



5 Government Game Changers in Ontario Real Estate Law

What you need to know!

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1. CHANGES TO ONTARIO’S LAND TRANSFER TAX

Land Transfer Tax (“LTT”) is payable on every conveyance of land or interest in land in Ontario.

To address certain developments in the real estate market, the Province introduced the following changes to the LTT system effective as of January 1, 2017.

Doubled Maximum LTT Refund for First-Time Homebuyers

To help Ontarians buy their first home, the Province has doubled the maximum refund of LTT for first-time homebuyers from \$2,000.00 to \$4,000.00. Consequently, if you are a qualified first time home buyer, no LTT is payable on the first \$368,000.00 of the price of the home.

Residency Requirement

The first-time homebuyers’ LTT refund is now only available to Canadian citizens and permanent residents.

Increases to LTT Rates and Brackets

The amount of LTT to be paid is based on the value of consideration paid for the land.

The Province has increased LTT rates by adding additional brackets for high-value transactions.

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The new LTT rates are as follows:

- amounts up to and including \$55,000.00: 0.5%
- amounts exceeding \$55,000.00, up to and including \$250,000.00: 1.0%
- amounts exceeding \$250,000.00, up to and including \$400,000.00: 1.5%
- amounts exceeding \$400,000.00: 2.0%
- amounts exceeding \$2,000,000.00, where the land contains one or two single family residences: 2.5%.

Notably, the LTT rate on the portion of the value above \$400,000.00 for purchases of any type of land other than residential, including commercial, industrial, multi-unit residential and agricultural properties increased from 1.5% to 2%.

Purchasers who entered into agreements of purchase and sale on or before November 14, 2016 are not subject to the increased LTT rates, even if the transaction closed after January 1, 2017.

Speak to your solicitor about securing a refund if you entered into an agreement of purchase and sale on or before November 14, 2016.

2. ONTARIO CORPORATION'S REGISTER OF OWNERSHIP INTEREST IN LAND

Following amendments to the *Business Corporations Act* (Ontario) ("*OBCA*"), corporations incorporated, amalgamated or continued under the *OBCA* must now maintain a current register of the corporation's ownership interest in land at its registered office. This registration requirement does not extend to ownership interests in real property situated outside of Ontario and only applies to Ontario corporations.

"Ownership interest in land" is not defined in the *OBCA* and the term presumably includes both legal and beneficial ownership in real property. It may also include charges/mortgages, or an interest in buildings or structures that are owned separately from land, as these have been included in the definition of "interests in real property" in the new *Forfeited Corporate Property Act* (Ontario), which was enacted concurrently with the changes to the *OBCA*.



The register must identify each property in which an ownership interest is held, the date of acquisition and the date of disposal, if applicable. In addition, the corporation must keep a copy of any deeds, transfers, or similar supportive documents that contain the municipal address, the registry or land titles division, the property identifier number, the legal description, and the assessment roll number, if any, of each property listed with the register.

The legislative changes took effect on December 10, 2016 and apply without restriction to any and all corporations incorporated in Ontario prior to or after that date. Corporations incorporated on or following December 10, 2016 must comply immediately. Corporations incorporated prior to December 10, 2016 must comply with the new corporate registry requirements within two years – If you are such a corporation you will need to ensure compliance with the requirements by no later than **December 10, 2018**.

Failure to comply with the new requirement may lead to fines and penalties under the *OBCA*, including potential personal liability and other penalties for directors and officers.

We suggest that all provincially incorporated corporations seek the aid of their solicitor to begin compiling all of the necessary information to create and maintain this register in accordance with the *OBCA* as soon as possible.

3. DISPOSITION OF A PRINCIPAL RESIDENCE

Beginning in the 2016 tax year, taxpayers who sell their principal residence must now report the disposition on Schedule 3 (Capital Gains) of their T1 income tax and benefit return. In previous years, this reporting was not required if the property was designated as a principal residence for every year it was owned, since principal residences are exempt from tax on any capital gains realized therefrom. While the principal residence exemption continues to apply, taxpayers now have to list in Schedule 3 the year the property was acquired, the proceeds of disposition, and a description of the property.



In order to claim the exemption for a particular year, the property must be designated as the taxpayer's principal residence. If the property was a principal residence for every year that it was owned, this designation may now be made on Schedule 3. If the designation is only being made for a portion of the years the property was owned, form T2091 can still be used as in past years. As before, a taxpayer can only designate one property as his or her principal residence for any year, and any designations by the taxpayer's family unit must be for the same property.

If a taxpayer forgets to make a designation of principal residence in the year of the sale, it is very important to ask the Canada Revenue Agency to amend the income tax return for that year to show the disposition.

