the two lawyer requirement for transfers of title to real property];

- a transfer where the transferor and the transferee are “related persons” as defined in section 251 of the *Income Tax Act (Canada)* [Rule 2.04.1 (3) (b). When registering the transfer the lawyer will make a compliance with law statement indicating that the transfer is being completed in accordance with the solicitor’s professional standards];
- a transfer where 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 [Rule 2.04.1 (3) (c). When registering the transfer the lawyer will make a compliance with law statement indicating that the transfer is being completed in accordance with the solicitor’s professional standards].

Where the Rules permit an individual lawyer to act for both the transferor and the transferee in the transfer of title to real property, the lawyer must ensure that he or she complies with Rule 2.04 on conflicts of interest including obligations with respect to joint retainers.

**Appendix 1** contains some practice tips to assist individual lawyers to comply with the new two-lawyer rule regarding transfers of title to real property.

**2. A vendor and purchaser of real property have signed an agreement of purchase and sale and have asked that I act for both of them in the transfer of title to real property. I have determined that I cannot do so and have referred one of the parties to another lawyer. What is the role of the other lawyer?**

The other lawyer represents the client referred to him in the transaction and must assume complete professional responsibility for any document which he or she signs using the e-reg™ system [Rule 5.01(6)].

**3. Does new Rule 2.04.1 apply to mortgage transactions?**

No. Rule 2.04.1 only applies to lawyers acting for the transferor and the transferee in the transfer of title to real property. Rules 2.04(11) and (12) continue to apply to mortgage or loan transactions and these rules prohibit a lawyer from acting or otherwise representing both the lender and borrower in a mortgage or loan transaction except in certain limited defined circumstances.

**4. Am I precluded from acting for both the transferor and the transferee with respect to a transfer of an easement?**

No, provided that you comply with Rule 2.04 on conflicts of interest. Transfers of easements are an exception to the two lawyer requirement. Subsection 5(3) of Ontario Regulation 19/99 under the *Land Registration Reform Act* provides that no law statement is required to register this document. Before accepting a joint retainer to act

for both the transferor and the transferee regarding a transfer of easement, the lawyer must ensure that there is no conflict of interest that would preclude the lawyer from accepting the joint retainer [Rule 2.04]. In addition the lawyer must comply with the joint retainer rules [Rules 2.04(6)-(10)].

**5. I am acting for the transferor in the transfer of title to real property; can my partner act for the transferee in the same transaction?**

Yes, the rule permits different lawyers in one firm to act: one for the transferor and the other for the transferee provided that both lawyers comply with Rule 2.04 on conflicts of interest [Rule 2.04.1(2)]. The lawyers must ensure that there is no conflict of interest that would preclude them from accepting such a retainer. Where the two lawyers are in the same law firm, the clients are clients of the law firm and the retainer is a joint retainer. Prior to accepting such a retainer, the lawyers must ensure that they can meet their obligations under Rule 2.04 and must comply with the Rules 2.04(6) – (10) on joint retainers.

**Appendix 2** contains some practice tips to assist lawyers in the same firm to comply with the new two-lawyer rule regarding transfers of title to real property.

**6. What are the lawyer's obligations in a joint retainer?**

Joint Retainers are dealt with in Rules 2.04(6) –(10). A joint retainer is a retainer in which the lawyer accepts employment from more than one client in a matter or transaction whether or not a conflict of interest exists. The *Rules of Professional Conduct (Rules)* impose certain obligations on the lawyer both prior to accepting a joint retainer and during the course of the joint retainer.

***Obligations before accepting the joint retainer***

Before accepting a joint retainer, the lawyer must make certain disclosure to the clients and obtain the clients' informed consent.

The lawyer must advise the clients that:

- the lawyer has been asked to act for both or all of them;
- no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
- if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely [Rules 2.04(6) – (10)].

The client's consent must be in writing and signed by each of the clients or may be oral provided that the lawyer sends a letter to each person giving the oral consent confirming his or her consent [Rule 1.02 – Definition of Consent].

***Independent Legal Advice***

In order to ensure that the client's consent is informed, genuine, and uncoerced, in some cases the lawyer should recommend that the client obtain independent legal advice

before accepting a joint retainer. Examples of these situations would include a situation where one of the parties is less sophisticated or more vulnerable than the other. (Commentary to Rule 2.04(6)).

