

The Adviser



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ALTERATION OF DOCUMENTS

Notwithstanding the appearance of the new computerized forms of Transfer and Charge, they are legal documents and should be treated as such.

Members are reminded that any changes or alterations to these documents can only be made with the informed consent of the parties to that document.

EXECUTION AMENDMENT ACT, 1988

Effective June 29, 1988, subsection 10 (1) of the Execution Act has been amended. Writs of execution must now be received and recorded by the Sheriff before they are binding on the goods and lands against which they are issued, subject to the provisions of the Land Titles Act and Section 11.

DISCHARGE OF MORTGAGES

As a result of the 1984 amendments to the Ontario Real Estate Board form, agreements of purchase and sale now provide a procedure for dealing with discharges of institutional mortgages. That procedure involves the giving of a personal undertaking by the vendor's solicitor to discharge an institutional mortgage only, provided that a mortgage statement and vendor's direction re funds accompanies it. This does not apply to private mortgages. Members are cautioned that some agreements have been further amended to provide for the giving of a vendor's solicitor's personal undertaking regardless of whether it is a private or

institutional mortgage with no provision being made for the production of a mortgage statement.

The Practice Advisory Service Directive of February 1981 is still in effect, and it provides that no undertaking should be given in the case of private mortgages. Members are also reminded of the provisions of Commentary 6 of Rule 14 of the Rules Of Professional Conduct with respect to undertakings.

SERVICE BY FAX

Effective May 1, 1988, Rule 16.05 of the Rules of Civil Procedure has been amended by permitting service of a document on the solicitor of record, by fax. Please note the addition of Rule 16.05(3) which stipulates that the fax transmission shall include a cover page indicating the 6 items of information listed in Rule 16.05(3). The amended Rule 16.05 may be found in 62 O.R. (2d) Part 3, April 29, 1988.

BANK SERVICE CHARGES ON MIXED TRUST ACCOUNTS

The Law Foundation of Ontario has agreements with the major banking institutions concerning interest on lawyers' mixed trust accounts. Most of these agreements prohibit regular service charges on such accounts. Some banks do not regard cheque certification charges as regular service charges. Cheque certification can be charged to the client as a disbursement under Professional Conduct Rule 9. If members have questions about any bank service charges in regard to their mixed trust accounts, they should request their branch manager to make appropriate enquiries at the bank's head office.