



STHI LEGAL NOTES

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BARRISTERS & SOLICITORS • TRADEMARK AGENTS

Volume 42

Fall 2015

Working With Real Estate Agents: The Basics

If you are looking to buy or sell a home then one of your first jobs will probably involve finding a real estate agent to assist you. A real estate agent, or realtorⁱ, is a person who will act on your behalf in the sale or purchase of property. A realtor is responsible for a number of things, and depending on whether they are working for the seller or the buyer, may include:

- reviewing and identifying relevant property listings
- accompanying buyers to property sites and advising on the value of the property
- advising on local market conditions
- promoting the sale of the seller’s property
- helping to decide on the conditions of sale
- acting as an intermediary in negotiations
- drawing up the agreement of purchase and sale.

Although you are not legally required to employ the services of a real estate agent, most buyers and sellers do decide to hire a professional. Once you have found a realtor you are comfortable with, you will generally be asked to sign a seller representation agreement (i.e. a listing agreement.)

The seller representation agreement is a binding contract between the seller and the agent’s real estate companyⁱⁱ. The agreement provides the realtor with an exclusive listing of the home for a fixed period of time as well as the right to list the property on the Multiple Listing Service (MLS)ⁱⁱⁱ.

The listing agreement includes such factors as:

- the terms under which the seller is willing to sell the home
- the commission to be paid to the realtor
- the length of the hold over period^{iv}.

The seller representation agreement is not an offer to sell and there is no legal requirement to accept any offer.

In the case of the buyer, he or she may be asked to sign a Buyer Representation Agreement which will spell out a variety of terms, including:

- the property type and geographic location for your potential new home
- the services to be provided
- the commission that may be payable to the brokerage
- the duration of the agreement.

Once you have signed such an agreement, you become a client of the brokerage and they have a special duty to follow your instructions, protect your confidential information and promote and protect your best interests.

As a buyer, there is a second type of legal agreement that you may enter into, one that does not offer as much protection. It is called a Buyer Customer Service Agreement. With this second type of agreement, the buyer is not a client but rather a customer. In this latter scenario, the realtor does not have an obligation to get the buyer the best possible deal on a particular property since the realtor’s primary obligation is to his/her client, i.e. the seller.

Before you officially begin dealing with a real estate agent, whether as a buyer or as a seller, be sure you understand each of your roles, rights and duties and be certain that you understand the content and implications of any agreement you are asked to sign.

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*The articles in **STHI Legal Notes** are necessarily of a general nature and cannot be regarded as legal advice. Our firm will be pleased to provide additional details on request.*

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Changes to the Law You Should Know About

All levels of government are periodically passing new laws and amending existing ones. At times these laws receive great media attention but often a law will come into force without any great fanfare and many remain unaware of the changes. In this article we highlight some recent laws that we think you should know about.

Real Estate

The GTA continues to be one of the hottest real estate markets in Canada and while this leads to higher property prices it can also lead to some unscrupulous practices. One such practice is known as phantom bids. A phantom bid occurs when a real estate agent hints to a potential buyer that there are other bids even when there are not. The goal of course is to prompt a higher bid and/or a rush to close the deal.

While there is no evidence that this is a widespread problem, the Real Estate Council of Ontario (RECO) was concerned enough that they have created strict criteria as to what constitutes a bid. Since July 1, 2015, a realtor cannot suggest or even imply that there is a competing offer unless it is in writing and has been signed. In addition, realtors must keep copies of such offers or an equivalent summary on file for one year. However, a buyer who suspects that there may be a phantom bid can only find out for certain after the bidding is finished, at which time the buyer can file a complaint with RECO.

Road Safety

In the 2014 Spring edition of *STHI Legal Notes*, we told you about a number of proposed changes intended to make Ontario roads safer, but then a provincial election was called and all unpassed bills died. Those changes were resurrected following the Fall 2014 election and the *Making Ontario's Roads Safer Act* came into effect this past September 1st. The following are some of the key changes.

