

ADVICE TO MINISTER

**CONFIDENTIAL
GCPE-FIN ISSUE NOTE**

Ministry of Finance

Date: January 6, 2016

Updated: February 10, 2016

Minister Responsible: Michael de Jong

Property Transfer Tax Act – New Data Collection Measures

ADVICE AND RECOMMENDED RESPONSE:

- **The Province is taking steps to better inform our collective understanding of what drives growth in B.C.'s real estate market.**
- **If approved by the Legislature, changes to the Property Transfer Tax Act will authorize government to collect new information from owners when they register their property at the Land Title Office.**
- **Estimates of the impact of foreign investment and the use of bare trusts in B.C.'s housing market have been just that – estimates. Conclusive data wasn't available.**
- **The changes will allow the Province to monitor the volume of foreign investment and the use of bare trusts in B.C.'s real estate sector.**
- **Individual transferees will be required to disclose their citizenship when they register their property at the Land Title Office. Corporations will be required to disclose their directors' citizenship.**
- **Transferees will also be required to disclose whether they are holding the land as a bare trustee when they register their property at the Land Title Office and disclose information on the settlors and beneficiaries of the bare trust.**
- **The new disclosure requirements will come into effect in summer 2016.**

KEY FACTS REGARDING THE ISSUE:

Foreign Investment

The public has been particularly interested in issues related to foreign real estate investment in B.C. and especially the Lower Mainland. With average prices continuing to creep upward, many have claimed that an influx of foreign buyers in the Lower Mainland is pricing locals out of the market. There hasn't been any conclusive data to support this perception.

Estimates of non-resident investment in B.C.'s housing market have been subject to considerable uncertainty due to a lack of conclusive data. Industry experts estimated that non-residents likely make up 2-4% of home sales activity in Greater Vancouver.

The new form asks transferees to disclose whether they are:

- Individuals: Canadian citizens or permanent residents, and if neither, their country of citizenship.
- Corporations: The number of directors, whether the directors are Canadian citizens or permanent residents, and if neither, the names, addresses and citizenship of those directors.

Bare Trusts

Media has called the property transfer tax unfair, claiming that it's routinely avoided through the use of bare trusts.

These changes will provide more data on the use of bare trusts in real estate by collecting the following information:

- Whether or not the transferee is holding the land as a bare trustee at the time of registration. (Note that citizenship information is now required of every transferee.)
- If the trust is a bare trust, transferees will be required to disclose:
 - The name of the settlor.
 - If the settlor is an individual:
 - Whether the settlor is a Canadian citizen or a permanent resident.
 - Their name and address
 - If neither a Canadian citizen or a permanent resident, their country of citizenship.
 - If the settlor is a corporation:
 - Number of directors and whether they are Canadian citizens or permanent residents.
 - the names, addresses and citizenship of those directors.
 - The name of the beneficiary.
 - If the beneficiary is an individual:
 - Whether the beneficiary is a Canadian citizen or a permanent resident.
 - Their name and address
 - If the beneficiary is neither a Canadian citizen or a permanent resident, their country of citizenship.
 - If the beneficiary is a corporation:
 - Number of directors and whether they are Canadian citizens or permanent residents.
 - the names, addresses and citizenship of those directors.

A bare trust is a legal entity created for the sole purpose of holding title to something, usually land and buildings. In a bare trust, the trustee holds legal title, but the beneficiary could enjoy the use of the property and control the trustee. Beneficial ownership can then be transferred through a change to the trust document, without a taxable registration at a land title office.

Changes in ownership shares of corporations or in beneficiaries of bare land trusts (that do not result in a change in the registered interest in property in the land title system) are, therefore, not subject to property transfer tax.

ADVICE TO MINISTER

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Program Area	Comm. Director	Deputy	Minister's Office
DJ			

Questions and Answers
New Property Transfer Tax Form
Data Collection
May 5, 2016

1. What additional data is being collected?

We are collecting information on the citizenship status of purchasers of property in British Columbia. For corporations we are collecting information on the citizenship of directors. We are also collecting information on the settlors and beneficiaries of bare trusts, as well as on the transferees.

2. Why is the government collecting data on citizenship and bare trusts

The data is being collected to answer questions about the impact of foreign purchasers on the real estate market in British Columbia and to collect information on the use of bare trust structures in the province.

