

How to invest in real estate in Canada: Opportunities and regulations for global investors

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes – and is updated annually. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

In Canada, different types of interests in land may be privately held and transferred. In all provinces governed by a common law system (i.e., all provinces other than Québec), freehold, leasehold, legal or beneficial interests are all permissible ways to hold an interest in property. In Québec, which is governed by a civil law system, the modalities of holding real property are set out in the Civil Code and include ownership, emphyteusis, and superficies. Public land registration systems have been established in each province and territory to document many of the foregoing interests, including registered ownership, and to facilitate the transfer of such interests.

Each province has jurisdiction over “property and civil rights” and has developed its own rules and procedures regarding privately held land registration. As stated above, Québec has maintained its civil law tradition, which is quite different from the common law system maintained by all other provinces. The provincial governments provide or facilitate electronic and/or physical facilities for the registration, storage and retrieval of documents affecting title to land, but they do not play an active role in land transfers. Effecting transfers of certain interests in land requires completion of specific documents, some of which are quite technical, and must be filed with the applicable land registration system.

There are different land registration systems throughout Canada; however, the dominant system is the land titles system. In Western Canada, including the provinces of British Columbia, Alberta, Saskatchewan and Manitoba, the land registration systems are based on the “Torrens” system (see below). In Ontario, while there is both a land titles registration system (or land titles system) and a deed registration system (or registry system), substantially all of the lands not previously subject to the land titles system have been, or are being, converted from the registry system to the land titles system. The Atlantic provinces, which include Nova Scotia, New Brunswick, Prince Edward

Island, and Newfoundland and Labrador, have either a deed system or a land titles system. In Québec, the deed registration system governs, and effective as of June 1, 2022, all documents which are to be registered in the deed registration system must be written in the French language. As all the provinces have varying registration systems and requirements, it is prudent to obtain professional assistance in each respective jurisdiction when acquiring land in Canada.

The “Torrens” system is a form of land titles system, which simplifies, expedites and provides certainty to land ownership by maintaining a record of registerable interests for each parcel of land. The accuracy of the record is guaranteed by each province, and any inaccuracies are compensable through an assurance fund maintained by the corresponding province.

Generally, no enforceable interests as against third parties are created in the land until they are registered. However, there are some exceptions, such as statutory liens (prior claims in Québec). Statutory liens are charges usually in favour of governmental entities that arise from the failure of present or past owners to pay amounts owing pursuant to various provincial or federal statutes and may attach to the land and be effective without registration against the title of the land in the applicable land title office.

In contrast to the land titles system, the registry system serves as a “depository” for documents affecting title. When land is acquired, one examines all of the documents in the registry system for a certain period (e.g., 40 years in Ontario; 30 years or longer in Québec) to determine if others hold an interest in the land being purchased and to confirm “good title” (that is, ownership). Under a registry system, the provincial government does not guarantee the validity of any registered document or “good title”. An increasing percentage of purchasers are turning to title insurance as a means to protect against certain title defects and other issues, including fraud and forgery, whether the property is governed by the registry system or the land titles system.

Failure to register an interest in land, including as an owner, a mortgagee or a lessee, may result in serious consequences under each land registration system. For example, if an interest is not registered, the estate or interest claimed in the land may not be enforceable against a third party who, for valuable consideration and without notice of such unregistered estate or interest, obtained an interest in the land. Also, in the registry system, if an interest is not registered, that interest may not be enforceable or may lose priority when subsequent interests are registered for value without notice before the subject interest is registered. Therefore, it is important to become familiar with the laws of each jurisdiction, to ensure that good title is given and received.

In addition to the provincial land titles system, a registry of beneficial ownership has been established in British Columbia, through the *Land Owner Transparency Act* (“LOTA”). Any individuals or reporting bodies (e.g., relevant corporations, trusts or partnerships as set out in LOTA) who are deemed to have an indirect interest in land are required to file a transparency report, which sets out certain personal information about the beneficial owners and which is housed in a searchable, public database called the Land Owner Transparency Registry (“LOTR”). Any prospective purchaser of land in British Columbia should take into consideration that the identity of the beneficial owner(s) of such land will be disclosed in a transparency report available in the LOTR.

