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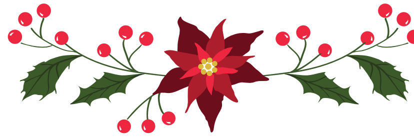

Presenting Legal News, Views and Updates from
Stillman LLP
Barristers & Solicitors

IMPORTANT NOTICE

The Provincial budget, released October 24, 2019, announced government fees will be increasing for select land titles services.

Fee changes effective January 1, 2020:

Land title transfer and creation (Base fee of $50.00 not changing)	**$1.00/every $5000**	**$2.00/every $5000**
Mortgage, encumbrance, amending agreements, PPSA security interests (Base fee of $50.00 not changing)	**$1.00/every $5000**	**$1.50/every $5000**
Caveat that charges land (Base fee of $50.00 not changing)	**$1.00/every $5000**	**$1.50/every $5000**

EDITOR'S NOTE

Stillman LLP is sorry to say goodbye to Craig Lupul, effective October 30, 2019, and Craig has decided to retire after a long and successful legal career. We wish Craig all the best in his retirement.

We are also pleased to welcome Kelly Lautrup, Nick Kunysz, Kayla Edwards, and Mark Olivieri to the firm.

BIG CHANGES COMING FOR COMMON LAW RELATIONSHIPS: PROPERTY DIVISION AND THE NEW *FAMILY PROPERTY ACT*

Nicholas R L Kunys: Associate Lawyer at Stillman LLP

On January 1st, 2020, the law on how property is divided for common-law couples will undergo significant changes. Many common-law couples will suddenly have the same property rights and obligations as spouses who are married. This has implications for people currently living in a common law relationship.

The old law

Under current legislation and case law, the division of property differ greatly depending on whether a couple is married, or not. The division of property for married spouses is primarily outlined in the *Matrimonial Property Act*, which provides a clear-cut formula for matrimonial property to be divided. Under this formula, married spouses can generally seek to have a property assets divided without proving their entitlement based on contribution.

The *Matrimonial Property Act* formula is currently inapplicable to common law relationships, which results in a great deal of confusion and uncertainty. In order to assert entitlement, common law spouses must commence a court action under the legal principals of constructive trust, or unjust enrichment. This requires evidence of contribution or entitlement to a particular asset. Proving this in court often makes finding legal solutions to property division problems more difficult, longer, more unpredictable, and ultimately more expensive.

The new *Family Property Act*

On January 1, 2020, the *Family Property Act* will come into effect, and the formula for dividing the property of married spouses will also apply to common law spouses that fit the definition of an Adult Interdependent Partner. An Adult Interdependent Partner is defined as, two people who have:

- Lived together in a relationship of interdependence for at least three years;
- Lived together in a relationship of interdependence for less than three years and have a child together; or
- Have entered into an Adult Interdependent Partner Agreement

If a relationship does not meet one of these three conditions, it is not an Adult Interdependent Relationship, and the changes to the law will not apply to it.

The general principles that will apply to Adult Interdependent Partners will include:

- Property acquired after the relationship began will be divided between the parties;
- Property acquired prior to entering the relationship will be generally exempted from division;
- Gifts and inheritances will generally be exempted from division;
- Any increase in value of exempted assets will be divisible property; and
- Previous Matrimonial Property Act rules relating to division any possession of the matrimonial home, will also apply to Adult Interdependent Partners.

Married and common-law spouses may choose to substantially opt-out of the changes to the law with an agreement which meets specific requirements, including receiving independent legal advice.

For more information outside of this short summary, we encourage you to contact the lawyers at Stillman LLP to ensure you are property prepared for this large change to this complex area of law.

RESTRICTIVE COVENANTS AND DESIGN GUIDELINES:

***BLACKBURNE CREEK HOMEOWNERS ASSOCIATION V BURT*, 2019 ABQB 608**

Shannon Kinsella: Associate Lawyer at Stillman LLP

When purchasing a new home, it is very common to see a restrictive covenant on title. Most people don't pay attention to these registrations against their title, but what do they really mean for a new homeowner?

