



STHI LEGAL NOTES

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BARRISTERS & SOLICITORS • TRADEMARK AGENTS

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Important Changes to the Estate Administration Act

In this world nothing can be said to be certain, except death and taxes.

Benjamin Franklin

Truer words have perhaps never been spoken. On January 1st of this year, new legislation came into force to ensure that the government gets what it considers to be its rightful share of your estate following your death.

First a little background.

The person who is responsible for overseeing the estate of a deceased is the estate trustee, commonly referred to as the executor. Although the estate trustee's power is derived from the will, there are many instances where an estate trustee must apply for a certificate of appointment of estate trustee with a will (or certificate of appointment of estate trustee without a will in the case of intestacy), often called probate. This is a legal process that confirms an estate trustee's authority to deal with the deceased's property. While not legally required to handle an estate, banks and financial institutions often require the certificate before releasing funds. A certificate of appointment will also be required if there is real estate to be sold.

The estate trustee applies for the certificate of appointment at the Superior Court of Justice located in the county or district where the deceased had his or her permanent residence. The fee for processing the application is referred to as the estate administration tax, more commonly referred to as probate fees. The estate administration tax is based solely on the value of the estate, therefore the larger the estate the

greater the tax. This is payable to the court and is entirely separate from any income taxes related to the deceased's estate.

The amount of the tax is

- \$5 per \$1,000 on the first \$50,000, and
- \$15 per \$1,000 on the remainder.

Now to the actual change in the law. Prior to January 1, 2015, when applying for a certificate of appointment the estate trustee had simply to estimate the value of the deceased's estate. The law now requires that the estate trustee, exercising reasonable diligence, also complete an Estate Information Return and provide a detailed list of the Estate's property and assets and their fair market value at the date of the death. This may require professional valuations and appraisals. If the total value of the assets is higher than originally estimated, the estate trustee must pay the additional tax out of the proceeds of the estate.

The Estate Information Return must be filed within 90 days of the certificate of appointment being issued. Failure to do so is considered a provincial offence and could result in a fine and/or jail time. Further, if within the first four years the estate trustee realizes the information regarding the assets is incorrect or incomplete he must file an amended return within 30 days.

The Ministry of Finance has been given broad audit powers to review the returns and if necessary the assessment of further tax.

If the estate trustee does not require a certificate of appointment (often the situation when the deceased is the spouse and the estate trustee is the surviving spouse) then an estate information return is not necessary.

The job of an estate trustee has definitely become more onerous with these changes and the amount of the estate administration tax payable will no doubt go up. There are a number of ways to lessen the impact, at least of the tax. Our estate planning lawyers would be happy to discuss your particular situation. 

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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.*

Used Car Sales 101

It can be a scary world out there for consumers. At times it seems that every day brings a new method for scamming people. To help navigate the landscape we are producing a number of articles about things consumers should know, because we believe that an informed consumer is less vulnerable to fraud and abuse.

In the first of our series we will consider the purchase of a used vehicle. Most adults living in Ontario will, at some point, purchase a motor vehicle and many will go for the more affordable option of a used vehicle.

Long before looking at vehicles, you need to do your homework. There are two options for purchasing a used vehicle, the first is from a registered dealer and the second is from a private seller. One of the main things to be aware of is that there are several specific laws to protect buyers who deal with a registered dealer. With respect to a private seller, while there is nothing wrong with going this route, it is important to understand that there is little in the way of legal protection if something goes wrong.

Registered Dealers

All car dealers in Ontario must be registered with the Ontario Motor Vehicle Industry Council (OMVIC) whose mandate is to maintain a fair and informed marketplace in Ontario by protecting the rights of consumers, enhancing industry professionalism and ensuring fair, honest and open competition for registered motor vehicle dealers. The organization is also tasked with enforcing the *Motor Vehicle Dealers Act, 2002*.

When purchasing a used vehicle from a dealer the following are some of the key things you need to know.