When purchasing land in Canada, it is important to consider not only what is being acquired, but also the steps taken to acquire it. A purchaser should consider having a legal professional conduct a title review, which consists of a review of the existing encumbrances registered against title to the land, because some encumbrances may severely restrict how the land may be used. Title searches are required to determine if any encumbrances are registered against title to the land, and a review of the documents creating such encumbrances may be quite complex. In addition to a title review, a purchaser should consider conducting off-title due diligence, which may reveal issues that affect the marketability or use of the land or that expose the purchaser to liability. Such due diligence typically includes enquiries into municipal zoning and compliance, pre-existing tax liabilities, the condition of any buildings located on the land, existing environmental contamination, previous environmental remediation, existing Aboriginal claims, and potential archaeological concerns. These enquiries range from simple database queries to extensive on-site investigations, and the relevance of such searches depends on the nature of the property. Legal professionals and other specialized consultants will be able to provide practical guidance on the preferred approach to diligence a prospective property.

Investments in Canadian real estate can be held in a variety of ways including personally, as a general partnership or as a limited partnership, as a joint venture or in some other form of co-ownership, as a corporation or as a trust. If there is more than one purchaser, the purchasers should consider if they want to take title as joint tenants or tenants in common (in the common law system). How purchasers take title will affect each of their subsequent rights to deal with the land.

Effective as of January 1, 2027, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* prevents non-Canadians from buying residential property with three (3) dwelling units or less in Canada (with the exception of certain areas located outside of Census Metropolitan Areas (CMA) and Census Agglomerations (CA) as defined by Statistics Canada), for a period of two (2) years, until December 31, 2024. Further, at the federal level, foreign investment in Canadian real estate, such as in apartment buildings, office complexes and shopping centres, is regulated by the Investment Canada Act. At the provincial level, provinces such as Alberta, Saskatchewan, Manitoba, Prince Edward Island and Québec impose limitations on ownership by non-residents of Canada in accordance with the respective foreign ownership of land regulations depending on such things as the size and location of the land being acquired. In addition, all provinces require corporations that have been incorporated in other jurisdictions to be licensed or registered in the province if they carry on business in that province. The concept of “carrying on business” is a broad one, and in most cases includes holding an interest in real property. Many provinces impose substantive restrictions on foreign corporations.

Taxation issues also arise when acquiring real property in Canada. A transfer of an interest (whether legal or beneficial) in land may attract provincial and/or municipal transfer or registration taxes, as well as the federal goods and services tax (GST) or, in the case of Québec, a separate tax that is equivalent to the federal GST. In addition, certain provinces levy sales taxes that may apply to the transfer of the interest in land and/or any associated chattels.

Each province (and some municipalities) has the authority to impose transfer or registration taxes. Accordingly, the amount of such taxes varies from province to

province and sometimes from municipality to municipality. Further, each province may establish guidelines for specific tax exemptions available to purchasers. Additional transfer taxes are imposed in some circumstances where the purchaser is a non-resident of Canada. For example, British Columbia has enacted an additional property transfer tax (20 per cent of the residential property's fair market value) that applies to the purchase of residential properties by foreign non-residents, foreign corporations or taxable trustees in a number of regions in the province, including in the Metro Vancouver Regional District, the Capital Regional District (which includes Victoria), the Regional District of Central Okanagan (which includes Kelowna), the Fraser Valley Regional District and the Regional District of Nanaimo. Similarly, Ontario has enacted a 25 per cent property transfer tax (effective for home purchases made on or after October 25, 2022), which is levied against non-resident purchasers of properties containing one to six single-family residences in all of Ontario.

Every transfer of an interest in land is subject to GST, unless a specific exemption is available. The most common exemptions are those available to purchasers of previously occupied residential property and non-commercial vacant land sold by an individual. GST is currently payable at a rate of five per cent. Certain provinces have harmonized their provincial retail sales taxes with the federal GST, which has the effect of raising the overall tax rate in those provinces. As of October 1, 2018, there are five harmonized provinces: New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (all at 15 per cent), and Ontario (at 13 per cent). The Province of Québec imposes a separate tax at a rate of 9.975 per cent, which is similar to the federal GST and applies to transfers of land to which the GST applies. Additionally, Manitoba, Saskatchewan and British Columbia impose retail sales taxes that generally do not apply to real property but do apply to most chattels that form part of the acquisition.

Certain jurisdictions, such as British Columbia and the City of Toronto, have recently introduced legislation which imposes a vacancy tax on underused residential properties. Vacancy taxes are intended to discourage property owners from keeping their residential homes unoccupied in order to address the current housing shortage crisis.

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