A restrictive covenant is something that restricts the action of any party to it. Developers and homeowners associations have registered these on title to force homeowners to keep the aesthetics of their properties looking a certain way by following certain design guidelines. For example, fences can only be painted a particular colour, sidings and roofs can only be of a specific material or colour and certain trees have to be planted in the yards. Some people may find some of the restrictions very prohibitive or absurd or not keeping with their person style and may ask what would happen if a homeowner does not follow the rules contained in the restrictive covenant?

A recent Court of Queen's *Bench decision, Blackburne Creek Homeowners Association v Burt*, 2019 ABQB 608 (*"Blackburne"*) very clearly sets out what happens when the neighbourhood design guidelines are not followed.

In *Blackburne*, the design guideline in the restrictive covenant that was at issue dealt with roofing materials. The covenant specifically stated that all shingles must be "wood shakes or shingles only". Three households decided to replace their roofs with synthetic rubber roofing materials. The Homeowner's Association, tasked with enforcing the restrictive covenant, brought this action when the homeowners refused to comply with their notices to change the roofing materials to ones that were acceptable under the design guidelines.

There are three requirements for a Restrictive Covenant to be enforceable (paragraph 36):

1. The covenant must be negative in nature;

2. The covenant must be made for the protection of land retained by the covenantee or his assignees; and

3. The burden of the covenant must have been intended to run with the covenantor's land.

Parts 2 and 3 of the test were easily met in this case. The covenant

imposed a building scheme over an area of land in the subdivision to regulate the development of the subdivision and it ran with the land. Part 1 of the test was also met. A restrictive covenant cannot force someone to do something, but if they decide to do it, they must do it in a certain way. For example, it cannot force someone to replace their roof, but if they choose to, it must be with wood shingles or shakes.

The homeowners argued that the restrictive covenant needed to be revised, given the recent experience in the province with forest fires destroying entire neighbourhoods. They also argued that the shingle they chose still fit with the design guidelines as they had a "wood like look consistent with the intent of the design guidelines".

Unfortunately for the homeowners, it was found that these restrictive covenants are able to be strictly enforced. The homeowners association was entitled to a mandatory injunction against the homeowners. This injunction compels the homeowners to replace their roofs with the appropriate roofing materials.

Blackburne has confirmed that restrictive covenants will be strictly enforced, so long as the requirements are met. Therefore, it is important when purchasing a new home that the purchasers are aware of any registrations against the title to their homes. The lawyers at Stillman LLP will review the title of the home with the purchasers and inform them of any restrictive covenants or other registrations on title so that a new purchaser has as much knowledge as possible when entering into this large transaction.

If you have any questions regarding restrictive covenants, or any questions about purchasing or selling your home, please call any one of the lawyers on our real estate team.

8 WAYS TO AVOID SHAREHOLDER DISPUTES

Sara Boulet: Associate Lawyer at Stillman LLP

Shareholder disputes can be extremely expensive, not only because of the cost to litigate the dispute but also because of the disruption a shareholder dispute can cause to the operations of a corporation. As such it is always best to avoid shareholder dispute where possible. With that in mind, here are 8 tips to try and avoid shareholder disputes:

1- Do not have any other shareholders

It may sound trite, but the simplest way to avoid shareholder disputes is to not have any other shareholders. If you want to have other people involved in your corporation you can offer them employment. If you are looking to raise capital for your corporation offer a debt to a potential investor instead of shares. Be sure to communicate to potential investors that you are offering them a debt only and not shares.

