



*Legal
Information*

Non-Resident Purchasers

Effective January 1, 2023, the government of Canada has prohibited "non-Canadians" from purchasing residential properties (including condos and private homes of any description) almost anywhere in Canada for two years.

The *Prohibition on the Purchase of Residential Property by Non-Canadians Act* was passed last June, but only came into effect at the beginning of 2023. It requires that a person or corporation that qualifies as "non-Canadian" cannot directly or indirectly purchase almost any residential properties almost anywhere in the country until after January 1, 2025. (We discuss the Act's minimal exceptions below.)

The Act also imposes a penalty of up to \$10,000 on anyone who counsels or assists a "non-Canadian" with respect to the purchase of residential property in Canada. **In short, not only sellers, but also lawyers and agents beware.**

WHO IS A "NON-CANADIAN"? For the purposes of this legislation, they are:

1. Persons who are not citizens of Canada;
2. Persons who are not registered under the Indian Act;
3. Persons who are not permanent residents of Canada;
4. Corporations incorporated anywhere outside of Canada;
5. Corporations incorporated in Canada but controlled by a non-Canadian (individual or corporation) and whose shares are not sold on a designated stock exchange in Canada;
6. Entities (other than corporations) from outside of Canada, or, if formed in Canada, that are controlled by an entity or person who is a non-Canadian;

and any other person that the government prescribes by a regulation under this legislation.

There are some exceptions. Those are:

1. Persons qualifying as “temporary residents,” such as international students and foreign workers on valid, unexpired visas, who are in good standing (i.e., meet all conditions of their temporary residency, and certain other conditions set out in the Regulations under this Act, including that they cannot own more than one residential property in Canada, and, if under a student visa, that the purchase price of the property does not exceed \$500,000);
2. Successful refugee claimants;
3. A “non-Canadian” spouse of a person who is either (i) not a “non-Canadian” or (ii) fits one of the two exceptions above, *provided they are purchasing the property together*;
4. Foreign governments (where purchasing diplomatic or consular properties);
5. Certain representatives of foreign governments;
6. Certain temporary residents whose status was granted as an exemption for public policy reasons; and
7. Refugee claimants who have been deemed eligible and referred to the Refugee Protection Division;

and any other person that the government exempts by a regulation under this legislation.

A further exception is provided for “non-Canadians” who entered into *binding* agreements prior to January 1, 2023.

The prohibition also does not apply to the following transactions:

- a. Where the residential property subject of the transaction is not included in a “census agglomeration” (i.e., where there is a core population of at least 10,000 residents) or “census metropolitan area” (i.e., where the core population is at least 50,000, and total population is 100,000 or more); (In effect, the prohibition will apply in every city and town, and in virtually every small village, in Canada.)
- b. Where title is transferred as a result of death, divorce, separation, or as a gift;
- c. Where transfer occurs under the terms of a trust that was created prior to January 1, 2023; and
- d. Where the transfer take place because of the exercise of a security interest or right by a secured creditor.

The prohibition does not affect rental of residential properties by any non-Canadians.

WHAT ALL THIS MEANS is that if you are a seller, lawyer, or real estate agent with customers or clients who might fit one of the prohibited “non-Canadian” categories, and neither they nor the property or transaction fit any of the relatively limited exceptions, they will not be entitled to purchase residential properties in Canada until 2025.

And since even providing advice to a “non-Canadian” about buying residential property during the prohibition period puts you at risk of fine of up to \$10,000 (even if you are advising them about a sale that wouldn’t be completed until after January 1, 2025) your best approach during this period, if asked by a non-Canadian to sell or assist in the purchase of Canadian property, is simply to say, “sorry, no can do”.

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