If the lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts the joint retainer for that client and another client in a matter or transaction, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer [Rule 2.04(7)].

**Appendix 3** contains a sample form Joint Retainer Acknowledgment and Consent Form for use in a real estate transaction.

**7. The Rules permit a lawyer or lawyers in the same firm in certain circumstances to represent both the transferor and the transferee with respect to the transfer of title to real property. What are some examples of situations where it would not be prudent for a lawyer or lawyers in a law firm to accept a joint retainer to act for both these parties?**

The commentary to the Joint Retainer Rules cautions lawyers that although all of the parties concerned may consent to the joint retainer, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses.

The following are examples of situations where it would not be prudent for a lawyer or lawyers in the same firm to act on both sides of the transaction:

- the transferor and the transferee are spouses of one another and are involved in a matrimonial dispute and are not separately represented in the matrimonial dispute; or
- the parties have not agreed on the terms of the transaction.

The following are examples of situations where the lawyer or lawyers in the same firm should consider either not acting for both sides in the transaction or having the more vulnerable party in the transaction obtain independent legal advice on the transaction:

- one of the parties to the transaction is receiving a greater benefit than the other party to the transaction; or
- the transferor and the transferee are related parties and one of the parties is more vulnerable than the other party.

Although the Rules permit lawyers in the same firm or an individual lawyer in certain circumstances to represent both the purchaser and vendor in a real estate transaction, lawyers should use care when accepting such retainers. The probability of a conflict of interest arising between a purchaser and a vendor in a real estate transaction is high. The interests of each of these clients might differ and the advice that the lawyer would give to each client might not be the same, and may even be conflicting. Where there is a

pre-existing relationship between the lawyer and one of these clients, the lawyer might prefer the interests of that one client to the other. Finally conflicts often arise unexpectedly. If a conflict between the parties were to arise on the date of closing, there might be insufficient time for each of the parties to retain separate lawyers and their rights might be prejudiced.

**8. Rule 2.04.1(3) (c) provides that in certain circumstances a lawyer may act for both the transferor and the transferee in the transfer of title to real property where the lawyer practices law in a remote location and where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer. What is a “remote location”?**

The term “remote location” is not specifically defined in the Rule. Generally the term “remote” implies that there is some element of physical distance. The Rule is intended to capture situations where there are no other lawyers in the location where the lawyer practices or in its vicinity that either the transferor or the transferee could without undue inconvenience retain for the transfer. If there are such other lawyers, the situation will not fall within this Rule. It should be noted that the term “undue inconvenience” in the Rule refers to the “undue inconvenience” of the client and not of the lawyer.

**9. Rule 2.04.1(3) (b) provides that in certain circumstances an individual lawyer may act for both the transferor and the transferee if the parties are “related persons” as defined in section 251 of the *Income Tax Act*. How do I determine if the parties are “related persons” with the meaning of the *Act*?**

Lawyers should refer to the definition of “related persons” in section 251 of the *Income Tax Act* to determine whether the transferor and the transferee are “related persons” within the meaning of the *Act*.

Please refer to the materials entitled “*Understanding the Two-Lawyer Rule: “The “Related Persons” Exception”* by Chris Anderson for further information regarding section 251 of the *Income Tax Act* including examples of “related persons”.

**10. Effective April 7, 2008, the Government of Ontario has made changes regarding access to the electronic land registry system. Generally transfers of title must be signed for completeness by two different lawyers: one acting for the transferor and one acting for the transferee. Where can I obtain information about the new electronic registration requirements and law statements?**

Ontario Regulation 19/99 under the *Land Registration Reform Act* contains information on the new requirements.

In addition Bulletin No. 2008-02 dated March 7, 2008 of the Ministry of Government and Consumer Services deals with the new access requirements and the requirements relating to the electronic registration of transfers of title, and powers of attorney.