3. What can / will the data be used for?

The data will be used to compile statistical information on real estate purchases in British Columbia and for the enforcement and administration of tax statutes. We have an information exchange agreement with the Canada Revenue Agency.

4. When will data collection start?

Data collection will begin on June 10, subject to Cabinet approval of the regulation.

5. Why won't the form be implemented until June 10?

This is a complex, online form. Staff are finalizing and testing its functionality, working to put the necessary systems in place, and coordinating with Land Title & Survey Authority, who will host the form.

6. Q: How will the government ensure people are being truthful?

It is an offence to lie on the PTT return. We don't discuss our audit plans, but we have the ability to verify citizenship. Audit powers under the Property Transfer Tax Act are robust.

7. What about privacy?

The confidentiality of taxpayer information provisions in Property Transfer Tax Act and the provisions of the Freedom of Information and Protection of Privacy Act will apply to the information that is collected.

8. Is the government losing money on bare trusts?

There is no revenue loss. The property transfer tax is designed to tax registrations at a land title office, which it does.

9. Why are you going after information on bare trusts? Are you going to tax them?

For almost thirty years now in BC, governments have chosen to tax registrations in the land title system, but not to tax changes in beneficial interests done through sales of companies or through trust transactions that are not registered at a land title office.

Data collection through property transfer tax administration will give us better information on the first registration of property using a bare trust arrangement. This first registration is taxable. This will include information about the fair market value of the properties involved, the types of properties involved and who is using the bare trust structure.

The data may lead to the conclusion that no action is required. On the other hand, it may lead a government to look further into possible options.

10. What about existing bare trusts?

This measure will only allow us to collect data on bare trusts going forward. Existing bare trusts will not be required to provide information unless there is a taxable transaction at the land title office. Collecting data on existing bare trusts would require undertaking a census of current property owners or the creation of some new registry.

Minister of Finance
Event Details Checklist
Updated: 10/06/2016

Function Date	Monday May 9, 2016
Name of Function	Real Estate Services Act Regulations and announcement of new data collection form
Number of attendees expected	Press gallery media
Sponsor/Host	BC Government
Contact name and number	Jamie Edwardson, 250-356-2821
Event Theme	Real Estate
Speech topic	Announcement of RESA regulations
Recommended arrival time	9:30 a.m.
Time Minister will be introduced	9:30 a.m.
Speech length	10 minutes
Q&A time?	10 minutes
Anticipated departure time	10 a.m.
Appropriate Dress	Business
Address/ directions	Legislature Press Gallery
Name and title of person introducing Minister	Jamie Edwardson, Communications Director
Media anticipated	Press Gallery
Presentation details	Minister to walk media through the new form using posterboards as visual aide.
Staff attending event	Jamie Edwardson

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SPEAKING NOTES FOR

**ANNOUNCEMENT OF RESA REGULATIONS
AND
NEW PROPERTY TRANSFER TAX FORM FOR DATA COLLECTION**

**HON. MICHAEL DE JONG
MINISTER OF FINANCE**

PRESS GALLERY

**MAY 5, 2016
PRESS GALLERY
BC LEGISLATURE
VICTORIA, B.C.**

AUDIENCE: Media

THEME: Real Estate

TIME: 10 minutes + QA

WORD COUNT:

KEY MESSAGES:

- **The Province is making changes that will better protect sellers in the real estate market and address concerns about the conduct of some B.C. real estate licensees.**
- **With these new rules, real estate licensees drafting offers to buy or sell real estate must include default terms in the offer unless otherwise instructed by their client.**
- **These terms require the seller's consent to assign the contract and any resulting profit to be returned to the seller.**
- **If the buyer instructs their real estate licensee not to include the two terms, the seller must be notified and advised to seek independent professional advice.**
- **Sellers' licensees are required to discuss with their clients whether the contract would be assignable and whether there would be any conditions on assignment, including whether the seller is entitled to any profit.**
- **These changes are designed to prevent situations in which a buyer purchases a property, only to reassign the contract at a higher price before the closing date, without the seller knowing the contract could be assigned.**
- **By ensuring conditions around assignment are transparent at the outset, sellers are in a better position to decide whether or not to accept an offer.**
- **The new requirements will ensure that in all cases involving a licensee, sellers are aware whether the contract to sell their property may be assigned before signing the contract.**

