



Real Estate Primer

WITH LAURA HOLLAND

CONTENTS

Who is a non-resident?

- A. Signing documents
- B. Powers of Attorney
- C. Non-resident holdback

LEGAL SERVICES

- Business Law
- Construction Law
- Employment Law
- Estate Litigation
- Franchise Law
- Immigration Law
- Investment Law
- Personal Injury & ICBC Law
- Real Estate Law
- Wills & Estates

Non-Resident Clients

by Laura Holland, Associate Counsel

Purchasing and selling real estate is stressful enough, but to do it in a country you do not reside in can add even more stress. It involves a bit of planning and forethought. Here are some issues you may wish to discuss with your non-resident clients, so they are not unpleasantly surprised.

WHO IS A NON-RESIDENT?

First of all, who is a resident and who is a non-resident? If you are not sure, ask your client to provide you with a copy of their last Canadian tax return or to have their accountant provide confirmation as to their status. Just because someone lives in Canada does not make them a resident. The category of non-resident for real estate purposes is determined by whether or not a person files her or his tax return in Canada as a resident. You can only have one primary residence globally, regardless of where you actually live.

A. Signing documents

One practical issue for non-residents is the signing of purchase or sale documents. Documents can now be signed outside of B.C. in another province or country. Documents can be emailed to clients, who can print them off and sign them, then email them back. We do need the original documents back in the mail eventually, to complete our files.

If the person is intending to sign outside of British Columbia, we advise that the client meet with a notary public. The client may also go to an officer of the Court of the foreign jurisdiction or the Canadian Consulate, if available. If the clients are in a remote area, finding a suitable witness can become an issue.

When the client meets with the notary public, she or he should ensure that the notary public fulfills the following requirements:



DRYSDALE BACON
McSTRAVICK LLP

LAWYERS

604.939.8321
www.dbmlaw.ca

MAIN OFFICE

Suite 211,
1015 Austin Ave.
Coquitlam BC V3K 3N9
T: 604-939-8321

VANCOUVER

Suite 300,
1055 W Hastings St.
Vancouver BC V6E 2E9
T: 604-939-8321

LANGLEY

Suite 205,
19978 72nd Ave.
Langley BC V2Y 1R7
T: 604-534-2131

SECHLT

Suite 106,
5674 Teredo St.
Sechelt BC V0N 3A0
T: 604-885-7779

Good advice.
Good law.
Good people.



1. IDENTIFICATION – copies of the clients' ID will need to be notarized;
Have the notary public provide certified copies of the front and back of two pieces of identification for client, one of which must be government-issued photo ID;
2. The notary must also complete and sign a document attached to the identification called "Agreement with Agent for Verification of Client Identity"; such agreement has different versions depending whether the client is signing within or outside Canada;
3. FORM A-FREEHOLD TRANSFER/ FORM B MORTGAGE: The notary public must sign the Transfer/Mortgage opposite the client's signature and must print his/her full name, address, telephone number and occupation below his/her signature;
4. If possible, have clients come in to DBM before they leave town;
5. ALLOW EXTRA TIME – Documents can be faxed or emailed from here, but originals may need to be couriered back prior to completion.

B. Powers of Attorney

Powers of Attorney ("POA") are not valid for BC LTSA unless drafted in BC. If a POA is needed, please have a BC lawyer prepare it, or review the original POA to ensure it is acceptable. One common issue that complicates matters is if the seller's name on the POA does not match the seller's name on the title search.

C. Non-resident holdback

When a property is sold by a non-resident of Canada, the seller must pay income tax on any gain.

Before funds can leave Canada, a clearance certificate must first be obtained by the seller. Canada Revenue Agency (CRA) issues this clearance certificate, which certifies how much tax is payable on the sale. Efforts should be made to obtain the clearance certificate on or before the completion date. The clearance certificate can be applied for as soon as a subject free offer is in place.

If the clearance certificate is not issued by the Completion date, the purchaser of the property is required to withhold and eventually to remit a percentage of the purchase price on behalf of CRA.

Some things to keep in mind:

- The holdback is mandatory.
- The seller should retain an accountant as early into the process as possible.
- The holdback amount is between 25–50% of **sale price, not profit!**
- Allow 10–12 weeks to obtain Clearance Certificate.
- Certificate can be applied for once subject conditions have been removed.
- Accountant usually makes application for client, not the lawyer.
- We recommend that there be a lengthier than normal gap between the subject removal date and the completion date, to better ensure that a clearance certificate is issued at time of sale, thus avoiding the need for a holdback.
- Clients should have been filing annual income tax returns regarding the rental income generated by the property. If they have not done this, past returns will have to be filed before a Clearance Certificate application can be completed.
- Tax will be payable from sale proceeds.



- Once a Clearance Certificate is received, the balance of funds can be released to the client.
- The amount of the holdback is either:
 - a. if the property is capital property (never generated income and was occupied by family members for personal use) and is not rental property, 25% of the purchase price; or
 - b. if the property is not capital property, but rather, rental property (or income-generating property) or depreciable property whether or not depreciation was ever claimed by the seller, 25% of that portion of the purchase price relating to the land value plus 50% of the purchase price relation to the building value.
- Although it is common for the seller's lawyer to holdback the money through normal undertakings, it is ultimately the purchaser's responsibility to ensure that sufficient money is held back; therefore, the purchaser has final say as to amount of the holdback, although the purchaser's position should be reasonable.
- If there is doubt as to the type of property, the higher holdback prevails.
- The holdback amount is set by the sale price, and is never reduced because the equity in the property is less than the required holdback. Sellers can be required to pay money into Canada in order to clear title on a sale if there is not sufficient equity in the property.
- The application for the Clearance Certificate must be made within 10 days of Completion.

Disclaimer

Information, strategies and opinions contained in this newsletter are provided for general information and convenience only. Since the particulars of each situation may differ and information may change rapidly, the reader should seek specific, appropriate, qualified professional advice before acting based upon any information provided by Drysdale Bacon McStravick LLP.