



# MTW *TODAY*

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It is with pleasure that Mullin Thwaites Ward, LLP takes this opportunity to publish the fourth of what is becoming a regular newsletter for our clients. We believe that it is important for us to communicate with our clients in an effort to keep them abreast of developments in the law (in Ontario) touching their personal or business life or the life of the community. We would like to extend our appreciation to our clients who we have had the privilege of serving and look forward to serving you in the future. We invite our readers to contact us by telephone, fax or at our website to learn more about us and our practice.

## **Estate Planning:**

### **Trusts**

For some clients part of their estate plan is to try and reduce or eliminate the income tax payable by their estate either at their death or during their lifetime. Changes in the income tax rules have allowed for the use of certain types of trusts to assist in this goal.

The trusts are called the Alter-Ego Trust and the Joint Partner Trust. To qualify for the special tax treatment, the taxpayer setting up the trust must:

- be at least 65 years of age
- must be created after 1999
- must provide that the taxpayer receives all of the income if an Alter-Ego trust or the taxpayers spouse or life partner if a Joint Partner Trust

- no one but the taxpayer or life partner can access any of the income or capital of the trust prior to the death of the taxpayer or the survivor depending on the type of trust.

Essentially the Joint Partner Trust is the same as the Alter-Ego Trust except that allowances are made for the taxpayers spouse or life partner.

The taxpayer needs to look at any tax that may become payable as a result of the transfer of the assets to the Trust either at the time of the transfer or upon the death of the taxpayer. Other costs that should be taken into account include the cost of setting up the trust documents, filing of the annual returns and any payments to be made to the Trustee for administering the trust.

This type of trust may not be for everyone. It can be helpful in reducing the amount payable on death to the Court if a Certificate of Appointment of Estate Trustee is required as assets held in a trust are not subject to the Estate Administration Tax (formerly Probate Fee). Further, if a Will is challenged, the assets in the trust fall outside of the estate and therefore would not be affected by a Will challenge and could remain private as the Trust document does not have to become public.

Your financial advisor or accountant can advise you whether you might benefit from the use of a trust.

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## Real Estate

### Title Insurance

If you are buying a new home or re-financing you have probably heard the term Title Insurance. Although this is a concept that has existed in the US for many years it is a fairly recent arrival to the Ontario real estate scene.

Title insurance is a policy of insurance issued by an insurance company and arranged by your solicitor or financial institution that will insure the homeowner and/or mortgage company for title related risks. Generally your solicitor will provide you with an opinion regarding the title to your property. Title insurance is an alternative to obtaining that opinion. It is not necessary or even advisable in every transaction.

The benefit of title insurance is that if the title insurer will insure your property despite a known problem your transaction may still close as scheduled. It is available even in the face of a specified title problems. In our practice we have found it to be very useful when an up-to-date survey is not available. Often a mortgage lender will want a building location survey that is less than ten years old as well as a letter from the municipality showing that the location of the buildings on the property comply with the zoning by-law. If a survey isn't available or is available but is too old or out-dated then a title insurance policy will insure the lender from any defects that an up-to-date survey would have revealed. It can also be helpful if a survey reveals a problem and the title insurer is prepared to accept that problem taking a chance that no corrective action will be required i.e. moving a building or applying for a variance under the zoning by-law.

Your solicitor can advise you if Title Insurance is the right product for you. Generally, the insurance premium charged by the title insurance company for a re-financing of your home is \$99.00 (plus GST); for a purchase with a mortgage the premium is \$270.00 but the cost can vary depending upon the circumstances of the transaction.

### Electronic Registration

Over the past few years the Government of Ontario has been implementing reforms in the way the Land Registry office function. The latest reform to take effect in Dufferin County relates to electronic registration.

This initiative allows for the creation, signing, submission and registration of documents relating to land including Transfer/Deeds of Land and Charge/Mortgages through a computer gateway. No one has to attend at the Registry office and signatures do not appear on the registered documents! The paper documents that one would normally see do not exist. This is called electronic registration or e-reg.

The Province in partnership with a consortium called Teranet has been computerizing the provincial land registry records. Electronic registration, which allows for remote access to government records, has the goal of increasing the accuracy and ensuring the integrity of the land title information. There are currently five counties where electronic registration is mandatory and three others where it is optional. Ten other counties are to be brought on board before the end of 2003.