This Bulletin may be found on the Government of Ontario website at:  
[http://www.gov.on.ca/ont/portal/lut/pl.cmd/cs/.ce/7\\_0\\_A/s/7\\_0\\_GTS/\\_s.7\\_0\\_A/7\\_0\\_GTS/\\_/en?docid=200385](http://www.gov.on.ca/ont/portal/lut/pl.cmd/cs/.ce/7_0_A/s/7_0_GTS/_s.7_0_A/7_0_GTS/_/en?docid=200385)

**11. If the purchaser and the vendor are represented by different lawyers in a real estate transaction involving a transfer of title to real property and none of the exceptions to the two-lawyer requirement contained in Rule 2.04.1 apply, is one lawyer permitted to sign the transfer on behalf of both of the transferor and the transferee by making the statement that this transaction is being completed in accordance with the solicitor's professional standards?**

No. This transaction is not being completed in compliance with the lawyer's professional standards. Rule 2.04.1 requires that there be two lawyers for transfers of title: one for the transferor and one for the transferee unless one of the exceptions to the two-lawyer requirement in Rule 2.04.1 applies. In this situation none of the exceptions apply and the lawyer signing the transfer on behalf of both parties would be acting for both parties.

**12. I am acting for a client with respect to the transfer of title to real property? Am I permitted to retain a conveyancer to assist me in the transaction?**

Yes, a lawyer may retain a non-lawyer to assist him or her in the completion of the real estate transaction. When doing so, the lawyer must comply with his or her obligations regarding delegation and supervision. When a lawyer delegates tasks to a non-lawyer, the lawyer assumes complete professional responsibility for his or her practice of law and must directly supervise the non-lawyer to whom the tasks are delegated, in accordance with Rule 5.01 of the *Rules of Professional Conduct* and By-Law 7.1.

It should be noted that only a lawyer entitled to practise real estate law may sign for completeness documents containing compliance with law statements. Rule 5.01(3) prohibits a lawyer from sharing his or her diskette or pass phrase used to access the electronic land registration system with others including a non-lawyer employee. Effective April 7, 2008 most transfers of title contain compliance with law statements and must be signed by lawyers for completeness. Non-lawyers may sign these documents for release.

In addition, the Rules provide that a lawyer may not assign to a non-lawyer the ultimate responsibility for reviewing a title search report or documents before signature or the review and signing of a letter of requisition or title opinion or reporting letter to the client.

**13. Where can I obtain information regarding the new LAWPRO real estate insurance coverage?**

Information on the new LAWPRO real estate practice coverage is available on the LAWPRO website at:  
[http://www.lawpro.ca/insurance/Practice\\_Type/REPCO\\_coverage.asp](http://www.lawpro.ca/insurance/Practice_Type/REPCO_coverage.asp)

This information includes FAQs about the new real estate practice coverage and a self-assessment tool to assist lawyers to determine whether the coverage is required.



**STEPS TO ASSIST IN COMPLYING WITH THE TWO-  
LAWYER REQUIREMENT FOR TRANSFERS OF TITLE TO REAL  
PROPERTY - RULE 2.04.1**

- ❑ **Determine whether you are being requested to act for or represent both the transferor and the transferee with respect to a transfer of title to real property.**
- ❑ **If so, determine whether there is a conflict of interest that would preclude a lawyer from acting for both the transferor and the transferee in the transaction or whether this is a situation where it would not be prudent for a lawyer to accept such a retainer. If there is such a conflict, then you either cannot or should not act for both parties.**
- ❑ **If there is no such conflict, then determine whether the transaction falls within one of the following exceptions to the two-lawyer requirement:**
  - ❑ the transferor and the transferee are the same and the change is being made to effect a change in legal tenure (e.g. severance of a joint tenancy)
  - ❑ the transferor and the transferee are the same and the transfer is being made to effect a severance of land
  - ❑ the transfer is a transfer from an estate trustee, executor or administrator to a person who is beneficially entitled to a share in the estate
  - ❑ the transferor or the transferee is a government body including, the Crown in Right of Ontario, the Crown in Right of Canada, a Crown corporation, any agency, board or commission of the Crown or a municipal corporation
  - ❑ the transfer is being made to effect the transfer of an easement
  - ❑ the transferor and the transferee are related persons as defined in section 251 of the *Income Tax Act (Canada)*
  - ❑ the transfer involves a transfer where 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.

If one of these exceptions applies, then you may act for both parties provided that you comply with Rule 2.04 on conflicts of interest including the joint retainer provisions [Rules 2.04(6)-(10)].