Distracted Driving

The fines have increased fairly substantially from a range of \$60 to \$500 to a set fine of \$490 and three demerit points, although costs could reach as high as \$1,000. In addition, there will be a minimum 30-day suspension for novice drivers (i.e. G1 and G2 licences.) Distracted driving includes such things as texting, talking on your cell phone and watching things on your iPad. Note that you can talk on your cell phone if you are using a headset or a speaker.

Drivers & Cyclists

A driver who opens their car door into the path of a cyclist without checking will be subject to a \$365 fine and three demerit points, although costs could reach as high as \$1,000. When passing a cyclist, drivers must leave a one-meter distance, whenever possible, or face a \$110 fine and two demerit points. The fine increases to \$180 if you are in a community safety zone.

A cyclist with improper lighting on his/her bike faces a \$110 fine. Bicycles that are being ridden at nighttime, dusk and dawn must be equipped with a white or amber light on the front and a red light or reflector on the back.

Emergency Vehicles

When driving on a provincial highway, drivers must slow down and move into the next lane for emergency vehicles (ambulance, police and fire) stopped on the roadside to assist and whose red and blue lights are flashing. Under the new rules drivers must now do the same for tow trucks whose amber lights are flashing. A violation may result in a \$490 fine.

Note that the above set fines include a victim surcharge and court costs.


Other Changes

There are several other changes but they will not come into effect until 2016 and 2017. However, as a heads up, beginning January 1, 2016, drivers will have to yield the entire road to a pedestrian crossing the street. Currently drivers are only required to yield half the roadway.

Home Safety

This next rule actually came into effect a year ago and included a six month grace period, but in case you missed it, it bears repeating. Under Ontario's Fire Code, it is now mandatory to have carbon monoxide detectors in any home that has a fuel burning appliance or an attached garage. Fuel burning appliances include:

- furnaces
- space heaters
- water heaters
- kitchen stove or grill
- wood stove
- dryers and
- wood or gas fireplaces

Carbon monoxide is colourless, odourless and tasteless and can only be detected by a working carbon monoxide detector or alarm which should be installed near all sleeping areas and attached garages. Carbon monoxide detectors can cost as little as \$40. 

Learn more about what a realtor does at

www.howrealtorshelp.ca

www.crea.ca

www.torontorealestateboard.com

Support & a Deceased's Dependants

We have spoken on many occasions in this newsletter about the importance of having wills and powers of attorney. Not only should you have these documents, but you must ensure that they are properly drafted and that your estate trustee and/or substitute decision maker understands your wishes and your particular family situation. With the changing look of the modern family, it is even more important to give serious thought to and seek professional legal guidance in these matters.

The *Succession Law Reform Act* is the Ontario law that governs how a deceased's property is to be distributed following death. It provides the rules about how to make a legal will, including who can make a will, who can be a witness and when a will is revoked. The Act also sets out the formula to be followed when a person dies intestate, i.e. without a will. In addition, the Act provides a process for dealing with dependants of the deceased who have not been adequately provided for either under the will or under the rules of intestacy. It is this last that will be addressed in this article.

Definitions

Although a testator can decide who should receive his/her estate following death, the testator must make adequate provision for dependants. Failure to do so allows a dependant to initiate an application for support.

The Act defines a dependant as:

- the spouse of the deceased,
- a parent of the deceased,
- a child of the deceased, or
- a brother or sister

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his or her death.

A spouse is defined to include those who are legally married and those who have cohabitated continuously for a period of not less than three years or are in a relationship of some permanence if they are the natural or adoptive parents of a child.

A child is defined to include a child conceived before and born alive after the parent's death, a grandchild and a person whom the deceased has demonstrated a settled intention to treat as a child of his or her family, except foster children.

The Process

Generally speaking an application for dependant support

must be commenced within six months of the issuance of a Certificate of Appointment of Estate Trustee (often referred to as Letters Probate). An application is supported by a detailed explanation of the support that was provided during the deceased's lifetime as well as a financial statement and budget demonstrating the dependant's need for support.