This new reporting requirement does not apply if you are purchasing a property even if it will become your principal residence.

There are strict penalties for those who do not report the disposition in the year of sale. The penalty is the lesser of (i) \$100 per month from the original due date to the date you report the disposition in a form satisfactory to the CRA, and (ii) \$8,000.

4. NON-RESIDENT SPECULATION TAX

The Ontario Ministry of Finance has introduced a Non-Resident Speculation Tax ("NRST"), which took effect on April 21, 2017. The NRST is an additional 15% tax on the purchase or acquisition of an interest in *residential* property located in the "Greater Golden Horseshoe" ("GGH") by individuals who are not citizens or permanent residents of Canada (foreign nationals), foreign corporations and taxable trustees.

GGH is defined to include Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York.

Regardless of whether the subject property is in the GGH, all transfers of Ontario land must now contain a statement expressly acknowledging that consideration has been given to whether the NRST applies. The transferee's lawyer must make one of the following three statements on the Land Transfer Tax Statement attached to the registered transfer:

The NRST does not apply to this transfer because the binding agreement of purchase and sale was signed on or before April 20, 2017;

The NRST does not apply to this transfer; or



The NRST applies to this transfer and has been paid to the Ministry of Finance, as confirmed by receipt #.

The NRST applies to the value of the consideration for a transfer of one and not more than six single family residences *if any one* of the transferees is a foreign entity or taxable trustee. Each transferee is jointly and severally liable for any NRST payable even if the other transferees are Canadian citizens or corporations.

The NRST does not apply when a person purchases or acquires residential property as a trustee of a mutual fund trust, real estate investment trust or specific investment through-flow trust.

Taxpayers reporting unregistered dispositions of land to the Ministry of Finance must also expressly acknowledge in a covering letter that consideration has been given to the application of the NRST and whether or not it is payable on the reporting transaction.

Exemptions to the NRST are available, including:

- Foreign nationals who receive confirmation under the Ontario Immigrant Nominee Program (“nominee”);
- Foreign nationals who are conferred the status of “convention refugee” or “person in need of protection” under the *Immigration and Refugee Protection Act* at the time of the purchase or acquisition (“refugee”); and
- Foreign nationals, nominees and refugees who have a spouse who is a Canadian citizen or a permanent resident of Canada.

A NRST rebate may be available in the following situations provided the foreign national uses the property as his or her principal residence and:

- The foreign national becomes a Canadian citizen or permanent resident of Canada within 4 years of the date of the purchase or acquisition;
- The foreign national is a student who has been enrolled full-time for at least 2 years from the date of purchase or acquisition; or
- The foreign national has legally worked full-time in Ontario for a continuous period of one-year since the date of purchase or acquisition.

Failure to pay the NRST as required may result in a penalty, fine and/or imprisonment.



5. PRESCRIBED INFORMATION FOR PURPOSES OF SECTION 5.0.1 LAND TRANSFER TAX ACT

Effective April 24th, 2017, persons (including beneficial owners) who purchase or acquire land that contains at least one and not more than six family residences or agricultural land must complete the Prescribed Information for Purposes of Section 5.0.1 form (the “Form”) with their solicitor. The personal information collected on the Form will be used by the Ministry of Finance for the purposes of compiling statistics and developing economic, tax and fiscal policy.

“Agricultural land” means farm lands used for farm purposes by the owner, or used for farm purposes by a tenant of the owner and buildings thereon used for farm purposes, including the residence of the owner or tenant and of the owner’s or tenant’s employees and their families on the farm land.

Single family residences may include, but are not limited to, detached and semi-detached houses, duplex, freehold townhouse, condominium townhouse, condominium apartment and cottage.

The prescribed information required includes (but is not limited to) the following:

- whether the home is intended to be occupied by the person who purchases or acquires the land, or their family member(s), as their principal residence;
- the type of dwelling;
- date of birth of the transferee(s);
- whether the property, in part or in whole, is intended to be leased out;
- residency, citizenship and permanent resident status, if the person who purchases or acquires the land is an individual;
- information about incorporation, ownership and control, if the purchaser(s) is a corporation; and
- information about beneficial owners, if the person who purchases or acquires the land is acting as a trustee, nominee or in a similar capacity.

Persons who purchase or acquire land acting as a trustee of a mutual fund trust, real estate investment trust, or specified investment flow-through trust are not required to complete the Form.

It is incumbent upon purchasers to provide this information to their solicitor prior to the closing date, and failure to submit the Form may constitute an offence under the *Land Transfer Tax Act* (Ontario).

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