

Canada's Foreign Buyers Ban: What You Should Know About the Ban on Non-Canadians Purchasing Residential Property in Canada

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The government of Canada recently passed legislation that effectively bans non-Canadian individuals and corporations **from purchasing residential real estate** under the ***Prohibition of Purchase of Residential Real Estate by Non-Canadians Act*** (the "**Act**"). Unfortunately, the regulation regarding the legislation was just recently published so the particulars of the restrictions were not available for comment until now. This new legislation became effective as of January 1, 2023, and will remain in force for two years. As of now, commercial real estate is not governed by the legislation and is **not** affected.

Who is Affected?

With certain minor exceptions, the Act will apply to all individuals who are not Canadian citizens, permanent residents, or registered "Indians" as defined under the *Indian Act*.

In addition to individuals, the Act also closes loopholes with foreign owned corporations. The Act will apply to both:

- Corporations and entities that are formed or incorporated in foreign jurisdictions, which includes all corporations or entities not incorporated or formed under the laws of Canada or a Canadian province, are immediately subject to the ban.
- Corporations and entities that are formed or incorporated in Canada and whose shares are **not** listed on a stock exchange in Canada and are "controlled" by a non-Canadian individual, entity, or corporation are also subject to the ban. The degree of "control" is a key consideration in determining if the corporation will be subject to the Act.

The prohibition does not apply to refugee claimants or other protected persons within the meaning of s.95(2) of the ***Immigration and Refugee Protection Regulations***, nor does it apply to non-Canadians who purchase property with their Canadian spouse or common-law partner. The Act defines a common-law partner as a person who cohabitates with an individual in a conjugal relationship, having so cohabited for a period of at least one year.

The *Regulations* also provide limited exceptions to temporary residents who either are recognized as international students under the ***Immigration and Refugee Protection Regulations*** or who hold a work permit and who meet the prescribed conditions outlined in the regulations for this Act.

What Constitutes a Purchase?

The Act broadly prohibits non-Canadians from purchasing residential property, including:

- A detached house or similar buildings containing not more than three dwelling units;
- Part of a building that is a semi-detached house, rowhouse unit, residential condominium unit, or similar premises that are intended to be owned apart from any other unit in the building; and

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- Vacant land that is zoned for residential use or mixed-use that is located within a census agglomeration (core population of 10,000) or a census metropolitan area (total population of at least 100,000, 50,000 living at its core).

Property located in an area of Canada that is not within either a census agglomeration or a census metropolitan area is excluded from the Act. Please note that Windsor, Toronto, Ottawa, Vancouver, Halifax, and dozens of other cities and towns that may attract investors to Canada are located within a census agglomeration or a census metropolitan area but some surrounding property, such as Pelee Island, may be exempt.

As the focus on the property is on whether there is a “reasonably necessary for its use and enjoyment as a place of residence for individuals,” there is no explicit exception made for cottages and recreational homes. However, foreign buyers seeking cottages or vacation homes should be aware of the fact that a lot of popular cottage country in Ontario is captured within a census agglomeration or a census metropolitan area.

What about Transferring an Existing Interest in Residential Property?

The Act prohibits the transfer of an interest or real right in residential property to non-Canadians. For example, the transfer of title from a Canadian parent to a non-Canadian child could be subject to penalty under the Act. There are limited exceptions for transfers to non-Canadians in circumstances arising from death, divorce, separation, or gifts.

The Act also does not apply to non-Canadians seeking to rent, non-Canadians who are secured creditors, and non-Canadians obtaining an interest or real right in a residential property under the terms of a trust that was created prior to January 1, 2023. Trust terms created after January 1, 2023, may not provide for the transfer of an interest or a real right in residential property to non-Canadian beneficiaries.

What are the Penalties?

The Act finds all non-Canadians who contravene the prohibition—**and every person that counsels, induces, aids or abets, or attempts the foregoing with the knowledge that the non-Canadian is prohibited from purchasing the residential property**—guilty of an offense under the Act.

There are no exceptions made in the Act nor its regulation for lawyers, real estate agents, brokers, builders, etc. Professionals should take great care when advising parties in real estate transactions by ascertaining the status of a purchaser, as well as the location and type of property in question.

The Regulations under the Act detail a procedure whereby the Court can order the sale of a property obtained in violation of the Act. The proceeds that the offending party received from the court-ordered sale cannot exceed the purchase price that was paid for the residential property. In addition, liability for a contravention of the Act carries a potential fine of up to \$10,000 (CAD).

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. We strongly recommend that you contact one of our Canadian Miller Canfield lawyers with any specific questions you may have so that those questions can be addressed properly with you.

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