

## Real Estate Law Update

### First-Time Homebuyers Rebate Lawyers Beware

Many real estate lawyers doing residential real estate no doubt deal with first time home buyers. First-time homebuyers are entitled to a rebate of land transfer tax.



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In order to qualify for the rebate, the owners must never have owned a residential property anywhere in the world.

The rules appear to be as follows:

1. The maximum amount of the refund is \$2,000.00. In order to obtain a refund, the purchaser must be at least 18 years of age; must occupy the home as its principal residence within 9 months of the date of transfer; cannot have ever owned an eligible home or an interest in an eligible home anywhere in the world.
2. In addition, if the purchaser has a spouse, the spouse cannot have owned an eligible home or an interest in an eligible home anywhere in the world while being the spouse of the purchaser.
3. Spouses are defined pursuant to

section 29 of the *Family Law Act*.

In a recent matter, a rebate was claimed by a purchaser. The lawyer who acted apparently took instructions from the client and made the application on the client's behalf after closing. Subsequently, it was determined by the Ministry that the client was not entitled to the rebate and the Ministry issued a Notice of Assessment. The client repaid the \$2,000.00 to the Ministry.

The Ministry has laid charges against the homebuyer under the *Ontario Provincial Offences Act*. Shockingly, the Ministry has also laid charges under the *Ontario Provincial Offences Act* against the lawyer who submitted the application on the basis that he assisted or facilitated in a breach of the provisions of the *Land Transfer Tax Act*.

The facts of the case are fairly straightforward. In 2003, the lawyer

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acted for a father and his daughter on the purchase of a home. In 2009, the daughter bought a new home with her husband and the lawyer acted for them on that purchase. The lawyer believed that even though the daughter was on title to the first home, he did not think that she was the beneficial owner of the property. He concluded that she was not a true owner as contemplated by the legislation and that she could sign the first time homebuyer's statement. In 2013, a Notice of Reassessment was issued and forwarded to the client advising that she was not a qualified first-time buyer and requested the additional tax. She paid the additional tax and a subsequent notice of assessment for unpaid interest. Notwithstanding, the lawyer has since been served with a summons by the Ministry charging him under the *Land Transfer Tax Act* for assisting in the making of a false statement. Apparently, the

charge for making a false statement is not a *mens rea* offence and the maximum fine under the section is \$2,000.00. The client has also been charged despite paying the rebate and interest.

There appears to be some policy where a registered co owner holding in trust for a beneficial owner will not be deemed to have owned the property, and that appears to have been the lawyer's understanding regarding the 2003 transaction. Lawyers might do well when acting for clients who may be going on title to property for estate planning purposes, or where required by a lender for financing purposes to be on title but who have never owned a property before, to document a trust in favour of a beneficial owner in order to avoid the possibility of losing entitlement to the first-time homebuyers refund. Lawyers acting for new home purchasers might do well to protect themselves in

regard to ensuring eligibility and documenting it.

I can appreciate that the Ministry is charged with the task of collections but to lay quasi-criminal charges against the lawyer might seem excessive. The charge under section 24 of the *Provincial Offences Act* relates to the following offences:

“being an agent for a transferee under the provisions of the *Land Transfer Tax Act* make or assist in making a statement in an application for a refund under section 9.2 of the said Act, or in a document provided to the Minister in connection therewith, that was false or misleading such being an offence pursuant to subsection 9(5) of the said Act.”

To charge lawyers even quasi-criminally for facilitating in the preparation of a false statement where there is no actual knowledge or intent seems to me to be outrageous. Be warned.