

Property Ownership in Ontario

Legal concepts surrounding ownership of land are very different in other cultures than in Ontario. For new comers it is very useful to understand these concepts to ensure that the property rights, and along with it the families, are protected. Property rights in Ontario reflect the culture of Ontario. Cultures of the Middle East and South Asian countries have strong family ties and the laws of those countries reflect the social history of those countries. For newcomers, failure to understand how the ownership works in Ontario can lead to considerable loss of time and energy in rectifying the situation when something goes wrong.

Land ownership concepts can be intriguing for a newcomer to the common law system of Ontario which was originally inherited from England. It is similar to the other provinces of Canada but not Quebec, which has inherited the French Code. In Ontario most of the time title to the property gives rights to the person holding that title, but not always.

A typical family of father, mother and children, is becoming less typical with second marriages, and along with that change the manner in which property is typically owned in Ontario is changing as well. The most common manner of ownership is "joint ownership" between husband and wife. It is also known as "joint ownership with a right of survivorship". The expression 'right of survivorship' explains the legal concept itself. If one of the persons holding title to the property dies, the survivor continues to own the property, usually the spouse. The legal theory behind this mode of ownership is that each of the person owning the property owns the whole of the property during their lifetime. If the other dies you continue to own the entire property. Technically, no conveyance is required. However, the deletion of the name of the deceased spouse from the title is highly recommended.

In case of a second marriage the husband may not want the new spouse to have interest the whole of the property. In such cases it is advisable to have 'tenancy in common'. Under this type of ownership, each person named on the title has a percentage of ownership which is stated in the deed or some supporting document. Upon the death of that person his or her percentage of ownership does not pass on to the survivor but it goes to the beneficiary as stated in the will of the deceased. And if there is no will, it passes on to the beneficiary under intestacy as stated in the succession laws. In such ownership arrangement it is vital to have the percentages spelled out in the deed or an instrument which sets out which proportion of the property is owned by the title holders. This stipulation avoids the conflict later between the survivor and the beneficiary.

Tenancy in common is more commonly used by business partners. Each person in this type of ownership is free to invest and buy interest in the property in different proportions based on the contribution each makes to purchase the property. When the property value increases or decreases, the benefit or loss accrues correspondingly to the owner in the same proportion.

In Ontario, where the equality of genders came closer to reality, about 20 years ago, the changes in the law were made to create a spousal interest for the newly married; even without any change in the title. This was done to make sure that the wife who stays at home to raise the family has interest in the property to protect her rights. Immediately upon marriage and by living in the house the property becomes designated (unless you change it by registration) as a matrimonial home. Your freedom to dispose off the property unilaterally terminates. You can no longer mortgage the property or sell it without the consent of the spouse. If you lived in a house and then got married and your bride came to live in the house, she immediately acquires an interest in the property.

This is not the case where you live in common law, which means living together without getting married. In such cases only the right of support, but not the property ownership rights, can arise after living together for three years.

When you sell or mortgage the notionally designated matrimonial home, you are required to make a declaration of spousal status in the mortgage document or deed. The purchaser's lawyer will not accept the document for registration purposes until your spouse has consented.

Is there an escape route from this spousal interest when you have worked so hard and your young bride wants to share in the property in a second marriage or even a first marriage? The answer is "Yes". If you take the trouble to prepare a marriage agreement, commonly known as a prenuptial contract, under the Family Law Act, you can provide for a different ownership rights than what is stipulated in the law. In different words you can custom make your property rights in a marriage relationship by signing an agreement. The marriage contract permits the spouse to give up the right to ownership of the matrimonial home, but not the possessory rights to such home. That is, if the marriage breaks down, the spouse would have a right to continue to live in the house, subject to the court order.

Title ownership shown on the deed and registered in the registry office, which is now kept electronically, does not always mean real ownership. This is done through a trust. The trust concept is somewhat unique to the common law jurisdictions. Trust ownership means that one person may show his or her name on the title to the property but the title is name only and the beneficial owner is the real owner.

It is very necessary in such trust ownership situations to have a trust document prepared which confirms that the trustee is holding the property in trust for the beneficial owner. It is also usual for the beneficiary to provide an indemnity clause to the trustee stipulating that if the trustee was required to pay any money arising from owning the property as a trustee, he would be indemnified.

During the recession of the nineties the lawyers competed for real estate work, and the legal fees charged by the lawyers declined substantially. In dollar values the lawyers now charge less fees than what they used to charge in the sixties. The complexities of the real estate transactions has increased at the same time, and they include title insurance and electronic registry system. Low fees provide little incentive to the real estate lawyer to spend time to advise the client on the ownership issues.

When an immigrant family, more in tune with the large family system, has several members who are married and live under the same roof, and have put their resources together to buy a house, real concern arises on how the title should be held, meaning in whose name should you have title and should it be tenancy in common or joint? There could be a mixing and matching of these concepts of joint and tenancy in common ownerships to solve the puzzle. A separate written document is desirable to ensure that the rights of all members are protected and time is needed to figure out the relationships and advise.

Next time you see a lawyer you are well advised to take a few minutes to understand how your ownership will be mentioned on the title, rather than spend all your precious time negotiating the lowest fees you can bargain for.