1. Used car dealers must provide the buyer with fairly extensive information about the vehicle at the time of the sale, including:

- the make, model, style and year of the vehicle
- the total number of kilometres the vehicle has been driven and whether the mileage is accurate
- if the anti-lock brake system or airbags do not work
- whether two or more body panels next to each other have been replaced
- if the vehicle has had more than \$3,000 damage in any one accident
- if the vehicle was ever used as a rental car, a police cruiser, an emergency services vehicle, a taxi, or a limousine
- any other fact about the vehicle that could influence the buyer's decision.

2. A written purchase agreement must be entered into and must contain detailed information about the dealer.

3. The written purchase agreement must also include the price of the vehicle, an itemized list of all charges, including any administrative charges, and anything the dealer is including at no extra charge.

4. When it comes to vehicle purchases there is no cooling off period, that is to say a time frame in which you may cancel the purchase. Having said that, the agreement can be cancelled within 90 days if the dealer has failed to reveal:

- the total mileage
- the make, model, or year
- that the vehicle was used as a daily rental, police cruiser, emergency services vehicle, taxi, or limousine
- that the vehicle ever qualified as irreparable, salvage, or rebuilt.

5. Used car dealers cannot employ unfair practices to induce someone to buy a vehicle. For instance, they cannot take advantage of a language difficulty or physical, mental, or emotional disability. They cannot charge more than what is reasonable for the vehicle nor can they pressure the buyer to purchase a vehicle that they know the person cannot afford. The consequence of dealers using unfair practices, is that the buyer can cancel the purchase agreement at any time within one year if the unfair practice can be proven at court.

Private Seller

If you choose to purchase a used vehicle from an individual rather than a dealer you need to be extra vigilant. The following are some of the things you need to be aware of.

- Check the vehicle's history, including maintenance records
- Ensure the seller is the legally registered owner. Ask to see the ownership and the vendor's driver's licence. If they make excuses for why they don't have these documents consider it a red flag.
- Ensure that the Vehicle Identification Number (VIN) on the vehicle matches the one on the owner's permit.
- Although a seller is required to obtain the Used Vehicle Information Package (UVIP) it is wise for the buyer to also obtain the package to ensure that none of the paperwork has been altered. You can obtain the UVIP through Service Ontario.
- Check the lien/debt information which will be included in the UVIP

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In the Market for a House? Read this First

The real estate market in the GTA is, in a word, HOT! With interest rates remaining low, more and more people are looking to own their own home.

According to the Toronto Real Estate Board, the average selling price of a home in the GTA is just over \$600,000. Despite this hefty price tag, too many homebuyers treat buying a house like buying a fridge or a mattress or a car, even though this is likely to be the biggest purchase they will ever make.

Although many house sales go off without a hitch, the purchase of real estate can be fraught with hurdles and even a few hidden dangers. However, with the help of an experienced real estate lawyer your purchase should go smoothly.

The first thing you should do if you are thinking of buying your first house or your third house is to contact your lawyer. In a misguided attempt to save money, many people only bring their lawyer into the picture once an agreement of purchase and sale has been signed. In fact, talking to your lawyer early on may save you time, risk and money. Your lawyer will ensure that the purchase is done right and that all of your legal rights and protections are respected.

Having your lawyer review the agreement of purchase and sale before you sign it, at which point it becomes a binding contract, can be very helpful. He or she will ensure that the wording benefits you, the purchaser. For instance, instead of indicating that “the offer is conditional on financing” your lawyer may suggest something more accurate such as “the offer being conditional on the buyer getting financing satisfactory to the buyer.”

If you are looking at purchasing a home or condo that has not yet been built, it becomes even more important to bring a lawyer into the process. The purchase agreements in these situations can often be quite lengthy, running as much as 50 pages. This is not the time to just click “accept”. In addition, builders often offer incentives to make the purchase more attractive. However, those incentives may look quite a bit different in the agreement than they did on the sales material. The purchase price may also look quite different once all the extra charges have been added. Your lawyer will have good advice for protecting your rights.