- **Before accepting the joint retainer, you must advise the transferor(s) and the transferee(s) that:**
  - You have been asked to act for both or all of them;
  - No information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
  - If a conflict develops that cannot be resolved, you cannot continue to act for both or all of them and may have to withdraw completely
  - If the clients are agreeable to retaining you on these conditions, then you must obtain the informed consent of each of the clients by:
    - Having the client sign a written consent;
    - Obtaining the client's oral consent and then sending that client a letter confirming his or her consent.
  - If one of the clients in the joint retainer is more vulnerable or less sophisticated than the other(s), you should consider having this client obtain independent legal advice before accepting the joint retainer.
  - If you have a continuing relationship with one of the clients for whom you act regularly, before accepting the joint retainer, you must advise the other client(s) of the continuing relationship and recommend that the other client(s) obtain independent legal advice about the joint retainer.
- **Once you accept the joint retainer, you must assume complete professional responsibility for all documents that you electronically sign using the electronic land registration system and must comply with Rule 2.04 on conflicts of interest.**

July 4, 2008



**STEPS TO ASSIST IN COMPLYING WITH THE TWO-  
LAWYER REQUIREMENT FOR TRANSFERS OF TITLE TO REAL  
PROPERTY - RULE 2.04.1**

- ❑ Determine whether two lawyers in your firm are being requested to act for, or represent both the transferor and the transferee with respect to a transfer of title to real property.
- ❑ If so, determine whether there is a conflict of interest that would preclude lawyers of the same firm from acting for both the transferor and the transferee in the transaction or whether this is a situation where it would not be prudent for lawyers of the same firm to accept such a retainer. If there is such a conflict, then the lawyers in the same firm either cannot or should not act for both parties. If there is no such conflict, then the lawyers in the same firm may act provided that they comply with the joint retainer rules [2.04(6)-(10)]
  - ❑ Before accepting the joint retainer, the lawyers must advise both the transferor and the transferee that
    - ❑ The lawyers have been asked to act for both or all of them;
    - ❑ No information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
    - ❑ If a conflict develops that cannot be resolved, you cannot continue to act for both or all of them and may have to withdraw completely
  - ❑ If the clients are agreeable to retaining you on these conditions, the lawyers must obtain each client's informed consent by:
    - ❑ Having the client sign a written consent; or
    - ❑ Obtaining the client's oral consent and then sending that client a letter confirming his or her consent.
  - ❑ If one of the clients in the joint retainer is more vulnerable or less sophisticated than the other(s), you should consider having this client obtain independent legal advice before accepting the joint retainer.
  - ❑ If you have a continuing relationship with one of the clients for whom you act regularly, before accepting the joint retainer, the lawyers must advise the other client(s) of the continuing relationship and recommend that the other client(s) obtain independent legal advice about the joint retainer.
- ❑ **Once you accept the joint retainer, each lawyer must assume complete professional responsibility for all documents that the lawyer electronically signs using the electronic land registration system and must comply with Rule 2.04 on conflicts of interest.**



The Law Society of  
Upper Canada | Barreau  
de l'Ontario-Canada

## Joint Retainer - Sample Form Acknowledgment and Consent For Use in Real Estate Transactions

*(You should use your discretion and amend the form to suit the circumstances of the individual transaction)*

You have asked me/us to act as your solicitor (s) in the above (purchase, sale, mortgage, matter).

As you know I (we) have also been asked to act as solicitor(s) to \_\_\_\_\_ the (purchasers) (mortgagors) (mortgagees) (vendors) in the above matter.

In acting for more than one party, no information received in connection with the matter from one party can be treated as confidential so far as any of the others are concerned.

If a conflict develops that cannot be resolved, I (we) cannot continue to act for both or all of you and may have to withdraw completely.

*or alternatively where applicable*

I (we) confirm your agreement that if an issue contentious between you and \_\_\_\_\_ arises, I (we) may continue to advise \_\_\_\_\_ about the contentious matter and that I (we) will refer you to another lawyer.

*and where applicable*

I (we) confirm that you are aware that I (we) act regularly for and have a continuing relationship with \_\_\_\_\_ and that I (we) have recommended that you obtain independent legal advice about the joint retainer prior to retaining me (us).

If you still wish me (us) to act on your behalf in the above matter, please confirm your instructions by signing and returning the enclosed copy of this letter.

Yours very truly,

I acknowledge that I have read and understood the above letter. I consent to \_\_\_\_\_ acting on my behalf notwithstanding the conflict.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_  
(Signed)

cc. copy to \_\_\_\_\_ for signing and return.