

# Seals: The Power That Drips from Red Wax

By Albert S. Frank, LL.B.

The sealing wax has been dripped onto the large, beautifully handwritten legal document. Now it is time to apply the nobleman's signet ring to make the impression in the wax that completes the sealing. There – it is done. The document is sealed.

The above description is obviously somewhat out of date. Nowadays, few people own a signet ring or other sealing instrument, and hardly anyone drips sealing wax on legal documents. Typically, without any great feeling of ceremony we simply apply a small self-adhesive wax wafer purchased from a stationery store.

Is sealing a fading custom, of no real significance? Actually, there is still power in that old red wax.

## ***Consideration***

Putting a promise in writing is not, in itself, enough to make the promise legally binding. For the promise to be binding, the person making the promise usually has to get something in exchange for the promise. That "something" is called "consideration."

The consideration could be something physical, like gold, land, machinery, peppercorns, etc. The consideration could be money. The consideration could be a promise or promises from the other side of the deal.

But what if you are not sure that the person making the promise is getting consideration?

For example, someone guaranteeing borrowing being done by a friend might not be getting consideration. Here is where sealing comes in.

A sealed document is binding by virtue of being a sealed document, whether or not there is any consideration. This can prevent numerous arguments about whether consideration was provided or was adequate.

### ***Specialty***

Sealing can have a major affect on how long you have within which to sue for the breach of a promise to pay a debt.

If you wish to sue for a breach of a contract or similar document, the limitation period is generally 6 years. After 6 years it is too late to sue. In the law of Ontario, however, and in the law of other provinces with similar legislation, there is a 20-year limitation period for certain sealed documents called "specialties."

A "specialty" is a contract or promise in writing that secures a debt and is under seal. If the document does not secure a debt, it is not a specialty. If it is not under seal, it is not a specialty. But if it secures a debt and also is under seal, it is a specialty and instead of a 6-year limitation period there is a 20-year limitation period.

### ***Sealed Contract Rule***

Where an agent signs a contract for an undisclosed principal, the law generally is that the undisclosed principal may sue or be sued on the contract. If the contract is under seal, though, the "sealed contract rule" applies. Under the sealed contract rule only the

persons named in the contract document may sue or be sued for breaches of the contract.

The Supreme Court of Canada in the recent decision of ***Friedmann Equity Developments Inc. v. Final Note Ltd.***, [2000] 1 S.C.R. 842 considered the sealed contract rule and the law of sealed documents generally. The Court accepted the traditional rules of sealed documents and specifically stated – at paragraph 24 – that “The sealed contract rule is clearly still a part of the common law in Canada.” At paragraph 51 the Court states: “The sealed contract rule has provided a valid means for undisclosed principals to avoid personal liability and has most probably been invoked in transaction after transaction.”

The Court refused to set aside the sealed contract rule. It also rejected an argument that the sealed contract rule should not apply where the agent is a corporation.

### ***What is a "Seal," What is "Sealing"?***

Sealing is making a mark on a document in such a way as to show an intention to seal the document.

Documents are traditionally sealed with red wax, but I am aware of no reason why any other colour could not be used.

The old dripping-wax-plus-signet-impression method would work. Applying a self-adhesive wax wafer would work, the wafer itself being the “mark” on the document that shows the intention to seal the document. Making a mark of some kind in cooling wax would work, as most likely would making a mark representing a seal even in the absence of any kind of wax.

Some sort of mark must actually be made on the document, though. Various judges have agreed that simply including in a document words like "Signed, Sealed, and Delivered" or "whereunto we have affixed our seals" is not enough – the signer must actually do something physical to the document to indicate an intention to seal it.

What about applying a corporate seal? Various Courts – for example Ontario's Divisional Court in ***Alton Renaissance I v. Talamanca Management Ltd***, [1996] O.J. No. 4125 – have ruled that applying a corporate seal does not count as the sealing of a document. See also the Supreme Court of Canada decision in ***Friedmann Equity Developments Inc. v. Final Note Ltd.***, [2000] 1 S.C.R. 842. The reason is that the corporate seal is the equivalent of a human being's signature. To "seal" a document we have to do something more than sign it.

Even corporations are still affected by the power that drips from red wax.

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*Albert S. Frank is a business trial lawyer  
(commercial litigator).*

*E-mail: [afrank@FrankLaw.ca](mailto:afrank@FrankLaw.ca)*

*Web: [www.FrankLaw.ca](http://www.FrankLaw.ca)*