

- This handout has been prepared to assist real estate professionals with understanding some of the recent developments in the law affecting non-Canadians, namely the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the “**Act**”) and Non-Resident Speculation Tax (“**NRST**”).
- A step-by-step approach is the easiest way to understand if recent developments in the law apply to the client that you are acting for. However, every transaction is unique, if you are uncertain if your transaction (client) would be subject to the Act and/or NRST, please contact one of our real estate lawyers, as they are always happy to help.
- ***Disclaimer: this handout is for informational purposes and is not intended to replace legal advice from a lawyer.***

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

- The Act imposes a **\$10,000 fine** on any individual who knowingly assists a non-Canadian with purchasing certain property while the *Act* is in force. **Real estate professionals must do their due diligence to ensure that their buyer clients are allowed to purchase property under the Act.**
- **Step 1: does the Act apply to my client’s transaction?**
 - The *Act* is in force from January 1, 2023, until January 1, 2025. During this time, non-Canadians cannot purchase property, unless they fall into an exception. The *Act* does not prohibit non-Canadians from renting/leasing property.
 - The buyer must be considered a “non-Canadian” as defined by the *Act*. A non-Canadian is someone who is:
 - Not a Canadian citizen
 - Not a person registered as an Indian under the federal *Indian Act*
 - A corporation that is not incorporated in Canada
 - A corporation that is incorporated in Canada, but is controlled by an individual or a corporation that is not Canadian
 - **Only “residential property” is banned from being purchased under the Act.** The *Act* defines residential property as any property that is in an urban area and is one of the following:
 - A detached house or similar building containing three (3) or less dwelling units
 - A part of a building that is a semi-detached house, rowhouse unit, residential condominium unit, or other similar premises that is a separate parcel or other division of land
 - **Vacant land** that is zoned for residential use or mixed use
- **Step 2: Does an exception apply?**
 1. Spouse/common law: non-Canadians can purchase residential property with their spouse or common law partner if the spouse or common law partner is a Canadian citizen, person registered as an Indian under the *Indian Act*, permanent resident, protected person (refugee) or a temporary resident that satisfies certain conditions.

2. 4 or more dwelling units: A non-Canadian can still purchase an entire building with 4 or more dwelling units.
3. Rural area: The ban only applies to residential property in urban areas, and therefore does not apply to residential property in rural areas. To determine if the property is in an urban area, it must fall inside either a census agglomeration (CA) or census metropolitan area (CMA) according to Statistics Canada's 2021 Census. **Be mindful of this if you are helping a client purchase property in a less populated area.** Windsor is a CMA, and this includes Tecumseh, Amherstburg, LaSalle, Lakeshore, Leamington, Kingsville and Essex. **Therefore, a non-Canadian cannot purchase property in Windsor-Essex County.**
4. International students: international students are exempt from the ban if they meet all of the following requirements:
 - Are enrolled in a program of authorized study at a designated learning institution
 - Filed income tax returns for the past 5 years
 - Were physically present in Canada for at least 244 days in each of the past 5 years
 - **The purchase price of the property does not exceed \$500,000**
 - They have not purchased more than one residential property
5. Temporary resident workers: temporary residents who hold a work permit, or who do not require a work permit are exempt from the ban if they meet all of the following requirements:
 - They worked in Canada on a full-time basis and filed income tax returns for a minimum period of three years within the four years preceding the year in which the purchase was made
 - They have not purchased more than one residential property
6. Protected person (refugee): if the government finds that an individual has a valid refugee claim they are exempt from the ban.
7. Diplomat, consular, official or special representative: if an individual holds a passport that contains a diplomatic, consular, official or special representative acceptance issued by the government they are exempt from the ban.
8. Temporary resident status: an individual with valid temporary resident status may be exempt if certain conditions are met as set out in the *Act*.

Non-Resident Speculation Tax (NRST)

- **Step 1: Does NRST apply to my client's transaction?**
 - Due to the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, Non-Resident Speculation Tax will come up much less frequently until January 1, 2025, but it is still possible that your buyer client will have to pay NRST on the home that they are buying. **NRST is a 25% tax that foreign nationals must pay in addition to the purchase price of residential property.**

- **If there are multiple people purchasing a single property, only one of the buyers must be an entity subject to NRST for the tax to be due on the entire purchase price.** For example, if four people are purchasing a property that costs \$100,000, but only one of the buyers is a foreign national, the NRST to be paid is \$25,000 (\$100,000 X .25).
- Only certain property is subject to NRST:
 - The property must be located in Ontario
 - The land must contain at least one and not more than six family residences (for example a detached house, semi detached house, townhouse, condominium unit, duplexes, triplexes, fourplexes, fiveplexes and sixplexes)
 - Cottages are included
- **Step 2: does an exemption apply?**
 1. Spousal arrangements: Foreign nationals with certain spousal arrangements may be exempt from NRST if:
 - The foreign national is a spouse of a Canadian citizen, permanent resident of Canada, nominee or protected person
 - Each spouse is a transferee named in the conveyance
 - If the foreign national and their spouse hold property with any other individuals, those individuals must be Canadian citizens, permanent residents, nominees or protected person
 - They will occupy the property as their principal residence
 2. Nominee: the foreign national may be exempt from NRST if:
 - They are nominated under the Ontario Nominee Program
 - They have applied or certified that they will apply to become a permanent resident of Canada before the expiration of their nominee certificate
 - If they hold property with any other individuals, those individuals must be Canadian citizens, permanent residents, nominees or protected persons
 - They will occupy the property as their principal residence
 3. Protected person (refugee): Foreign nationals with protected person status may be exempt from NRST if:
 - They have refugee protection
 - If they hold property with any other individuals, those individuals must be Canadian citizens, permanent residents, nominees or protected person
 - They will occupy the property as their principal residence