



New Standardized Lease Protects Landlords and Tenants

RINUS PAIS

Thinking of renting out an investment property? Or seeking to rent a place to live in Ontario? Whether you are a landlord or a tenant, the recently enacted *Rental Fairness Act* that amended the *Residential Tenancy Act, 2006*, may affect you.

Standardized Tenancy Agreement

Beginning April 30th, 2018, landlords and tenants must use a standardized tenancy agreement for all residential rental agreements agreements, except for a few excluded properties.

The new tenancy agreement defines the rental period, rental amount, and contractual responsibilities of each party. A standardized lease provides both landlords and tenants with a document they know complies with the law, unlike the previous patchwork of online forms and landlord-created agreements.

The standard lease will be mandatory for new tenancies in single and semi-detached houses, apartment buildings, rented condos, and secondary units like basement apartments. Any existing landlords and tenants can continue to operate under leases already in place, so long as their terms and conditions comply with the Act. The new standardized lease does not apply to care homes that provide nursing, rehabilitation, medication and other assisted living services to patients, sites in mobile home parks and land-lease communities, or most social and co-operative housing. Further clarification is available from the Ontario Ministry of Housing or Landlord and Tenant Board.

The Province plans to release a guidebook in 21 different languages to accompany the standardized lease. The guidebook will outline what additional terms are legal and illegal.

Section 15 of the standard lease form allows landlords and tenants to add additional terms to the lease, such as making changes to the unit before the tenant moves in or rules governing shared spaces around the building. These additional terms should be written in plain language and clearly set out what the landlord or tenant must and must not do to comply with the terms. An additional term cannot take away a right or



responsibility under the Act. If a term conflicts with the Act or any other terms set out in the form, it would be deemed void and unenforceable. Some examples of void and unenforceable terms include those that:

- do not allow pets (however, the landlord can require the tenant to comply with condominium rules, which may prohibit certain pets).
- require the tenant to pay deposits, fees or penalties that are not permitted under the *Residential Tenancies Act 2006* (e.g., damage or pet deposits, interest on rent arrears).
- require the tenant to pay for all or part of repairs that are the landlord's responsibility.

If tenants request a written lease, landlords have 21 days to provide one. Should a landlord not provide a written lease within 21 days, a tenant can withhold up to one month's rent, giving the landlord another 30 days to provide the lease. Should the landlord not provide a written lease despite the second request, the tenant does not have to pay back the withheld one month's rent.

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Rinus Pais is a member of Lawrences' Real Estate Group. He represents landlords and tenants in negotiating, drafting, interpreting and enforcing residential and commercial leases. Rinus can be reached at (905) 451-6892 or rpais@lawrences.com.

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The Linda Adlam Manning Award for Volunteerism

Ed Upenieks received the Linda Adlam Manning Award at the 2018 Ontario Bar Association Awards Gala. The Manning Award recognizes the outstanding volunteer commitment of an OBA member who, through significant contribution, has advanced the interests of the OBA and its membership and promoted the role of the legal profession in Ontario. Ed was President of the OBA 2015-2016, having previously served on the board and on several committees. The following is an excerpt of the speech Ed delivered on accepting the award.

Chief Justice Strathy, distinguished guests:

My path to this podium tonight began when I was working in Toronto and bought a home in Brampton. Before the closing date, I met my lovely wife, Marianne, who was from Brampton. After we had our first child, I wanted to move back to Toronto, but Marianne had other preferences, so we made Brampton our home and I asked a trusted friend how to get involved in the community. He told me to call Justice John Webber in Brampton. When I eventually got the nerve to call him, Justice Webber answered the phone on the first ring and suggested I volunteer for a local charity. Years later, he sent me a letter congratulating me on my accomplishments with the Heart and Stroke Foundation of Ontario.

I later moved my practice to Lawrence, Lawrence, Stevenson LLP in Brampton, where Justice Webber had practised before his appointment to the bench. Not surprisingly, Lawrences has a lengthy tradition of giving back to the community. After he retired from the bench to work full-time as an arbitrator and mediator, Justice Webber and I started lunching together every year or so. At one of these lunches, after commending me for my involvement with our local hospital, John asked me, "What are you doing for your profession?"

