

THE VACANCY TAX: ALL YOU NEED TO KNOW ABOUT THE CITY OF VANCOUVER'S EMPTY HOMES TAX

Posted on January 9, 2018

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In 2016, the British Columbia provincial government, under Vacancy Tax Bylaw No. 11674 (the “**Bylaw**”), implemented an empty homes tax (the “**Vacancy Tax**”) on certain properties located in the City of Vancouver (the “**City**”). The Vacancy Tax became effective on January 1, 2017 and has two main goals: 1) reduce the number of empty or under-utilized properties in the City, and 2) relieve pressure from the City’s rental housing market by increasing the number of rental properties available, thereby decreasing the rental costs in the City.

This bulletin is meant to explain the Bylaw so that all registered owners of Residential Property (as defined below) in the City (“**Homeowners**”) can ensure they are adhering to the requirements of the Bylaw and determine if their property is subject to the Vacancy Tax.

Who does the Vacancy Tax apply to?

The Vacancy Tax requires all Homeowners to submit a property status declaration (“**Declaration**”) each year to determine if their property is subject to the Vacancy Tax.

All Homeowners, regardless of whether they live on their property or not, must submit a Declaration for the year ended 2017 by **February 2, 2018**. If the Vacancy Tax is payable, payment from the Homeowner is required by April 16, 2018. Any unpaid amounts thereafter will be added to the Homeowner’s property tax bill on December 31, 2018.

What does the Vacancy Tax apply to?

As a starting point, the Vacancy Tax applies to all Taxable Property, which is defined in the Bylaw as Residential Property that is:

- Vacant Property (as defined below);
- not exempt from taxation under section 373 of the Vancouver Charter; and
- not exempt from the Vacancy Tax under the Bylaw (discussed below).

In order to determine if property is Taxable Property, making the Vacancy Tax payable, a Homeowner must

navigate through various definitions and concepts contained in the Bylaw, including those which are described below.

Residential Property is defined in the Bylaw as real property classified as class 1 property (residential) under the Assessment Act. This includes, but is not limited to, single family residences, duplexes, multi-family residences, apartments and condominiums.

Vacant Property, according to the Bylaw, is Residential Property that:

- has been Unoccupied (as defined below) for more than 180 days during the Vacancy Reference Period (as defined below); or
- is deemed to be Vacant Property in accordance with the Bylaw.

Unoccupied, according to the Bylaw, refers to:

- Residential Property that is not the Principal Residence of an Occupier (as defined below); or
- Residential Property that is not occupied by a tenant or subtenant for a term of at least 30 consecutive days.

Principal Residence is defined in the Bylaw as the usual place where an individual lives, makes his or her home and conducts his or her daily affairs including, without limitation, paying bills, and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration, and utility bills.

Occupier is defined in the Bylaw as a Homeowner or a person who occupies Residential Property with the permission of the Homeowner but is not a tenant or subtenant.

Vacancy Reference Period is defined in the Bylaw as the twelve months of a tax year, which for the City refers to the period of time from January 1 to December 31 of each year.

For the purposes of the Vacancy Tax, Residential Property is deemed to be Vacant Property if the Homeowner:

- fails to make a Declaration;
- makes a false Declaration;
- fails to provide information or to submit required evidence to the Collector of Taxes in accordance with the Bylaw; or
- provides false information or submits false evidence to the Collector of Taxes.

What is the Vacancy Tax rate and how is it calculated?

The rate of the Vacancy Tax is 1% of the taxable assessed value of a parcel of Taxable Property.

What exemptions from the Vacancy Tax are available for Homeowners?

- A Homeowner will not be required to pay the Vacancy Tax if the Homeowner's Residential Property was Unoccupied for more than 180 days during the Vacancy Reference Period:
- because the Homeowner is deceased and neither a grant of probate of the will of the deceased, nor a grant of administration of the estate of the deceased has been provided;
- in order to redevelop the property or safely carry out major renovations, for which permits have been issued by the City and which, in the opinion of the City, are being carried out diligently and without unnecessary delay;
- because the Occupier, tenant or subtenant has been undergoing medical care or has been residing in a hospital, long term or supportive care, except that such exemption shall not be allowed for more than two consecutive Vacancy Reference Periods;
- because the Residential Property is a strata unit in a strata development, prior to the date of enactment of the Bylaw, and the by-laws of the strata restricted the number of strata units that may be rented, and rental of the Residential Property is not permitted because the maximum allowable number of permitted strata rentals for the strata development has already been reached;
- solely because a court order has prohibits its occupancy; or
- the lawful use of the property in question is limited to vehicle parking, or as a result of the size, shape or other inherent limitation of the parcel, a residential building cannot be constructed on the parcel.

Additionally, a Homeowner will not be required to pay the Vacancy Tax if:

- title to the Residential Property in question was transferred during the applicable Vacancy Reference Period; or
- the Residential Property is not the Principal Residence of a Homeowner but was Occupied by such Homeowner for a minimum of 180 days during the Vacancy Reference Period because the Homeowner worked in the City.

Takeaway

The Bylaw is complicated and contains a number of fines and penalties that are applicable to Homeowners that fail to adhere to its requirements. These include a 5% penalty on all amounts remaining unpaid in relation to the Vacancy Tax as of the 10th business day of April of the year in which they become due and payable. Furthermore, any person who is convicted of an offence under the Bylaw is punishable on conviction by a fine

of not less than \$250 and not more than \$10,000 for each offense. As such, when dealing with the Vacancy Tax and/or the Bylaw, we recommend seeking legal advice for any clarification and instructions that you may require.

by Dharam Dhillon and Gavyn Backus, Articled Student

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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