Your real estate lawyer will also provide advice and services with respect to the following:

Good Title

Although you are buying the physical land and house, neither are worth much if you don't have good title to them. Good title means that the house or property you have pur-

chased is really yours and that no one else has a claim to it that you do not know about. Good title also means that your property is correctly described in all official documents and that those documents are properly registered.

Title Insurance

Title insurance offers home buyers another way of guaranteeing good title. If there are any problems after closing, the buyer will be covered for losses up to the amount of the policy.

Paperwork

There is lots of paperwork involved in the purchase of a house, including the deed, the proper description of the land, the mortgages, the affidavits of residence and the affidavits for the land transfer tax. It is important that all the documents are filled out correctly and that they are registered in a timely fashion and in the correct order.

With respect to the legal fees, you should know that purchasers will generally pay more than the vendor since most of the legal work is done by the former's lawyer. You should also know that the fees can vary depending on whether you are buying a condo or house, a new construction or resale since the amount and type of work can be quite different.

We have several experienced real estate lawyers who would be happy to provide you with a written quote including disbursements. 

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- Look for obvious signs of damage and have your mechanic inspect the vehicle for you.
- Test drive the vehicle
- Ensure the Bill of Sale includes the name of the seller and purchase price, and that both you and the seller sign and date it.
- Do not forget to obtain the vehicle portion of the owner's permit with the completed portion on the back.

We highly recommend that you check out the OMVIC's interactive how-to guide: *The Road to Buying a Car in Ontario*. (Download it at omvic.on.ca). T

If following the purchase something does go wrong, particularly with a private sale, you may have some legal recourse, but the number one rule to remember when purchasing a car is Buyer Beware. 

Keeping It In The Family

One of a parents greatest concerns is when their child marries someone that they do not like. Although most will keep these concerns to themselves, they often want to make sure that their son or daughter-in-law is not able to get their hands on their child's inheritance. Parents who find themselves in this situation mistakenly believe that their only recourse is to write that child out of their will. However, before doing anything so drastic here are some of the things you need to know.

Under the *Family Law Act of Ontario*, property, other than the matrimonial home, that was acquired by inheritance from a third person (e.g. a parent) after the date of the marriage remains, with a few exceptions, solely the property of the recipient child. Further, any income from the inheritance also remains the sole property of the recipient child, so long as the parent has expressly stated as much in their will. Note that these rules are applicable to legally married spouses.

The main exception to the above rules is if the beneficiary child decides to use the inheritance for the matrimonial home or otherwise blends it with the family finances and loses track of it as a separate fund. In that case the monies and/or assets become part of what can be divided in the event that the marriage breaks down. For instance, if the beneficiary child receives a large sum of cash and uses it to pay down the couple's mortgage, that money will form part of the beneficiary child's net family property if the marriage breaks down. In other words, it becomes money that the other spouse may be entitled to a share of.

Another possible way to "protect" the recipient child's inheritance would be to set up a trust that would be administered by a trustee, possibly a sibling. Depending on the family dynamics and the value of the inheritance, this could be a workable solution. Although this can be a good legal solution, it could also have serious repercussions on the family relationships because of the message it sends to the recipient child.

If you are a parent and you are concerned about what might happen to the inheritance you will leave your child, we suggest that you speak to a legal professional who specializes in estate planning.

The lawyers in our estate planning department can walk you through different scenarios and help you to reach a workable solution that can allay your concerns while maintaining your relationship with your child. 

Movie Recommendation: Woman in Gold

It's a painting that many of us have seen but do not necessarily know much about, Gustav Klimt's *Portrait of Adele Bloch-Bauer I*

Woman in Gold, starring Helen Mirren and Ryan Reynolds tells the story of Maria Altman's (Adele's niece) legal quest to regain the famous painting plundered by the Nazis during World War II. She with the help of her young lawyer ultimately take the Austrian government to court in order to establish the rightfully ownership of the painting.

The movie also includes a series of flashbacks of the arrival of the Nazi forces in Vienna. 

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PRACTICE AREAS

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