

THE STATUTE OF FRAUDS AND COMMERCIAL LEASING

What are the origins of the *Statute of Fraud* (Ontario)?

1. Original legislation passed by the English Parliament in 1677 and incorporated into the Canadian common law provinces as received legislation.
2. Enacted to prevent parties from bringing false claims before the courts supported by perjury by requiring written evidence for certain types of agreements.
3. The legislation survives in Ontario in an abbreviated form.

When does the *Statute of Frauds* apply to leases?

1. The *Statute of Frauds* requires transactions concerning interests in land be evidenced in writing which includes leases.
2. One major exception: leases with terms of less than three years do not need to be in writing if the rent to be paid is at least “two-thirds of the full improved value of the thing demised.”

What does a lease need to be compliant with the *Statute of Frauds*?

1. In general, a lease has five essential requirements:
 - a. the identities of the parties to the lease;
 - b. a description of the property being demised;
 - c. the commencement and duration of the term;
 - d. the rent payable during the term; and
 - e. all other material terms not incidental to the landlord-tenant relationship.
2. A formal written lease agreement signed by both parties containing the above five elements will obviously satisfy the *Statute of Frauds*.
3. Alternatively, where no written agreement exists, a memorandum or note containing the essential elements of a lease can suffice.
4. Such memorandum or note can take a number of forms (e.g. correspondence, receipts, internal memos, etc.) as long as it has been signed by the party being sued.

What happens if a lease does not comply with the *Statute of Frauds*?

1. If a lease does not comply with the *Statute of Frauds* and the tenant takes possession with the landlord's consent, the statute provides that a tenancy at will is created, which can be terminated at any time by either the landlord or tenant.

Can courts provide relief if the *Statute of Frauds* is not strictly complied with?

1. The courts have resorted to the equitable doctrine of part performance to provide relief in situations where the strict application of the *Statute of Frauds* would undermine an otherwise fair lease agreement.
2. The general principle of part performance is that a verbal agreement that has been partly performed is evidence of an existing agreement and will be enforced.
3. The Supreme Court of Canada has established the following broad tenets of the doctrine of part performance:
 - a. the part performance of the agreement must be unequivocally referable to the alleged contract;
 - b. the payment of money alone is not sufficient to establish part performance;
 - c. the acts of performance must be acts of the plaintiff who acted to his or her detriment in carrying out his or her obligations and those acts are known to the other party;
 - d. the contract must be one where the law would grant specific performance if it had been evidenced in writing; and
 - e. the evidence of the existence of the contract must be clear and proper.
5. The Ontario Court of Appeal recently articulated the following principles which expand the doctrine of part performance:
 - a. the doctrine should consider the actions of both parties as opposed to just the plaintiff when determining whether it is inequitable for one party to invoke the *Statute of Frauds*;
 - b. the payment of money can be a sufficient act of part performance;
 - c. the part-performance of the agreement need not be unequivocally referable to the alleged contract so long as the performance is referable to "some dealing with the land" that is consistent with the alleged contract, with regard to how a reasonable person carries on their affairs;
 - d. the plaintiff being prevented from purchasing the property can be sufficiently detrimental to satisfy the detrimental reliance requirement; and
 - e. an offer signed by only the offeror can be binding on the offeree.

How is the law changing to deal with modern methods of communication?

1. Both the legislatures and the courts are taking steps to reconcile modern communication methods with the *Statute of Frauds*.

2. The *Electronic Commerce Act, 2000* (Ontario) now provides that lease agreements can exist and be signed electronically while satisfying the requirements of the *Statute of Frauds*.
3. The courts are also taking a more flexible approach in applying the writing requirement of the *Statute of Frauds* to modern methods of communication.