A few weeks later, out of the blue, I received a call about getting involved in the Ontario Bar Association, as a member of the OBA Council. With Marianne's blessing, I agreed to do so. Since that time, I have discovered that the only way we can improve our profession is by offering our skills and time—and encouraging our colleagues to do the same.

At our last lunch before John passed away, I asked him whether he had something to do with that call I received a decade ago about the OBA. He just smiled and said, "I'm glad you got involved in the OBA."

John, I am grateful to you for guiding me in the right direction. Volunteering with the OBA has helped me become a more complete lawyer, a better citizen, and a more fulfilled human being.

Tonight, while I'm delighted to be receiving this award, I feel I should be thanking the OBA for the opportunity of meeting so many intelligent, dedicated, engaged individuals. At Lawrences, I thank my partners and the three young lawyers I have been working with,



Kiran Gill, Angela Kwok and Sahar Cadili, for supporting me in my OBA work. Thanks also to Lynne Vicars, OBA First Vice-President, for nominating me and to those who wrote letters of support.

In closing, I have one question for those of you here tonight: What are you doing for our profession?

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Eviction Rights for Personal Use

As of September 1, 2017, landlords who want to take back a rental unit for personal use must compensate existing tenants with one month's rent or offer them another comparable rental unit. Personal use is defined as occupancy by a family member or caregiver.

Landlords must express intent to occupy such units for at least a year. This is designed to discourage them from converting their units into short-term rentals or immediately re-renting them at a higher rate. Landlords who subsequently advertise, re-rent or demolish/convert their units within one year will be considered to have acted in bad faith and could face a fine of up to \$25,000.

Only individual landlords, not corporations, can end tenancies under the 'landlord's own use' provision.

Landlords intending to sell their properties must give tenants 60 days' notice of the upcoming sale date but are not required to compensate their tenants.

Conclusion

Both landlords and tenants should seek legal advice before signing a lease. Lawrences' Real Estate Group has extensive experience advising and representing landlords and tenants. We can ensure that your interests are protected before you sign a lease.

Legal Due Diligence: How It Protects You

Part I: Corporate Searches

LOUIS VOULOUKOS

Brothers Mario and Luigi Rossi have built up a thriving construction business and now want to expand. A business contact is eager to sell them his small trucking company, which Mario and Luigi feel would be very beneficial to them. The owner of the trucking company wants to proceed quickly, warning that he has other parties interested in buying. They negotiate a selling price and the brothers take the agreement to their lawyer, who wants to do “due diligence” before they sign. She explains due diligence as research to ensure that everything is as the current owner represents it to be. The brothers are reluctant: they can’t see what’s in it for them other than higher legal bills.

What is Due Diligence?

The legal due diligence process can identify red flags or deal-breakers that are not apparent during the preliminary business negotiations between the vendor and the purchaser. Legal due diligence before buying a business can be compared to having an inspection done before buying a building or a home. In the above example, Mario and Luigi’s lawyer wants to ensure that there are no hidden problems and that everything is as the seller claims before the brothers agree to buy the trucking business. This series of two articles explores some legal due diligence considerations in the purchase and sale of a business.

Corporate Searches

In most agreements of purchase and sale, vendor companies will state that they are selling the assets (or shares) free and clear of any liens (claims on property), that they are authorized to sell their businesses, and that their corporations are not insolvent. These statements are called representations and warranties. To determine if the representations and warranties are true, purchasers can undertake various corporate searches.

- Certificate of status, corporate profile report, and bankruptcy searches can reveal the current standing of the vendor company. For example, does the company exist or has it been dissolved? A dissolved company cannot transfer its assets. Has the company previously amalgamated with another company? Names of any predecessor companies must also be searched. Who are the company’s directors and officers? If, for example, Mario and Luigi’s lawyer finds that the vendor’s representative does not show up as a director or officer on a corporate profile report, she will identify this as a red flag, raising the possibility of a fraudulent transaction. Similarly, she will discover whether the vendor company has been declared bankrupt or if bankruptcy proceedings have been initiated against the vendor company to determine whether the company can deal with its assets, or if those assets have been vested in a bankruptcy trustee.



