

Consultation Paper

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This consultation paper sets out proposed policy directions to finalize the implementation of the prohibition on the purchase of residential property by non-Canadians, a measure announced by the Government of Canada in Budget 2022, and set out in the Minister of Housing and Diversity and Inclusion's mandate letter in December 2021.

The Government is seeking the feedback of interested Canadians and stakeholders. Your feedback will inform the development of regulations to implement the final details of the prohibition.

Overview

In Budget 2022, the Government announced its intention to prohibit non-Canadians from purchasing residential property in Canada for a period of two years.

On June 23, 2022, the Parliament of Canada passed legislation, called the Prohibition on the Purchase of Residential Property by Non-Canadians Act (the Act), which will come into force on January 1, 2023.

The Government is now working to finalize certain details in regulations under the Act (the Regulations). These details include selected definitions, exceptions and enforcement elements.

This consultation paper provides Canadians and stakeholders with additional information on the Act, and seeks feedback as the Government considers the final policy elements to include in the Regulations.

We invite interested parties to send written comments to the Canada Mortgage and Housing Corporation, on or before September 16th, 2022, using the following address: cmhcfeedback@cmhc.ca

Summary of Legislation

The Act prohibits non-Canadians from purchasing, directly or indirectly, residential property in Canada for a period of two years. Canadian citizens and permanent residents, for example, are not subject to the prohibition.

Under the Act, the Government may establish through the Regulations certain instances in which the prohibition does not apply. These include exceptions for certain groups of people, types of real property, and particular circumstances.

The Act restricts non-Canadians from avoiding the prohibition by using corporations or other entities to purchase residential property. Under the Act, the Government may clarify in the Regulations the scope and application of the prohibition, including by defining what is meant by "control," and further elaborating what constitutes a "purchase" for the purposes of the Act.

The Act establishes penalties for non-compliance applicable to non-Canadians, as well as any person or entity knowingly assisting a non-Canadian in contravening the Act. A non-Canadian that contravenes the prohibition, or any person or entity that knowingly assists a non-Canadian in contravening the prohibition, is guilty of an offence and liable on summary conviction to a fine of up to \$10,000.

If a non-Canadian is convicted of having contravened the prohibition, the superior court of the province in which the residential property to which the contravention relates is situated may, on application of the responsible Minister, order the residential property to be sold. The Act establishes that any such court-ordered sale will result in the non-Canadian receiving no more than the purchase price paid for the residential property.

Purpose of Regulations

The Act provides authorities for the Government to bring forward the Regulations to establish the final details of the prohibition, including certain definitions, exceptions and enforcement elements.

The Regulations will help to provide Canadians and stakeholders with greater clarity and certainty around the application of the prohibition in different circumstances.

The Act sets out a number of policy areas to be further elaborated in the Regulations:

- The conditions under which certain persons, such as temporary residents and other types of persons, may be exempted from the prohibition;
- The treatment of certain types of residential property, including any residential property that may be exempted from the prohibition;
- The specific circumstances under which the prohibition may not apply to the purchase or acquisition of residential property by non-Canadians;

- The definitions of “control” and “purchase” in respect of the prohibition; and
- Enforcement elements, including the making of orders in relation to the court-ordered sale process established in the Act, and the disposition of funds in excess of the purchase price.

The following section sets out proposed policy directions in respect of each policy area to be further elaborated in the Regulations.

Proposed Policy Directions for Regulations

1. Exceptions for Certain Groups of People:

The Act sets out exceptions for certain categories of people. These groups are: (i) temporary residents who satisfy prescribed conditions; (ii) protected persons, which include refugees; (iii) non-Canadians purchasing residential property together with their spouse or common law partner, where the latter is a Canadian citizen or permanent resident; and (iv) any other prescribed categories of people.

The Act enables the Regulations to establish the conditions that temporary residents must satisfy to benefit from an exception, as well as to identify any other prescribed categories of people for the purposes of an exception.

A. International Students

Each year, Canadian learning institutions welcome thousands of international students to live and study in Canada. This arrangement enables students to pursue learning opportunities in Canada to further their education. It also provides funding, and supports and enriches Canadian learning institutions, which benefits Canadian students and their educational experience. Many international students apply to settle in Canada permanently, leveraging their studies to enter the workforce and contribute to the Canadian economy and society.

In Budget 2022, the Government committed to provide an exception for international students on the path to permanent residency. This would enable students building a new life in Canada to pursue home ownership in their communities sooner. The policy intent is to provide an exception for students who are residing in Canada and undertaking studies conducive to a pathway to future permanent residency, while limiting the exception to property types suitable to the needs of students.

The Government is seeking feedback on a proposal to provide an exception for a temporary resident of Canada that satisfies each of the following conditions:

- Is pursuing a program of authorized study at a designated learning institution as defined in s. 211.1 of the Immigration and Refugee Protection Regulations;
- Would be eligible for a work permit issued under subparagraph 200(1)(c)(ii) or (ii.1) for work described in paragraph 205(c) of the Regulations upon completion of the program;
- Has filed a Canadian income tax return for each of the five taxation years preceding the year in which the purchase is made; and
- Has been physically present in Canada for a minimum of 275 days in each of the five calendar years preceding the year in which the purchase is made.

The exception would be limited to the purchase of residential property not exceeding a purchase price of \$500,000, anywhere in Canada.

