

# Amendments to the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*

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## Overview

On March 27, 2023, the Canadian government introduced new amendments<sup>1</sup> (the “Amendments”) to the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*<sup>2</sup> (the “Act”) and its regulations (the “Regulations”). The Amendments clarify several aspects of the Act and seek to rectify its unintended broad implications in order to better align with the Canadian government’s ultimate goal for greater opportunities for home ownership and to address housing supply issues.

## The Amendments

### **Vacant land zoned for residential or mixed-use no longer considered “residential property” under the Act**

The Amendments repeal subsection 3(2) of the Regulations,<sup>3</sup> which stated that land which does not contain any habitable dwelling, is zoned for residential or mixed use and located in a census agglomeration or census metropolitan area was not permitted to be purchased by a non-Canadian. As a result of the Amendments, non-Canadians may now purchase land containing no dwelling units, even if the land is zoned residential or mixed-use.

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<sup>1</sup> *Regulations Amending the Prohibition on the Purchase of Residential Property by Non-Canadians Regulations*, <https://assets.cmhc-schl.gc.ca/sites/cmhc/professional/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act/prohibition-purchase-residential-property-non-canadians-regulations-amendment.pdf?rev=cf655bc0-d1a9-48a1-a0d5-6ea9b32788e9>

<sup>2</sup> *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c 10, s 235.

<sup>3</sup> *Prohibition on the Purchase of Residential Property by Non-Canadians Regulations*, SOR/2022-250, ss 3(2).

## **A new exception to the acquisition of property by non-Canadians for development**

One of the most notable changes to the Act is the amendment to Subsection 4(2) of the Regulations,<sup>4</sup> which introduces an exception that will allow non-Canadians to acquire residential property for the purposes of development. Effectively, this allows for ordinary course acquisition of development sites/proposed development sites and for purchasing residential properties for land assemblies.

While neither the Act nor Amendments define what constitutes a *development* for the purposes of this exception, the Canadian Mortgage and Housing Corporation (the “CMHC”) provides some guidance<sup>5</sup> on the interpretation of *development* within the context of this new exception. According to the CMHC, *development* encompasses the process of evaluating, planning, and undertaking of alterations or improvements (with or without a change in use) to a residential property or the land on which the residential property is located, including the redevelopment of an existing building.

According to the CMHC, undertaking repairs and renovations to an existing residential property (such as expanding an existing dwelling unit or re-demising interior space) would likely not rise to the level of a *development* within the meaning of the Regulations.

## **Control threshold increased from 3% to 10%**

The Amendments have changed the threshold of “control” from direct or indirect ownership representing 3% or more of equity value or voting rights to 10%.

## **Scope of protections extended to Canadian publicly-traded REITs and limited partnerships**

Prior to the Amendments, the definition of *non-Canadian* under the Act had the potential to capture Canadian real estate investment trusts (“REITs”) and other non-corporations (such as limited partnerships) listed on Canadian stock exchanges. Section 2(b) of the Regulations<sup>6</sup> has been amended to broaden the scope of protections to any entity formed under Canadian law and publicly traded on a Canadian stock exchange.

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<sup>4</sup> *Supra*, note 3, ss 4(2).

<sup>5</sup> Canadian Mortgage Housing Corporation, “Prohibition on the Purchase of Residential Property by non-Canadians Act-Frequently Asked Questions” (3 March 2023), online: CMHC < <https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act/faq#19> >.

<sup>6</sup> *Supra*, note 3, s 2(b).

## Special provisions for temporary residents

Subsection 5(b) of the Regulations<sup>7</sup> has been amended to exempt a temporary resident within the meaning of the *Immigration and Refugee Protection Act* from the prohibitions under the Act if they have 183 days or more of validity remaining on their work permit on the date of purchase and if they have not purchased more than one residential property.

Prior to the Amendments, temporary residents must have worked in Canada for a minimum of three years in the four years preceding the year in which the residential property purchase was made and filed income tax returns for a minimum of three years to be eligible for the exemption under the Act. This change will further support individuals and allow families to set down roots and pursue home ownership in Canada.

## Going forward

The Amendments further define the legal parameters surrounding the Act and provide much-needed clarity on the application and scope of the Act. However, non-Canadian purchasers and investors should continue to proceed with caution to ensure they are in compliance with the Act.

If you have any questions or would like to obtain legal advice on how these Amendments may impact you or your business, please contact any lawyer in our [Real Estate Group](#).

*This article is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.*

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<sup>7</sup> *Supra*, note 3, s 2(b).