What this means for you is that you no longer will have a signed Transfer/Deed of Land or Charge/Mortgage for your property. Instead, when you attend at your lawyers office to complete a transaction you will sign an Acknowledgment and Direction in favour of your solicitor which will allow the firm to register the document to which the Direction relates. You will be asked to review the content of the document to confirm its accuracy as well as authorize its registration. You must also confirm your identity with the office. This is usually done by producing some type of photo identification, for example a Driver's Licence or an Ontario Health Card. Once all of the monies, keys and other closing documents have been exchanged, your solicitor will, through their computer digitally sign the documents on your behalf and register them all from their office computers.

This new system has many benefits to the client in that remote access to documents and the registry office can save time and money in completing transactions. Further, being able to register from the lawyer's office can reduce delays encountered in waiting in line at the Registry Office for your turn to register, especially on busy real estate days.

## **BUSINESS LAW**

### **Types of Organizations**

Thinking of starting your own business or perhaps you have been successfully operating and are wondering if it is time to incorporate. There are a variety of ways to organize your business. What follows is a brief summary of some of three or the more common available options with some of their advantages and disadvantages:

#### a) Sole Proprietorship

- carried on by an individual who owns the business
- few legislative requirements
- generally low start-up costs ( i.e. filing of Business Name registration)
- profit or loss realized by owner directly
- owner makes all business decisions
- unlimited personal liability to owner for all debts and consequences of their decisions
- when sole proprietor dies so does business as no independent existence
- useful for small businesses or professional office

#### b) Partnership

- legal entity created under the Partnership Act
- can be one or more individuals or corporations who carry on business together with a view to making a profit
- can be determine by facts and not the existence of certain documents i.e. intent and conduct of the parties
- partnership owns the property and partners have interest in partnership

- can govern type of partnership by use of agreements i.e. limited or general
- can govern operation of partnership by agreement i.e. share of profit/loss, management, expansion of partnership, liability, how decisions are made
- can be vulnerable to actions of a partner
- generally partnerships dissolve upon the death of one of the partners
- different tax treatment than proprietorships
- in absence of agreement partners can be jointly and severally liable for action of partnership
- on dissolution of partnership general rule is that assets must be liquidated

#### c) Corporations

- separate legal entity
- corporation owns the business and assets
- operated by shareholders of the corporation through a Board of Directors
- ownership is of the shares in the corporation not of the individual assets
- can be federal or provincial depending upon where the corporation does business or type of corporation it is
- can be profit or non-profit organizations although different considerations may apply depending upon the circumstances
- created by filing with the government an application for incorporation and paying the required fee
- limited liability for shareholders unless an individual personal guarantee is provided
- lower income tax rates for corporation
- income splitting between different classes of shareholders
- can establish a year end other than December 31<sup>st</sup>
- can assist in estate planning through ownership of different types of shares
- more expensive to establish than other forms
- record keeping requirements and filing of change of information forms

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## ***General Interest***

### ***Websites to Note***

In our practice we have come across a number of websites that we have found to be useful to us and may be of interest to you. The following is a list of those sites in random order.

Government of Ontario  
[www.gov.on.ca](http://www.gov.on.ca)

*Information from various Ministries about government programmes and services.*

Government of Canada  
[www.canada.gc.ca](http://www.canada.gc.ca)

Municipal Property Assessment Corporation  
[www.opac.on.ca](http://www.opac.on.ca)

*Provides information about your current property assessment*

Niagara Escarpment Commission  
[www.escarpment.org](http://www.escarpment.org)

Canada Post  
[www.canadapost.ca](http://www.canadapost.ca)

Conservation Ontario  
[www.conservation-ontario.on.ca](http://www.conservation-ontario.on.ca)

*Provides links to Ontario's 36 Conservation Authorities*

The Law Society of Upper Canada  
[www.lsuc.on.ca](http://www.lsuc.on.ca)

The Corporation of the County of Dufferin  
[www.dufferincounty.on.ca](http://www.dufferincounty.on.ca)

The Corporation of the Town of Mono  
[www.townofmono.com](http://www.townofmono.com)

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We invite our clients to visit our website to receive information about our firm, the services provided and to be kept updated on our newsletters at the following address: [www.mtwlawoffice.com](http://www.mtwlawoffice.com).

Our law firm is proud to support *The Orangeville Theatre, The Orangeville Minor Hockey Association and The Orangeville Minor Lacrosse Association*. A link to each of their websites is provided on our own website.

This MTW *TODAY* is provided as an information service to our clients and is a summary of legal matters. It is not meant to be a legal opinion. Readers are cautioned not to act on information provided herein without seeking specific legal advice with respect to their unique circumstances. Comments and suggestions are welcome.



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