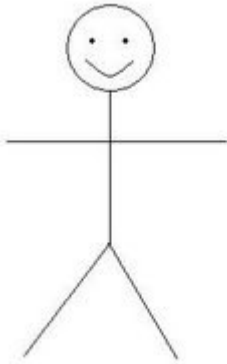


Minors Buying Real Estate



By Brian Madigan LL.B.

Generally, the law does not wish to have minors entering into contracts, without proper guidance.

Consequently, the law requires that a minor may only contract for something that is a **necessity**. That is a very restricted definition and varies from one person to another. Food and lodging easily come to mind as necessities and possibly education. In these cases, the ordinary contract rules will apply.

Expensive items and anything which is not a necessity then invoke the **rules** which are designed to **protect minors**: that is, the contracts are:

- 1) **unenforceable** as against the minor, and
- 2) **voidable** by the minor.

Basically, that means the contract can be enforced by the minor, but not the other contracting party. Also, there is an election to either confirm or revoke the contract once the minor reaches legal age (18 years in Ontario).

So, unless it's a real big deal, then you are better not to bother trying to do business with a minor. The exception of course, is that they are extremely talented and you want to take the chance. Sports and entertainment contracts are frequently negotiated with minors. Sign them up and hope they won't leave. Get their parents to sign up too! That helps, but doesn't alter the law.

If you have signed the best 17 year old hockey player, you will find that when they reach 18 they might move on and sign up, legally this time, with someone else.

When you are dealing with a minor who is wealthy, they may in fact enter into a contract which is enforceable under the ordinary rules as a necessity for cars, boats and real estate. The difficulty for the other party is that you wouldn't really know for sure.

From the perspective of enforceability, the only way to protect yourself is to have a Court approval and confirmation of the transaction. This is the route selected by insurance companies that want to make a payment to a minor. It is often referred to as an “infant Settlement” and requires the consent of the Public Guardian and Trustee and approval by the Court. It doesn’t work for sports contracts, but it will work for real estate.

Minors own real estate because their parents bought real estate and placed it in their names. This frequently occurs with families who do not reside in Canada. In other situations, the minor might inherit property from an estate.

In a situation where a minor is involved in a contract for real estate, it is always wise seek legal advice. The proposed transactions are too tricky, and too unique to take any risk.

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