



ISSUES IN OWNERSHIP OF REAL ESTATE

CANADA – NOVA SCOTIA McInnes Cooper

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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 Nova Scotia.

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

A deed is used to convey ownership of real estate. The most common form of deed is a warranty deed which contains covenants on the part of the grantor for quiet enjoyment, good title in fee simple, right to convey, free from encumbrances and further assurances. A deed without such covenants 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 most other title-related documents are recorded electronically in the government land registration office for the

county where the real property is situated. All properties in the province are in the process of being converted from the old names based Registry of Deeds system to the new parcel based land registration system. Conversion is mandatory whenever ownership is transferred for value, a new mortgage is placed or the land is subdivided into 3 or more lots including the remainder (non-family). With respect to those real properties which have been converted to the land registration system, transfer and other title-related documents may be registered and title searches may be conducted online. With respect to those real properties which have not yet been converted to the land registration system, the Registry of Deeds records are in the process of being converted to electronic format and, depending on the county in which the property is located, title searches may need to be conducted at the applicable land registry office. A title search may be conducted by anyone upon payment of the applicable fee at the land registration office but generally title searches are conducted by a lawyer, a paralegal or law clerk working for the lawyer, an independent title searcher 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 Nova Scotia subject to any discrepancy in the location, boundaries or extent of the parcel and certain overriding interests. In many transactions, purchasers rely upon title opinions from the purchaser's lawyer. The cost of such opinions will vary depending on the value of the property. Title insurance is available in Nova Scotia. Title insurance rates are set by various title insurance companies and depend upon the nature of the property (i.e. commercial vs. residential). For residential properties there is usually a fixed rate for properties up to a certain value and an additional charge of approximately \$1.00 per thousand dollars of excess value. A lender's policy may be issued for no additional charge when issued along with an owner's residential policy. Lender's policies issued alone generally cost slightly less than owner's policies. The rate for commercial properties with a value between \$2,000,000 and \$5,000,000 is approximately \$0.75 per \$1,000.

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 form of investment vehicles utilized to hold beneficial ownership of real estate in Nova Scotia: 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 Nova Scotia.

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 Nova Scotia. 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?

Deed transfer tax is levied at the municipal level in Nova Scotia upon transfer of real estate by deed. Whether or not a deed transfer tax applies depends upon the municipality in which the property is located. Both registered and unregistered transfers of real estate are subject to such taxation. Long term (in excess of 21 years) leases also attract tax. Mortgages are not subject to deed transfer tax. All sales of real property are subject to Harmonized Sales Tax (“HST”) in Nova Scotia unless specifically exempted. This is a combined tax including the Federal Goods and Services Tax and the Provincial Sales Tax. The current combined rate of this tax is 13%. The tax is collected by the Seller from the Buyer and remitted to the government. There are several exceptions to the application of the HST to sales of real property, the most common being an exemption for “used residential” property. In certain circumstances, there are elections available which may permit the Vendor to avoid collecting the HST on closing and allow the Buyer to self-remit. A sale of real property may result in a capital gain for the Seller which will result in capital gains tax being payable. A sale by a non-resident will require that a Compliance Certificate be obtained from the Canada Revenue Agency. A Buyer is entitled to withhold 25% of the purchase price pending issuance of a Compliance Certificate.

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?

In those municipalities which impose a deed transfer tax the tax applies to the sale price of every property that is transferred by deed. A transfer of shares in a corporation owning real estate or the transfer of an interest in a limited partnership do not involve a deed and therefor do not attract deed 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?

Local regulation and taxation of real estate is very significant. For example, the rate of deed transfer tax can vary from 0% (where no tax is imposed) to 1.5% depending on the municipality. Subdivision regulation, zoning and land use by-laws can also vary significantly between municipalities as can the rates of residential and commercial real property taxes assessed annually.

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.