

Introduction to the first edition

Real estate law in Ontario is changing. After more than a century of certainty built on years of practice, lawyers and law clerks are now facing increasing uncertainty as the most basic rules governing the way in which residential real estate is transferred from one person to another are undergoing a significant transformation.

The current era — the period from 1999 to 2002 — is a transitional phase. The newest innovations may not have made their way into practice in all areas of the province and future innovations are still on the horizon. As a result, the practice of real estate law right now is at its most complex and bewildering. While the new systems are being introduced, the old ones continue in practice, at least for the time being. Anyone involved in providing real estate services must be prepared to deal with both the old and the very new as things change dramatically at the dawn of the new century.

The most powerful force behind this sudden and radical change to the way real estate law is practised in Ontario is modern technology; the combination of computer accessibility and the growth of the Internet has allowed for innovations that would have been unimaginable even a decade ago.

Lawyers, even younger lawyers, still hearken back to the “good old days” and how real estate law used to be practised. Huge parcel-register books, hand-written documents and parcel entries, paper, paper, and more paper. Deals made months in advance of closing, packages delivered by hand or by regular mail, genteel meetings between lawyers at the Land Registry Office while the transaction closed. Undertakings given and accepted. Promises made orally with no written record of them.

In this new era, however, much if not all of that old-time lawyering is gone or on its way out. Modern technology — fax machines, copiers, computers — has removed the personal touches from the practice, sped up the process to lightning speed, and done away with much of the paperwork that originally accompanied “the deal.” And now, with the advent of title insurance, closing centres, Internet title searching, wired money, and electronic document registration, the lawyer is slowly being shunted right out of the process. It is only a matter of years before the entire residential real estate transaction will take place in a single office, at a single computer console, in less than an hour.

But, while lawyers are on their way out of the process, law clerks and paralegals are finding new opportunities in residential real estate law. Already, in the modern law office, the law clerk, legal secretary, or paralegal does much of the day-to-day work that goes into the real estate transaction and those roles will continue to expand.

The purpose of this text, then, is to introduce the beginner lawyer, law clerk, paralegal, or legal secretary to the process of handling a residential real estate transaction in the modern law office. It is also designed to aid the more experienced practitioner in understanding the newest developments in the area of residential real estate transactions and in incorporating the requirements of these developments into their normal procedures.

The book begins with a look at the roles of the lawyer and the law clerk in the practice of real estate law today. It then develops a step-by-step approach to handling the residential real estate transaction thoroughly, fully, and efficiently, followed by a discussion of the latest developments such as title insurance, closing centres, and Internet title searching.

The final chapter takes a look at a future, which is rapidly becoming reality, and at electronic registration, which has already been introduced in selected sections of the province on a trial basis. The emphasis will be on what the government bodies involved intend to put into place and how lawyers and law clerks can prepare themselves for the changes to come. When electronic registration and other similar innovations become a reality across Ontario, new books will be required to provide the reader with the same kind of thorough, step-by-step guide provided here for the practice of real estate law as it stands today.

For some readers, the terms and phrases used above will be old hat; for others, they will be unfamiliar and rather daunting. At the back of this book you will find a Glossary of Terms. This glossary contains straightforward descriptions and definitions of many of the terms used in the book, the so-called terms of art. The first time any term found in the glossary appears in the body of this book, it will appear in bold. The author hopes that this glossary will allow for a better understanding of the issues discussed throughout the book.

Introduction to the second edition

Three years have passed since the publication of the first edition of this text. As predicted in that first edition, the practice of residential real estate law has changed a great deal in those three years, with title insurance becoming much more common, “closing centres” all but disappearing from the landscape, land records becoming available via the Internet across much of the province of Ontario, and electronic registration of title documents becoming mandatory in an increasing number of municipalities. Laws have also changed, with the enactment of an entirely new *Condominium Act* and changes to many other statutes in Ontario and in the federal jurisdiction.

When I wrote the first edition of this text, electronic registration (e-reg) was just arriving in Ontario and the legal community was bracing for what was expected to be a significant change in the way it approached the legal aspects of the purchase and sale of residential real estate. Three years later, e-reg continues its march across the province but its impact on the practice of law has been milder than anticipated: as veteran professionals like Josh Bach, Diane Jamieson, Derek Fazakas, and Meredith Berk have confirmed for me, e-reg has added a new layer of technological complexity to the practice of real estate law but, once that complexity is mastered, e-reg does result in higher efficiency and enables small but modern law firms to handle more transactions than ever before.

In spite of the implementation of e-reg, the basic steps in conducting a residential real estate transaction remain much the same as they have been for the past century.

This second edition of *Advanced Residential Real Estate Transactions* is intended not only to update the text to cover these new developments but also to address some of the flaws of the original. This text contains a section on easements and rights of way, a topic unfortunately overlooked in the first edition; it also contains a detailed index, another omission from the first edition; it also includes a detailed discussion of how the introduction of mandatory electronic registration of land documents has affected the way residential real estate law is practised in many parts of Ontario.

The author hopes that this new edition will mean that the text is even more comprehensive, ensuring that a reader from any part of the province will find here the basic information she needs to perform her tasks successfully as a real estate lawyer, law clerk, or legal secretary.

