



Spouses, Individuals, Business owners all stand to benefit with a properly drafted and executed Last Will and Testament in place.

The Mechanics of Estate Planning

With the COVID-19 Pandemic now safely in our rear view mirrors, much attention has been placed on the importance of family, financial stability, and strategies used to secure a strong and healthy future on both fronts.

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Real Estate Litigation: Deposit Disputes

Contract litigation, in a general sense, is not unlike litigation flowing from a failed real estate transaction. An Agreement of Purchase and Sale (APS) is, at its core, a written contract formed between a purchaser and a vendor. A breach of contract by a party to an APS gives rise to legal and equitable remedies available to the innocent party. The remedies available depend on the nature of the contractual breach.

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The Mechanics of Estate Planning

(continued from Page 1) The process of drafting new wills and powers of attorney begins with a thorough discussion of your estate planning goals. A meeting with a lawyer to discuss the contents of your estate, your intentions concerning the distribution of estate assets to beneficiaries and a review of strategic options for the minimization of Estate Administration Tax (EAT) will ensure that the drafting is done properly. The lawyer's full and proper understanding of your current circumstances and future objectives is of critical importance. Clients are given MH Law's intake forms, which are comprehensive in scope, and an opportunity to read, review and understand their intentions.

Once the client has reflected on his or her intentions, and once the lawyer has properly understood the client's estate planning goals, the drafting process will take place. Draft copies are provided to clients for their review and approval in advance of the final appointment to review and execute documents.

Witnessing and Proper Execution are Essential

To minimize and avoid the possibility of estate litigation down the road, and to eliminate the possibility of challenges to the validity of your testamentary documents, proper execution must be proven and documented. A significant portion of estate litigation concerns whether a will or power of attorney was validly executed by the testator or grantor. Hiring a lawyer ensures that no undue influence, duress or other manipulation affects the testator or grantor throughout the drafting process. The presence of a witness unrelated to the client at the time of signing assuages those concerns. The witness also swears an affidavit of execution, which establishes the fact of proper execution. This feature is not included in D.I.Y. Will drafting kits.

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Deposit Disputes and Litigation

(continued from Page 1) Examples of breaches of contract in the real estate context regularly include:

- i) a purchaser's inability to close the transaction on the scheduled closing date due to issues in obtaining financing, despite having had executed an APS without conditions on that issue;
- ii) the vendor's inability to close the transaction as a result of encumbrances, title defects or other issues which cannot be cured prior to closing, and
- iii) a purchaser's repudiation of the APS on the grounds that he or she did not properly understand or ascent to the transaction in the first place - an issue attributed occasionally to alleged pressures exerted by realtors in the negotiation and signing process.

Available Remedies for Vendors and Purchasers

To determine the range of remedies available in the case of a failed real estate transaction, the breach of contract must be properly classified by a lawyer. The remedies available to cure a breach of contract are directly related to the type of breach at issue as well as its significance and materiality. The circumstances surrounding the breach of contract must be evaluated prior to determining whether a vendor is entitled to retain the purchaser's deposit, or whether a purchaser will be relieved from the obligation to forfeit its down payment.

Breach of Warranty: the innocent party can only claim damages for breach of the particular term and may not treat the contract as ended and claim damages for the loss of the whole contract.

Breach of Condition: the innocent party may elect to treat himself as discharged from the contract or to maintain the contract and recover damages for the breach.

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Don't sign just yet!

Get the Law on Your Side

The Real Estate and Business Brokers Act (REBBA) offers a variety of options for vendors and purchasers of residential real estate in the Province of Ontario.

Vendors and Purchasers are free to employ a Real Estate Lawyer to cover all aspects of a real estate transaction, including those typically handled by realtors.



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Having a lawyer step in to review an Agreement of Purchase and Sale prior to signing can help reduce the risk of mistake in contracting, limit the potential for disputes concerning the terms of agreement, and safeguard the transaction from "deal breakers".



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