



ISSUES IN OWNERSHIP OF REAL ESTATE

CANADA – Quebec Blake, Cassels & Graydon LLP

CONTACT INFORMATION

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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, absolute property ownership is permitted in Quebec. Modes of ownership include divided (e.g. condominiums) and undivided co-ownership and superficies (e.g. separation of ownership between owner of sub-soil and works above the soil) and dismemberments of ownership include emphyteusis (e.g. ground lease).

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 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?

Generally a title search is conducted at the government land registry office to ascertain the registered ownership of the real property and encumbrances. The title search may be conducted by a notary, 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 no government guarantee of registered title that applies in Quebec. In most transactions, purchasers rely upon title opinions from the purchaser's lawyer. Title insurance is also available in Quebec. 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 ownership of real estate in Quebec: 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 owners of real estate hold as co-owners. Registered ownership is almost always held in the name of a limited liability company, often a nominee for the true owners. The most common entities employed to hold 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 Quebec.

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 Quebec 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 Quebec imposes the land transfer tax upon the buyer receiving a direct transfer of real estate. In addition to taxing the transfer of interests in real estate, long term (in excess of 40 years) leases also attract transfer tax. Mortgages or hypothecs 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 companies.

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 two years of the initial transfer, the subsequent share transfer will trigger the obligation to pay 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.

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.