2- Meet other shareholder's reasonable expectations

If you must have other shareholders in your corporation, be sure to meet their reasonable expectations. For example, it would be reasonable for a shareholder to expect you will run the corporation in a manner that will be profitable for all shareholders. If you make any promises or representations to someone who is becoming a shareholder in your corporation it would be reasonable for them to expect you to live up to them. Shareholders also have certain rights under Alberta's *Business Corporation Act*, RSA 2000, c B-9)"*BCA*"), so it is important to respect those rights. It is also important to ensure that you are communicating regularly with other shareholders.

3- Have a Unanimous Shareholders' Agreement

Having a Unanimous Shareholder's Agreement ("USA") can help to clearly establish what shareholders can expect from one another as well as what rights and responsibilities shareholders have. USAs can also limit a shareholder's ability to transfer shares to a new shareholder, preventing shareholders from transferring their shares to someone you would prefer not be part of your corporation. Additionally, a USA can include a dispute resolution clause, which sets out a process to be followed in the event of a dispute between shareholders. When drafting a USA be sure to communicate your understanding of the various clauses to the other shareholders.

4- Follow the USA

Again this will sound trite, but if you have entered into a USA then a simple way to avoid shareholder disputes is to follow the terms of the USA. If a dispute does arise and the USA contains a dispute resolution clause, follow the process set out in the USA as the Court is likely to require shareholders to abide by the terms of a USA and trying to resolve the dispute in another fashion may be a waste of time and money.

5- Include Exit Provisions in the USA

When drafting a USA, include some form of an Exit Provision. There are many different forms of exits provisions such as Shotgun Clauses, Right of First Refusal, Piggyback Clauses, etc. This type of provisions allow one or more shareholders to sell their shares and allow one or more shareholders to buy those shares. An Exit Provision can provide a very simple solution to a shareholder

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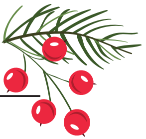

dispute, if one should arise that is serious enough that the parties can no longer work together.

6- Do not have an even number of Directors

Having an even number of Directors can cause a stalemate over decisions which require the approval of the majority of Directors and prevent necessary resolutions from being passed. This can cause friction amongst Directors and Shareholder, especially where the Directors are also the Shareholders, which can be avoiding by always ensuring you have an odd number of Directors. In the same vein, if you are only going to have 2 shareholders in a corporation, consider splitting the shares 51/49 to ensure that decisions which only require the consent of the majority of shareholders can be made.

7-Avoid Questionable transactions

If you are a Director or Officer of the corporation, try to avoid entering into any transactions which might make other shareholder suspicious. Entering into related party transactions or self-dealing may cause other shareholders to question your motives and cause friction amongst shareholders. If you cannot avoid entering into a related party transaction or self-dealing, be sure to be upfront with the other shareholders about your interest in the transaction.

8- Respect the requirements of the *BCA*

Corporations are required to do certain things by the *BCA*. For the example, section 132 of the *BCA* requires a corporation to have the first annual meeting of the shareholders no later than 18 months after incorporation and all subsequent annual meetings of the shareholders no later than 15 months after the holding of the last preceding annual meeting. Having the required annual meetings not only meets the statutory requirement but also gives shareholders the opportunity to discuss potential problems before they escalate to the point where they cause a shareholder dispute. Corporations are also required to provide shareholders with financial disclosure at every annual meeting, per section 155 of the *BCA*. Following the requirements of the *BCA* is a simple way to avoid causing friction between shareholders.
If you have any questions about implementing these tips, or about shareholder disputes, please contact your lawyer at Stillman LLP.
employee being able to return to work within a reasonable time".

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Stillman LLP is a general law firm formed in 1993 with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, and Wills and Estates and Family Law. The firm represents clients throughout Alberta, and has also represented clients from British Columbia, Saskatchewan, Manitoba, Yukon, Northwest Territories, Ontario, Quebec and various jurisdictions in France, Ireland the United States.

The firm has a well established network of agents in Canada, including Vancouver, Vancouver Island, Calgary, Regina, Saskatoon, Winnipeg, Toronto and Montreal. Stillman LLP also has established affiliations with various law firms throughout the United States and Great Britain.

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