- *Personal Property Security Act (PPSA)* and Bank Act searches help determine whether the vendor has used any of its assets as collateral for securing its obligations with lenders. For example, if Mario and Luigi’s lawyer finds that the vendor’s bank has placed a lien on the company’s inventory and equipment, she will help them get the lien discharged or get other assurances from the bank before the sale of the assets. Otherwise, the brothers will purchase the trucking company subject to the liens and might lose the inventory to the bank down the line.
- Execution searches can determine whether there are any outstanding legal judgements against a vendor. If a writ of execution is outstanding, a sheriff can seize and sell the vendor’s property to satisfy the judgement. In this situation, Mario and Luigi’s lawyer would help them get the vendor to satisfy the judgement amount before the transaction closes.

Part II of Legal Due Diligence will deal with corporate records, contracts, and consents.



Louis Vouloukos is an associate in Lawrences’ Business Law Group. He advises owner-managed businesses on a wide range of matters, including business acquisitions and divestitures, business structures, shareholder and partnership arrangements, corporate finance and security, corporate reorganizations, and corporate governance. He can be reached at (905) 452-6883 or lvouloukos@lawrences.com.

Life at Lawrences

Lawrences' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

New Face at Lawrences

We are delighted to welcome two new lawyers to Lawrences in our Litigation and Wills, Trusts, and Estates Groups.



Joseph Figliomeni comes to Lawrences' Litigation Group from a downtown Toronto law firm where he gained considerable experience in business litigation. Before entering law school, Joe earned a business degree at Western University and taught there in the Richard Ivey School of Business for two years. About his move to Lawrences, Joe comments: "I'm excited to be part of a firm that has a diverse range of interesting cases, from employment, to business, to real estate, to wills, trusts and estates. I'm also proud to be joining a firm with Lawrences' lengthy history and standing in Peel Region."



Sabrina Gismondi is joining Lawrences' Wills, Trusts, and Estates Group from a corporate law practice in a large national firm. After obtaining a business degree and before studying law, Sabrina worked in wealth management for one of Canada's largest chartered banks for two years. Sabrina comments on her move to Lawrences: "I'm really looking forward to focusing on Wills, Trusts, and Estates, where I will be able to use my wealth management experience to help clients with their estate planning and administration. Lawrences has an exceptional reputation in this field."

At the Podium

The lawyers at Lawrences are frequently asked to speak at professional and community events. Here are some of their recent presentations:

Ed Upenieks: "The Use of Transcripts from the Examination for Discovery of an Adverse Party in Evidence", Ontario Bar Association Trusts and Estates Program "Essential Evidence Series for Estate Litigation Part III", Toronto, June 6, 2018.

Mike Prsa: Estate Planning Tips, Scott Funeral Home Program, Alderlea, Brampton, June 6, 2018

Louis Vouloukos: "Franchising Your Business – Setting Yourself Up for Success". Joint presentation with Maria Da Silva of BDO Canada to City of Brampton, Brampton City Hall, May 8, 2018.

Rinus Pais, Louis Vouloukos: "Hot Issues in the Sale of a Business–Real Property", Ontario Bar Association "Buying and Selling a Business: A Comprehensive Guide", Toronto, March 8, 2018



Giving Back to the Community

It's a proud tradition at Lawrences for everyone to make a weekly charitable contribution, which the partners match at year-end.

When Peel Memorial Hospital reopened in 2017 as an ambulatory care facility, Lawrences chose to sponsor a room in the hospital's Urgent Care Centre. The room was recently dedicated to Lawrences with a plaque recognizing the firm's contribution. Many of Lawrences' lawyers and staff were on hand to see the plaque mounted.



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