

Ministry of Finance

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April 21, 2017

Mr. Eldon Horner
Ms. Merredith MacLennan
Federation of Ontario Law Associations
731 9th Street West
Owen Sound, Ontario
N4K 3P5

Dear Mr. Horner and Ms. MacLennan:

Thank you for your letter to Minister Sousa dated April 21, 2017 regarding the Land Transfer Tax return and the proposed Non-Resident Speculation Tax (NRST) announced on April 20. I am replying on his behalf.

A transition period of two weeks (April 24, 2017 to May 5, 2017) has been provided with respect to the collection of additional information.

Upon the enactment of legislation, the NRST will be effective as of April 21, 2017. However, today the Province announced a transition period (from April 21, 2017 to May 5, 2017) for the inclusion of statements regarding the NRST. This transition period only pertains to the inclusion of statements regarding the NRST, not the tax obligation. Please consult the Ministry of Finance website for further details.

The Ministry of Finance will work with the legal community on any questions or issues concerning NRST implementation.

Following are responses to the specific concerns raised in your letter.

What level of evidence are lawyers required to obtain to confirm the additional information?

The purchaser's lawyer must satisfy their professional obligations in relation to the information provided by clients on the Prescribed Information for the Purposes of Section 5.0.1 Form (Form) (e.g. the Law Society of Upper Canada's Rules of Professional Conduct). Upon audit, the Ministry of Finance may request documentation in relation to information provided on the Form.

You have expressed concerns about the inability to legally test "intention" and have raised a question about whether a solicitor would face liability if the purchaser changes their mind a month after the transaction and decides to lease the property, instead of occupying it themselves?

I appreciate your acknowledgment of the importance of the policy objective of obtaining data to better understand the housing market. The purpose of this question is to obtain information about a purchaser's reason for purchasing a property. In asking this question, the Province is aware that an intention reflects a point in time. A solicitor would not face penalties if he or she is unaware that any information included in the form is false or incomplete.

The intention of the purchaser will be stated by completing the Form. For a conveyance that is registered electronically, the Form is to be submitted by the transferee's lawyer on behalf of the transferee.

The Ministry of Finance's interpretation is that section 6 of the *Land Transfer Tax Act*, and clause 6(1)(a), in particular, creates a *mens rea* offence, which requires that the Crown prove that the person charged willfully committed the offence. Therefore, if a client lies to his or her lawyer and that lawyer is not in a position to determine if the client is lying, the lawyer would not be subject to a charge under section 6. A lawyer would potentially be subject to a charge under section 6 where there was evidence that the lawyer had knowledge that his or her client was lying at the time the false statement was made.

Do we have to obtain all three (i.e. information on residency, citizenship and permanent resident status)? Will it therefore become mandatory for every purchaser client to bring their passport to a pre-closing meeting?

Residency, citizenship and permanent resident status each relate to specific questions on the Form, which must be answered. Please refer to the Instructions of the Form for

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more information. The Instructions and Form will be available on Teranet eXpress as of April 22, 2017.

The purchaser's lawyer must satisfy their professional obligations in relation to the information provided by clients on the Form (e.g. the Law Society of Upper Canada's Rules of Professional Conduct).

What constitutes adequate proof of “incorporation, ownership and control”?

Incorporation, ownership and control each relate to specific questions on the Form, which must be answered. Please refer to the Instructions of the Form for more information. The Instructions and Form will be available on Teranet eXpress as of April 22, 2017.

The purchaser's lawyer must satisfy their professional obligations in relation to the information provided by clients on the Form (e.g. the Law Society of Upper Canada's Rules of Professional Conduct).

Nowhere do the Land Transfer Tax or Teranet materials state how long it will take to get a confirmation number.

When completing the Form electronically, the confirmation number is generated automatically upon successful submission of the Form.

A confirmation number is not required for manual paper registrations and unregistered dispositions of land.

How are lawyers to deal with applicable transfers that are contractually obliged to be completed in the last week of April and early May?

The Ministry of Finance recommends completing the Form beginning on April 24, 2017. This requirement will be mandatory as of May 5, 2017. However during the transition period from April 24 to May 5, 2017, any incomplete information, inability to complete the Form, errors and/or omissions made on the Form will not affect the registration of the transaction or incur penalties.

The Form will be available on Teranet eXpress as of April 22, 2017. The information will be captured by submitting a form on Teranet eXpress which is outside of the Teraview system.

Please note that if the new statements pertaining to the Form are selected, any documents pertaining to the transaction that were signed before April 24, 2017 will have to be re-signed. If this is not possible, it is recommended that none of the statements be selected. This provision applies only during the transition period.

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With respect to the NRST, the Ministry of Finance recommends that all transfers registered on or after April 21, 2017, include one of the three statements regarding the Non-Resident Speculation Tax (NRST) as set out in the "Payment of the NRST" section of the Bulletin on the Ministry of Finance website.

Completing this information will be mandatory as of May 5, 2017. However, during the transition period from April 21 to May 5, 2017, omitting one of these statements will not affect the registration of the transaction or incur penalties.

Starting next week, we intend to set up meetings with your organization as well as the Law Society of Upper Canada, LAWPRO and other legal organizations regarding these new measures.

Please feel free to contact me at sriram.subrahmanyam@ontario.ca if you have further questions.

Thank you again for writing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sriram Subrahmanyam". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sriram Subrahmanyam
Assistant Deputy Minister
Tax Policy Division
Ontario Ministry of Finance

c: Scott Thompson, Deputy Minister, Ontario Ministry of Finance
Ali Ghiassi, Chief of Staff for the Ontario Minister of Finance
Michael Waterston, Director, Legal Services, Ontario Ministry of Finance