



December 2022

UPDATE: Impending Ban on Purchases of Residential Real Estate by Non-Canadians: What Home Buyers, Builders, and Brokers need to know

By Aaron English, Seth Zuk and Anthony D'Angelo

Further to our publication of November 9, 2022, with respect to the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the “Act”) coming into force on January 1, 2023, the federal government has now published the Regulations passed pursuant to the Act. The Regulations provide guidance and further clarity with respect to, among other aspects of the legislation, the operation, applicability, and enforcement of the Act.

This update focuses on the following aspects of the Regulations which supplement our prior publication:

- 1. Definition of Residential Property.** While the Regulations make clear that the Act includes residential property that is located within a *census agglomeration* (meaning geographical areas having a population of fewer than 10,000 residents) or *census metropolitan area* (meaning geographical areas having a population of fewer than 100,000 residents), the Regulations also confirm that the Act does indeed capture vacant land that is zoned for residential or mixed-use located within either a *census agglomeration* or *census metropolitan area*. For this reason, builders should keep in mind that this inclusion not only includes substantially all types of residential property (including pre-construction condominium units and freehold homes) but also effectively restricts meaningful investment by non-Canadians in corporations, partnerships, and limited partnerships acquiring title to land zoned for residential or mixed-use development as more particularly detailed below.
- 2. What is a non-Canadian and How is “Control” Defined.** As noted in our prior publication, the Act stipulates that the prohibition on purchases of residential property applies to corporations that are not incorporated in Canada. Expanding on this concept, the Regulations confirm that the prohibition also applies to (i) entities not formed under the laws of Canada or a Canadian province; and (ii) entities formed under the laws of Canada or a Canadian province that are *controlled* by entities not formed under the laws of Canada or entities that are *controlled* by non-Canadian individuals or entities. The Regulations define “control” as:

- direct or indirect ownership of shares or ownership interests of the corporation or entity representing 3% or more of the value of the equity in it, or carrying 3% or more of its voting rights; or
- control in fact of the corporation or entity, whether directly or indirectly, through ownership, agreement, or otherwise.

As the threshold for “*control*” is, with respect to the 3% test, quite low relative to generally understood definitions of control in a corporate or partnership context, the following measures should be taken:

1. **Buyers** should ensure that they are fully aware of their status as a non-Canadian or that of a buyer corporation controlled by them that the Act deems a non-Canadian, as the Regulations’ deemed threshold for control effectively restricts meaningful investment by non-Canadians in corporations, partnerships, and limited partnerships acquiring title to qualifying residential property.
2. **Builders** should ensure that they are fully aware of both their investors’ and their corporate purchasers’ status as non-Canadian, as the Regulations’ deemed threshold for control effectively restricts meaningful investment by non-Canadians in corporations, partnerships and limited partnerships acquiring title to substantially all types of residential property, including vacant land zoned for residential development as well as pre-construction condominium units and freehold homes.
3. **Brokers** should ensure that they have working knowledge of the relevant provisions of the Act and its Regulations such that they are in a position to properly advise and inform their potential buyer clients of the restrictions on purchases of qualifying property by non-Canadians and corporations or entities controlled by them prior to their entering into a purchase and sale transaction.

Beyond the scope of this update are the Regulations detailing the procedure whereby a Court may order the sale of an acquired property by a non-Canadian in contravention of the Act as well as certain transactions and non-Canadian individuals to which the Act does not apply, both of which we anticipate rarely being applicable. As a reminder, liability for contravention of the provisions of the Act carries a maximum fine of \$10,000 and the Act provides that in no circumstance shall the proceeds received from a Court-ordered sale exceed the purchase price paid for the property.

As the Regulations have now been published and the Act is slated to come into force as of the new year, the authors and the other lawyers in our Commercial Real Estate Group would be pleased to answer any questions you may have regarding the Act, the newly enacted Regulations and/or related matters.

Authors



Aaron English
Partner

Tel: 416 643 8811
aenglish@torkinmanes.com



Seth Zuk
Partner

Tel: 416 775 8822
szuk@torkinmanes.com



Anthony D'Angelo
Associate

Tel: 416 594 4484
adangelo@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.