

## Prohibition on the Purchase of Residential Property by Non-Canadians Act

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The *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10, s. 235 (the Act) came into force on January 1, 2023.<sup>1</sup> The Act prohibits non-Canadians from purchasing residential property in Canada for a period of two years, with some exceptions.

### Key Takeaways

- The Act prohibits non-Canadians from purchasing residential property, directly or indirectly.<sup>2</sup>
- Canadian corporations which are controlled by a foreign person or corporation, such as a foreign parent company, are considered non-Canadians and are therefore prohibited from purchasing residential property. As defined in the Regulations to the Act, “control” of an entity generally means 1) control in fact of the entity; or 2) direct or indirect ownership of shares or interests of the entity representing 3% or more of the value of equity or 3% or more of the entity's voting rights.<sup>3</sup>
- The definition of residential property in the Act includes only those properties which are located in a census agglomeration or census metropolitan area. A map displaying the location of those areas in Canada can be found [here](#). As can be seen in the map, for Ontario, the areas which the Act will impact are primarily located in Southern Ontario while Northern Ontario is mostly exempt from the Act's enforcement. That being said, there are exceptions for Northern Ontario, including the major resource extraction areas of Kenora, Thunder Bay, Timmins, Sault Ste. Marie, Elliot Lake, Sudbury and North Bay, all of which are census agglomerations or census metropolitan areas and, therefore, fall within the Act's purview.<sup>4</sup>
- Properties which do not contain a habitable dwelling but are zoned for residential use or mixed use and are located in a census agglomeration or census metropolitan area are deemed residential property under the Act. Canadians purchasing property in partnership with a non-Canadian should consider the zoning of the property, even if the property does not contain a habitable dwelling, in order to avoid contravening the Act.<sup>5</sup>
- There are significant penalties for non-Canadians in violation of the Act, and for Canadians that knowingly assist a non-Canadian in violating the Act. The penalties include both a fine of up to \$10,000.00 and court ordered sale of contravening property.<sup>6</sup>

### Definitions in the Act and Regulations

A “non-Canadian” is defined in the Act and Regulations as:

- a) an individual who is not a Canadian citizen, not a person registered as an Indian under the Indian Act, and not a person identified as a permanent resident;
- b) a corporation that is incorporated otherwise than under the laws of Canada or a province;
- c) a corporation incorporated under the laws of Canada or a province whose shares are not listed on a stock exchange in Canada for which a designation under section 262 of the *Income Tax Act* is in effect and that is controlled by a person referred to in paragraph (a) or (b);<sup>7</sup>
- d) an entity formed otherwise than under the laws of Canada or a province; and
- e) an entity formed under the laws of Canada or a province and controlled by an entity referred to in paragraph (d) of this definition or controlled by a person referred to in paragraph (a), (b) or (c) of this definition.<sup>8</sup>

A “residential property” is defined in the Act and Regulations as any real property or immovable **located within a census agglomeration or census metropolitan area** and that is:

- a) a detached house or similar building containing not more than three dwelling units;
- b) a part of a building that is a semi-detached house, rowhouse unit, residential condominium or other similar premises that is intended to be a separate parcel or other division of real property; and
- c) land that does not contain any habitable dwelling and is zoned for residential use or mixed use.<sup>9</sup>

A “purchase” is defined in the Regulations as the acquisition, with or without conditions, of a legal or equitable interest or a real right in a residential property but does not include:

- a) the acquisition by an individual of an interest or a real right resulting from death, divorce, separation or a gift;
- b) the rental of a dwelling unit to a tenant for the purpose of its occupation by the tenant;
- c) the transfer under the terms of a trust that was created prior to the coming into force of the Act; or
- d) the transfer resulting from the exercise of a security interest or secured right by a secured creditor.<sup>10</sup>

## Exceptions

Subject to conditions set out in the Act and Regulations, the prohibition on the purchase of residential property will not apply to refugees, temporary residents, protected persons under the *Immigration and Refugee Protection Act*, foreign diplomats and other groups as stated in the Act and Regulations.<sup>11</sup>

The prohibition on the purchase of residential property will also not apply if the non-Canadian assumed liability for the residential property under an agreement of purchase and sale prior to January 1, 2023.<sup>12</sup>

## Penalties

A non-Canadian that contravenes the prohibition against purchasing residential property within the Act, and any person that knowingly counsels, induces, aids or abets them to do so, or attempts to, is liable on summary conviction to a fine of not more than \$10,000.00.

Professionals who assist in the purchase and sale of property in Canada, such as lawyers, brokers, developers, realtors and others, should make appropriate inquiries as to whether any purchasers are non-Canadian so as to avoid being liable under the Act.

If a corporation or entity commits an offence, any of the following persons that directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable for the offence:

- a) an officer, director or agent or mandatary of the corporation or entity;
- b) a senior official of the corporation or entity;
- c) any individual authorized to exercise managerial or supervisory functions on behalf of the corporation or entity.<sup>13</sup>

While the Act punishes contravention, it does not void or invalidate the sale of the residential property to which the contravention relates.<sup>14</sup> Therefore, enforcement of the Act will not relieve a party of its contractual obligations relating to the sale of the contravening residential property. However, if a non-Canadian contravenes the Act, the residential property in question may be sold by the superior court of the province in which the residential property is located, in the manner prescribed by the Act and Regulations.<sup>15</sup>

## Looking Ahead

The ban on residential property purchases by non-Canadians is part of a broader effort by the federal government to address rising housing costs that includes federal tax changes for residential property flipping (also in effect as of January 1, 2023) and underused housing (in effect as of January 1, 2022), and provincial and/or municipal taxes on vacant homes or land speculation. It remains to be seen whether these efforts will have the desired effect.

While part of a larger effort to curtail rising housing costs, the Act's scope is restricted to census agglomerations and census metropolitan areas, thereby leaving the majority of rural and recreational properties less directly affected. The Regulations also provide multiple exceptions in order to allow non-Canadians meeting certain conditions to purchase residential properties. That being said, non-residents permitted to purchase residential property in Ontario by the Act or Regulations should still be aware of the provincial regulations on such purchases. These provincial regulations include the Non-Resident

Speculation Tax implemented under the *Land Transfer Tax Act*, R.S.O. 1990, c. L.6, which applies throughout the entire province of Ontario and includes a 25% tax on non-resident purchases of residential homes.

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<sup>1</sup> *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c 10, s 235 [*The Act*].

<sup>2</sup> *Ibid*, s. 4(1).

<sup>3</sup> *Prohibition on the Purchase of Residential Property by Non-Canadians Regulations*: SOR/2022-250, [*The Regulations*], s. 1-2.

<sup>4</sup> *Ibid*, s. 3(1).

<sup>5</sup> *Ibid*, s. 3(2).

<sup>6</sup> *The Act*, s. 6(1)-(2).

<sup>7</sup> *Ibid*, s. 2.

<sup>8</sup> *The Regulations*, s. 2.

<sup>9</sup> *The Act*, s. 2 & *The Regulations*, s. 3(2).

<sup>10</sup> *The Regulations*, s. 4.

<sup>11</sup> *The Act*, s. 4(2) & *The Regulations*, s. 5.

<sup>12</sup> *The Act*, s. 4(5).

<sup>13</sup> *Ibid*, s. 6.

<sup>14</sup> *Ibid*, s. 5.

<sup>15</sup> *Ibid*, s. 7.