- **The new rules apply to offers made on or after May 16. They do not apply to contracts signed before that date.**

INTRODUCTION

- Premier Clark announced March 18 the Province would put new rules in place to prevent abuse of contract assignment in real estate.
- Today, I am announcing new regulations under the Real Estate Services Act that help ensure proposed contract assignment terms are transparent at the outset of a real estate transaction.
- These changes will better protect sellers in the real estate market and address concerns about the conduct of some B.C. real estate licensees.

RULES

- With these new rules, real estate licensees drafting offers must include two default terms in the offer, unless otherwise instructed by their client.
- The two default terms are:
 1. The contract must not be assigned without the seller's written consent.
 2. The seller is entitled to any profit resulting from an assignment of the contract by the buyer – or any subsequent assignee.
- If the buyer instructs their real estate licensee not to include the two terms, the seller must be notified and advised to seek independent professional advice.
- This notice will be given through a mandatory form approved by the Real Estate Council of British Columbia.

- The form also advises sellers not working with a licensee to obtain independent professional advice from a licensee or a lawyer before accepting the offer.
- Obtaining professional advice will help sellers fully understand the implications of a proposed contract that does not contain the two terms.
- Licensees who are representing sellers are required to discuss with their clients whether the contract would be assignable and whether there would be any conditions on assignment, including whether the seller is entitled to any profit.
- These changes are designed to prevent situations in which a buyer purchases a property, only to reassign the contract at a higher price before the closing date, without the seller knowing the contract could be assigned.
- The new rules apply to offers made on or after May 16. They do not apply to contracts signed before that date.

EDUCATION AND ENFORCEMENT

- The Real Estate Council of British Columbia is responsible for enforcing the Real Estate Services Act and Regulations.
- Penalties for failing to comply with the legislation include licence suspension and cancellation, and monetary fines.
- The Council intends to update its Council Rules to require a brokerage to retain copies of the notification form.
- In the interim, the Council is strongly recommending brokerages keep the form, to demonstrate their licensees' compliance with the new regulations.

- The Council will also send a Notice directly to all licensees setting out their obligations under the new rules.
- The Council will also update its Professional Standards Manual to provide more detailed guidance to licensees, and work with its education providers to ensure that the new requirements are included in course materials.
- The Council will also work with the British Columbia Real Estate Association to educate consumers and licensees regarding the new requirements.

REAL ESTATE DATA COLLECTION

- I announced with Budget government's intention to reinstate requirements that buyers disclose their citizenship when they register properties at the Land Title Office.
- As I said at the time, British Columbians are seeking explanations and solutions for a sharp rise in the price of homes in some areas of the province.
- The causes of rising property values are complex and can't be attributed to any singular factor.
- But there are steps the government can take to better inform our collective understanding of what is driving property prices in B.C.
- Today, I'd like to walk you through what some of new information buyers will be required to disclose.
 - Individuals who are not Canadian citizens or permanent residents must provide their country of citizenship.

- Corporations must provide the name, address and citizenship of directors who are not Canadian citizens or permanent residents.
- Bare trustees must provide information concerning names, addresses and citizenship of the settlors and beneficiaries of a bare trust.
- You have an example of what the form will look like in your kits.
- The example you have shows the kind of information we'll be collecting.
- Once implemented, this will be an online form with different fields appearing, depending on the purchaser's circumstances.
- The new form will be in place June 10, subject to Cabinet approval.
- By collecting this data, we will be in a better position to assess the volume of foreign investment and prevalence of bare trusts in B.C.'s real estate market, and determine whether any further action is required.
- Data will be shared with CRA to help with administration and enforcement of tax collection.

NEXT STEPS

- As you know, the Real Estate Council of B.C. launched an Independent Advisory Group in February to make recommendations to government on how consumer protection can be enhanced to restore public confidence in the real estate market.

- Government received the group's progress report in April that showed it is on the right track and looking at the right issues.
- The Province looks forward to the group's final report and the Real Estate Council's response, which we expect will include recommendations about further measures to protect consumers and consumer confidence in the industry.