



ISSUES IN OWNERSHIP OF REAL ESTATE

CANADA – ONTARIO Blake, Cassels & Graydon LLP

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- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple absolute property ownership is permitted in Ontario.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

A deed/transfer of land is used to convey ownership of real estate. A deed/transfer will be construed as conveying the entire estate or interest that the transferor owns unless any limitations are clearly expressed. An assignment of lease is generally utilized for the transfer of a leasehold interest in land.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Transfers evidencing the ownership of real property and all other title-related documents are recorded in the government land registry office in the locality where the real property is situated. Within the past few years, the government has introduced an electronic land registration system throughout the province. The majority – although not all – of the real properties located in the province have now been converted to this electronic land registration system. With respect to those real properties which have been converted to the electronic land registration system, transfers and other title-related documents may be registered and title searches may be conducted online via computer. With respect to those real properties which have not yet been converted to the electronic land registration system, transfers and other title-related documents are registered in paper format and title searches are conducted at the applicable land registry office. A title search may be conducted by a lawyer, a paralegal or law clerk working for the lawyer or, in some circumstances, a title insurance company.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

There is a government guarantee of registered title that applies in certain circumstances in Ontario. In many transactions, purchasers rely upon title opinions from the purchaser's lawyer. Title insurance is available in Ontario. Insurance companies are regulated by the Province of Ontario. Title insurance rates are set by various title insurance companies and are generally approximately \$0.75 per thousand dollars of value of the real property insured, subject to variation depending on the amount of insurance coverage being obtained. As well, title insurance companies generally offer a discounted premium of approximately \$0.10 per \$1,000 of coverage for a lender's policy when such policy is being obtained contemporaneously with or within a short period of time following the issuance of an owner's policy.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There are many forms of investment vehicles utilized to hold beneficial ownership of real estate in Ontario: a limited liability company, an unlimited liability company, a general partnership, a limited partnership, a trust or a real estate investment trust. Sometimes two or more beneficial owners of real estate hold as tenants in common (or co-tenants). Registered ownership is almost always held in the name of a limited liability company. The most common entities employed to hold beneficial interest in real estate are limited partnerships, trusts or unlimited liability companies, depending upon the tax rules applicable in the home jurisdiction of the investment vehicle and in Ontario.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Real estate investment trusts are permitted in Ontario and other provinces in Canada. Certain rules govern the tax status of REITs under the Income Tax Act (Canada).

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The Province of Ontario imposes the land transfer tax upon the buyer receiving a direct transfer of real estate. Both registered and unregistered transfers of real estate are subject to such taxation. In addition to taxing the transfer of freehold interests in real estate, long term (in excess of 50 years) leases also attract tax. Mortgages are not subject to land transfer tax. There are certain exemptions from land transfer tax that may be applicable generally involving transfers between non-arm's length entities.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Generally speaking, land transfer tax is not applicable to the transfer of shares in a corporation owning real estate; however, if an exemption previously applied to an unregistered transfer to an affiliated corporation (see item 7 above), and a change of control subsequently occurs within three years of the initial transfer, the subsequent share transfer will trigger the obligation to pay land transfer tax. Transfers of interests in limited partnerships (other than very small holdings of under 5%) will be treated the same as a transfer of a co-ownership interests in real estate and thus attract land transfer tax.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

For commercial properties the tax amounts to approximately 1.5% of the value of the consideration passing from the buyer to the seller. In addition, real estate located within the City of Toronto is also subject to an additional land transfer tax equating to approximately 1.5% of the value of the land transferred.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

The ultimate beneficial ownership of entities need not be disclosed as a matter of public record.