

NEW RESTRICTIONS ON SELLING LAND: AN OVERVIEW OF THE PROHIBITION ON THE PURCHASE OF RESIDENTIAL PROPERTY BY NON-CANADIANS ACT

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INTRODUCTION

On January 1, 2023, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the “**Act**”) will come into force for a period of two years. The Act bans non-Canadians from directly or indirectly purchasing residential property.^[1] This is a response by the Government of Canada to the public concerns surrounding the inflation of housing prices. Purchasers, developers, real estate agents, and other advisors should familiarize themselves with the new restrictions to ensure compliance with the Act. The scope of the ban, exceptions, and other key details regarding the operation of the Act are expected to be addressed in future regulations (the “**Regulations**”). In the meantime, guidance can be sought from the Government’s consultation paper (the “**Consultation Paper**”).^[2] This bulletin will cover some key considerations under the Act.

EXCEPTIONS^[3]

The Act will not apply to temporary residents; protected persons; non-Canadians who purchase residential property with their spouse or common-law partner as long as the spouse or common law partner is eligible to purchase residential property in Canada; and for other prescribed circumstances, which are to be defined in the Regulations. The Consultation Paper indicated that temporary residents may include students and those workers eligible for work permits who meet the following criteria:

- a. Students:
 - i. pursuing a program of authorized study at a designated learning institution;
 - ii. eligible for a work permit;
 - iii. have filed a Canadian income tax return for each of the five taxation years preceding the year in which the purchase is made;
 - iv. physically present in Canada for a minimum of 275 days in each of the five calendar years

preceding the year in which the purchase is made;

b. Workers:

- i. pursuing a program of authorized study at a designated learning institution;
- ii. eligible for a work permit;
- iii. have filed a Canadian income tax return for each of the five taxation years preceding the year in which the purchase is made; and
- iv. physically present in Canada for a minimum of 275 days in each of the five calendar years preceding the year in which the purchase is made.^[4]

PENALTIES/ENFORCEMENT

The offences under the Act will have a wide reach. The penalties will not only apply to non-Canadian purchasers, but to anyone who participates in or facilitates a prohibited real estate transaction, and is knowingly a party to a contravention of the Act. Anyone who is guilty of an offence may be subject to a maximum fine of \$10,000. In addition, corporations, directors, officers, managers, and others who have authorized or participated in the violation may be held personally liable for violations under the Act.^[5]

NOTABLE DEFINITIONS

The Act provides the following notable definitions:

“Residential property”

- a. a detached house or similar building with less than three dwelling units (residential unit with private kitchen facilities, bath and living area);
- b. a part of a building that is intended to be a separate parcel or other division of real property or immovable including a semi-detached house, rowhouse unit, or a residential condominium unit; and
- c. any prescribed real property or immovable.

“Non-Canadian”:

- a. a person who is not a Canadian citizen, permanent resident, or a person registered as an Indian under the Indian Act;
- b. a corporation that is not incorporated in Canada;
- c. a corporation incorporated in Canada that is controlled by a non-Canadian person or corporation; and
- d. a prescribed person or entity.

As discussed above, the Regulations will shed light on the scope of the Act, providing meaning on what will

establish a “purchase”, “control”, and anything that needs to be prescribed. It will clarify how much Canadian investment is required to determine that a corporation is Canadian and not in violation of the Act. The Consultation Paper has provided some initial guidance on the meaning of “control” by indicating that a suggested threshold of 3% or more direct or indirect ownership of the value of equity or voting rights of a corporation, or de facto control of a Corporation may amount to “control” under the Act.^[6]

IMPACT

The full extent of the Act’s impact will be clearer once it has been addressed by the Regulations. In the meantime, it is clear that purchase and sale agreements in place prior to January 1, 2023, will not be subject to the ban and the transaction can go ahead as planned. Additionally, a sale of residential property contravening the Act will continue to be valid and enforceable, however, if a Non-Canadian is convicted of a contravention under the Act, the superior court of the province in which the purchase occurred, on application from the Minister, can order the residential property be sold.^[7]

CONCLUSION

Anyone involved in the purchase of residential property should familiarize themselves with the prohibitions under the Act, including the clarifying provisions of the Regulations to ensure compliance with the legislation and avoid any potential liability for a fine.

If you wish to obtain further particulars of the Act, the future Regulations, and their proposed implications, please do not hesitate to contact us.

[1] *Purchase of Residential Property by Non-Canadians Act*, s. 4(1).

[2] Consultation Paper. Draft - For Limited Distribution (cmhc-schl.gc.ca).

[3] *Purchase of Residential Property by Non-Canadians Act*, s. 4(2).

[4] Consultation Paper. Draft - For Limited Distribution (cmhc-schl.gc.ca).

[5] *Purchase of Residential Property by Non-Canadians Act*, s. 6(1).

[6] Consultation Paper. Draft - For Limited Distribution (cmhc-schl.gc.ca).

[7] *Purchase of Residential Property by Non-Canadians Act*, s. 7(1).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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