

British Columbia's Property Transfer Tax – Certain Exemptions

In British Columbia, where a landowner transfers real property to another person, generally speaking Property Transfer Tax (“PTT”) is payable by the buyer, unless the transfer qualifies for an exemption. The PTT is a provincial tax calculated at the time of transfer as 1% of the first \$200,000 of the property’s value, and 2% of the remainder of the property value. For example, if the purchase price of a property is \$300,000, the PTT payable = $(\$200,000 \times 1\% + \$100,000 \times 2\%) = \$4,000$.

There are some, but not many, exemptions to the PTT. The following is a discussion of certain PTT exemptions and the eligibility criteria for each.

1. First time home buyer's exemption

PTT can be especially unpleasant for new buyers entering the home owners market for the first time. The legislation allows for a one-time exemption to PTT for first time home buyers. However, not all first time home buyers will qualify for this exemption. To be eligible for the full exemption:

- The buyer must be a Canadian citizen or permanent resident of Canada.
- The buyer must have lived in BC for the 12 months immediately before the purchase, or alternatively the buyer must have filed 2 of his or her last 6 income tax returns as a resident of BC.
- The buyer must not have previously owned a principal residence or any interest in a principal residence anywhere in the world.
- The property’s fair market value (usually the purchase price) must be \$425,000 or less.
- The size of the parcel of land must be less than 0.5 hectares (approximately 1.24 acres).
- The buyer will use the property as his or her principal residence only.

A buyer will be eligible for a partial PTT exemption if the buyer otherwise qualifies and:

- On a sliding scale where the property’s fair market value is between \$450,000 and \$425,000.
- Where the size of the property is greater than 0.5 hectares, only on the first 0.5 hectares portion of the property.
- Where the property will be used for purposes other than as a principal residence, only on the principal residence portion of the property.

A new buyer will lose the exemption if he or she does not actually move into the property within 92 days of the purchase. As well, part of the exemption could be lost if the buyer ceases to use the property as his or her principal residence, or sells the property, within one year of the purchase.

Often, two or more buyers are acquiring property and not all of them qualify for the PTT first time home buyer's exemption. In such case, only the percentage interest acquired by eligible buyers will qualify for the exemption. For example, where one of two buyers is eligible for the first time home buyer's exemption on a \$300,000 purchase, and each buyer will be a 50% owner of the property, then the tax payable is 50% of the PTT otherwise calculated, or \$2,000.

Some buyers try to manipulate the first time home buyer's exemption by making an eligible buyer a 99% owner and a non-eligible buyer a 1% owner of the new home. While this will effectively minimize PTT, there are many other legal implications of an uneven home ownership that should be considered first. Consult with one of our real estate lawyers to choose an appropriate ownership structure for your home.

Note – Be sure you are eligible under the PTT first time home buyers exemption before applying for it. The government will follow up with claimants after the purchase. If a buyer falsely declares that he or she has never owned a property anywhere else in the world, or that he or she has never before claimed the first time home buyers exemption, then a penalty equal to the tax payable will be applied. For example, on the purchase of a \$300,000 home, a false declaration would result in tax payable of \$4,000 PLUS a penalty of \$4,000, for a total of \$8,000. Consult one of our real estate lawyers if you are unsure if you are eligible for the first time home buyers exemption.

2. Transfer of a principal residence or recreational property to a related individual

Some property owners may find it desirable to transfer a home or a recreational property to a family member. The PTT legislation allows for exemptions on certain transfers of a principal residence or a recreational residence. Both exemptions require the transfer of the property to a related individual who is a Canadian citizen or a permanent resident of Canada. 'Related individual' has a broad meaning and includes: your spouse (including common-law spouse); a child, grandchild or great-grandchild of you or your spouse; a parent, grandparent or great-grandparent of you or your spouse; and the spouse of your child, grandchild or great-grandchild. Related individual does not include siblings, nieces, nephews, aunts and uncles.

A principal residence is defined as a home built to accommodate and in fact is accommodating 3 or less families, on a property less than 0.5 hectares that is classified as residential property by BC Assessment. To qualify for the exemption, the current owner or the new owner must have continuously used the property as his or her home for not less than six months up to and including the date of transfer.

A recreational residence is defined as a home that the seller usually resided on a seasonal basis for recreational purposes, on a property less than 5 hectares that is classified as residential property by BC Assessment. The entire property must have a fair market value of \$275,000 or less.

A new owner may be eligible for a partial exemption where he or she otherwise qualifies, but the property is larger than the eligible size, or the entire property is not classified as residential.

Where two or more buyers are acquiring the principal residence, and not all of them qualify for this exemption, only the percentage interest acquired by eligible buyers will qualify for the exemption.

Similar exemption provisions apply where a principal residence or a recreational property are being transferred through an estate after an owner's death.

3. Transfer of a family farm to a related individual or a family farm corporation

Family farms receive special treatment under PTT legislation. For the purposes of these exemptions, a family farm means farm land that is used, owned and farmed by an individual, a family member or a family farm corporation. The land must be properly classified under BC's Assessment Act and by BC Assessment.

A family farm can be transferred to a related individual, as well as a sibling or sibling's spouse, exempt from PTT provided such person is a Canadian citizen or permanent resident of Canada. Related individual has the same meaning as for the transfer of a principal residence or recreational property.

A family farm can also be transferred exempt from PTT to a family farm corporation, which is defined as a corporation whose principal activity is farming, and which does not have a shareholder that is a corporation. Provided the transferor:

- is the sole shareholder of the family farm corporation; or
- is a related individual or a sibling or the spouse of a sibling of the shareholder(s) of the family farm corporation

and all shareholders of the family farm corporation are Canadian citizens or permanent residents of Canada, then the transfer should qualify for the PTT exemption.

Family farm corporations can also transfer family farms exempt from PTT to the shareholder of the family farm corporation, or a related individual or a sibling or the spouse of a sibling of the shareholder, again provided the new owners are Canadian citizens or permanent residents of Canada.

Partial exemptions could apply where only some of the transferees qualify for the exemption.

Similar exemption provisions apply where a family farm is being transferred through an estate after an owner's death.

Summary

Any transfer of property creates many legal and tax implications for both the buyer and the seller. PTT planning is only one of several aspects of a transfer to consider. Before making any

transfer, consult with one of our real estate lawyers who can advise you on the most advantageous way to structure a transfer.

Sometimes the BC government will reassess a land owner for PTT where it feels that the land owner does not qualify for a PTT exemption claimed. As well, the government may dispute the calculation of fair market value of the property on a transfer, which will affect the amount of PTT payable. If you have been reassessed for PTT and you feel that the reassessment is incorrect, our lawyers can assist you. We have extensive experience representing clients in disputing both residential and commercial PTT reassessments, filing notices of objection and dealing with the government on PTT matters. Note that a notice of objection needs to be filed within 90 days of a reassessment, so a land owner must act quickly when disputing a reassessment.

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