If the court agrees that an applicant is a dependant and has not received adequate support from the deceased's estate, it can order that such provision as it considers adequate be made out of the estate of the deceased. In addition to the estate, support monies can also be taken from just about any asset that the deceased could exercise control over prior to death. These assets might include life insurance, an RRSP, a benefit plan and jointly held property. What should be noted is that these are all assets that traditionally pass outside the will and which are not part of the estate distributed through the will and that would be untouchable by creditors.

Dagg v. Cameron

The case of Dagg v. Cameron, which was decided earlier this year, throws a spotlight on this particular part of the *Succession Law Reform Act*.

This case involves Stephen, his pregnant fiancé, Evangeline, his ex-wife, Anastasia, his two children, Derek and Meaghan and his unborn child, James. Shortly after Stephen and Anastasia's separation in January 2012, Stephen began a relationship with Evangeline. The following year, she and Stephen decided to marry and Evangeline became pregnant with their son James. In July 2013, they began to cohabit on a full-time basis. Until this point they had been living in different countries.

In February 2013, Anastasia obtained a temporary order which included provisions for both child and spousal support as well as a provision that Stephen maintain Anastasia as irrevocable beneficiary on his life insurance policy.

In November 2013, Stephen was diagnosed with pancreatic cancer. Shortly thereafter he changed his life insurance designation such that Evangeline would receive 53.6 per cent of the insurance monies and his first family would get 46.3 per cent. When Anastasia became aware of the change she obtained an order requiring the insurer to restore the previous designation. Stephen died a few days after that.

Although, Evangeline was the sole beneficiary under Stephen's will, most of his worth was tied up in the million dollar life insurance policy. This prompted Evangeline to

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make an application for support for herself and James as dependants under the *Succession Law Reform Act*.

Despite Anastasia's arguments that she and not Evangeline was Stephen's spouse at the time of his death and that as the irrevocable beneficiary the insurance policy belonged to her, the Court found in favour of Evangeline.


In reaching this decision, the court found that a deceased could have two spouses to whom he/she owed an obligation of support. Although Evangeline did not meet the statutory definition of a spouse since she and Stephen had lived together less than three years and were not yet parents, the court concluded that because Evangeline was 8 months pregnant at the time of Stephen's death, they were common law spouses in the commonly understood sense of the word. The result was that Evangeline and James, who was born shortly after Stephen's death, were both dependants as defined by the Act. If, however, it had not been a live birth, then presumably her application would have failed.

With respect to the life insurance policy, while Anastasia may have been the irrevocable beneficiary, she was not the owner of the policy. Therefore, the proceeds of Stephen's life insurance were to be taken into account in calculating the amount of Evangeline and James' support.


Conclusion

On the face of it, Stephen did all the right things. He had a will naming his new partner as his beneficiary and he attempted to ensure that she would be financially secure following his death. Practically speaking, this litigation could have been avoided had he purchased a second insurance policy as soon as he found out that Evangeline was pregnant.

Involving lawyers in your relationships may not seem very romantic, but it is important to understand the various legal implications of living together without the benefit of marriage, the obligations of having children with different partners and how separation agreements impact your life with your new partner, particularly from a financial point of view.

Our firm has a number of lawyers who work in both family and estate law and who would be pleased to assist you. 

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Finally, you will need a lawyer to complete the real estate transaction. Our firm has several lawyers who have extensive knowledge and experience in real estate law, both residential and commercial. 

ⁱ The term REALTOR® is a registered certification mark that identifies licensed real estate agents who are members of The Canadian Real Estate Association (CREA).

ⁱⁱ Real estate agents are registered with the real estate company/estate brokerage.

ⁱⁱⁱ The Multiple Listing Service® is a co-operative system used by REALTOR® Members of Canada's real estate boards.

^{iv} The reason for a holdover clause is to prevent a vendor and a buyer, who were introduced during the contract period, from bypassing the realtor to avoid paying the commission. The typical holdover period is 60 to 90 days.

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PRACTICE AREAS

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