



FEDERATION OF ONTARIO
LAW ASSOCIATIONS
FÉDÉRATION DES ASSOCIATIONS
DU BARREAU DE L'ONTARIO

March 30, 2022

Dear Real Estate Representatives, Presidents and Library Staff,

In an effort to keep real estate lawyers updated with the ever-changing situation, we have further information to be shared with the real estate lawyers in your association.

Increase to Rate and Extent of Non-Resident Speculation Tax

Effective March 30, 2022, the Non-Resident Speculation Tax (NRST) rate was increased to 20% (from 15%) and expanded provincewide (from just the Greater Golden Horseshoe Region). As a result, the NRST may apply on the purchase or acquisition of an interest in residential property located anywhere in Ontario by individuals who are foreign nationals (individuals who are not Canadian citizens or permanent residents of Canada) or by foreign corporations or taxable trustees. Learn more [here](#).

Some previous exemptions have been eliminated. This increase applies to agreements of purchase and sale or assignments of agreements dated on or after March 30, 2022.

The NRST applies in addition to the general Land Transfer Tax (LTT) in Ontario.

Mortgage Discharge Guidelines

The most recent guidelines on mortgage discharges from the Law Society are from 1993 and are outdated. The Law Society has indicated an interest in reviewing those guidelines in light of significant changes to the practice of real estate since then. Preliminary discussions are starting and FOLA will be monitoring the progression of same.

Know Your Client Rules and Bylaw 7.1

Effective January 1, 2022, the Law Society implemented amendments to Bylaw 7.1 which requires lawyers to identify and verify their clients upon engagement and in the use of a trust account. This includes confirming the source of client funds, periodically monitoring the relationship when engaged in ongoing financial transactions, keeping required records and mandating withdrawal of representation in certain circumstances. The summary of these requirements can be found [here](#). These amendments were to integrate with the recommendations of the Federation of Law Societies of Canada.

These enhanced rules will impact real estate lawyers specifically as our engagement is routinely to facilitate the transfer of funds for our clients.

Enforcement of Positive Covenants

At the recent Lobby Day hosted by FOLA at Queen's Park on February 8, 2022, FOLA raised the prospect of a legislative amendment to alter the common law prohibition against positive covenants running with the land. There are many instances of existing developments,

infrastructure and communities that operate with shared services, facilities and amenities which are privately held and agreements that provide for routine maintenance, replacement and contribution are typically unenforceable unless owners and participants execute direct contracts. This is commonly seen in rural areas for shared roads, parking areas, marinas and driveways, but also can be found in certain urban areas for shared water and sewer services.

Such an amendment would need to balance the interest of recognizing these existing services and facilities against the danger of opening this up to new developments that would seek to do so as an alternative to a subdivision or condominium development. Discussions with Ministry staff are ongoing. If anyone is interested in participating in the process should contact one of the undersigned.

Reminder – DRA has been updated

The Document Registration Agreement and Multi-Party Document Registration Agreement have been updated and published on the Law Society of Ontario's website. The updated DRA and Multi-Party DRA are available in word [here](#). We encourage you to review and implement the updated DRA and Multi-Party DRA.

Reminder—City of Toronto Municipal Land Transfer Tax Administration Fee Increase

Effective April 4, 2022, the City of Toronto MLTT administration fee increases to \$82.88 plus HST. Remember to factor this in when facilitating purchases in Toronto.

Consultations on Changes to Condominium Regulations for Cancelled Projects

The Ministry of Government and Consumer Services is consulting on regulations under various statutes in relation to condominium developers cancelling condominium projects and the implementation of penalties or sanctions relating to same, such as increased interest payments, implications on builder/vendor licensing and publication of details on public registers. Details of the consultation can be found [here](#) and comments are due by **April 22, 2022**. FOLA expects to make a submission to the Ministry consultation and welcomes our members' thoughts, concerns or support by April 8, 2022 to help formulate the response on behalf of our membership.

If and when we receive further information of interest to the real estate bar, we will pass it along.

Stay up to date with FOLA's real estate information at <https://fola.ca/real-estate-law>.

Eldon Horner & Mark Giavedoni
FOLA Real Estate Co-Chairs

Please note: The information provided herein is of a general nature only and is not intended to provide legal advice.