Examples of documentation to demonstrate eligibility for this exception could include a letter from a designated learning institution containing enrollment information, a Notice of Assessment from the Canada Revenue Agency, and documentation commonly relied on elsewhere to demonstrate a physical presence in Canada, such as rental agreements or receipts, utility bills, and entry and exit records associated with travel.

B. Foreign Nationals with Work Permits

Across Canada, foreign nationals contribute meaningfully to the Canadian economy in diverse jobs and sectors. These include the technical jobs and skilled trades, managerial roles, and professional occupations that are instrumental to a prosperous Canada. Many of these workers apply to settle in Canada permanently, including as skilled workers, together with their families.

In Budget 2022, the Government committed to provide an exception for foreign nationals with work permits residing in Canada. The policy intent is to provide an exception for foreign nationals residing in Canada with valid work permits (or authorizations to work in the absence of permits) and demonstrable work experience performed in Canada, who are laying a foundation to settle in Canada permanently.

The Government is seeking feedback on a proposal to provide an exception for a temporary resident of Canada that satisfies each of the following conditions:

- Holds a valid work permit as defined in section 2 of the Immigration and Refugee Protection Regulations, or is otherwise authorized to work in Canada in accordance with section 186 of the Regulations;
- Has worked in Canada for a minimum continuous period of three years within the past four years, where the work meets the definition set out in s. 73(2) of the Regulations; and
- Has filed a Canadian income tax return for a minimum of three of the past four taxation years preceding the year in which the purchase is made.

Examples of documentation to demonstrate eligibility for this exception could include a work permit or authorization to work, a letter from an employer containing work experience in Canada, and a Notice of Assessment from the Canada Revenue Agency.

C. Refugees and People Fleeing International Crises

Each year, Canada provides thousands of refugees and other vulnerable people with the opportunity to build new lives for themselves and their families, including through private sponsorship. These individuals do not simply benefit from the safety Canada gives them; they become important contributors to our economy and cultural diversity.

In Budget 2022, the Government committed to provide an exception for refugees and people who have been authorized to come to Canada under emergency travel while fleeing international crises. The Act provides an existing exception for refugees, who are “protected persons” under Canadian immigration legislation.

However, certain persons fleeing international crises may not fall within the definition of “protected persons.” In addition, other persons may be residing in Canada under an alternative status conferring protection, or have an active and eligible claim that would result in them becoming “protected persons.” These persons are typically unable to safely return to their former jurisdiction; they can be expected to remain in Canada to build a new life.

The Government is seeking feedback on a proposal to provide an exception for a person that is not considered a “protected person,” but nonetheless satisfies one of the following conditions:

- A foreign national in Canada, with valid temporary resident status, whose temporary resident visa was issued, or temporary resident status was granted, following an exemption provided under section 25.2 of the Immigration and Refugee Protection Act, where the Minister was of the opinion that the exemption was justified based on humanitarian public policy considerations in order to provide safe haven to those fleeing conflict;
- Is in need of protection within the meaning of s. 97(1) of the Act; or
- Has made a claim for refugee protection in accordance with s. 99(3) of the Act, where such a claim has been found eligible and referred for consideration in accordance with s. 100(1) of the Act.

Examples of documentation to demonstrate eligibility for this exception could include a formal letter or document from the Immigration and Refugee Board of Canada.

D. Diplomats, Consular Staff and Employees of International Organizations

Canada maintains active and vibrant bilateral and multilateral relations with other countries and international organizations. These arrangements result in the posting of accredited members of foreign missions in Canada, such as diplomatic and consular personnel. In some instances, diplomats representing bilateral or multilateral missions may remain in Canada for extended periods of time, choosing to build their lives here, where their families are established and their children are born and raised.

The Act clarifies that the prohibition does not apply to foreign states purchasing residential property for diplomatic or consular purposes. However, absent clarification, the prohibition would apply to accredited members of foreign missions purchasing residential property as private persons. The policy intent is to provide for the equitable treatment of accredited members of foreign missions, including those who enter and remain in Canada for extended periods of time.

The Government is seeking feedback on a proposal to provide an exception for a person that:

- Is an accredited person, meaning a foreign national who holds a passport that contains a valid diplomatic, consular, official or special representative acceptance that has been issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development.

For greater certainty, this exception would include the accredited person and any immediate family members who are also accredited.

2. Treatment of Certain Types of Residential Property

The Act defines residential property to include any real property or immovable of not more than three dwelling units. This definition includes detached houses or similar buildings, as well as parts of buildings, such as semi-detached houses, condominium units or other similar premises. For greater clarity, larger multi-unit properties of four or more units are not subject to the prohibition.

The Act enables the Regulations to establish circumstances where residential property is not subject to the prohibition, as well as to prescribe any other real property or immovable as residential property subject to the prohibition.

A. Recreational Property

In many communities across Canada, tourism and the purchase and enjoyment of recreational property by non-Canadians plays an important role in supporting local economies and maintaining

cross-border ties. Recreational properties are typically located in areas of Canada where housing affordability challenges are less acute, away from larger population centers, and may not be accessible on a year-round basis.

In Budget 2022, the Government committed to provide an exception for recreational property. This approach is consistent with the treatment of recreational property established in the Underused Housing Tax Act, which was previously introduced by the Government of Canada and took effect on January 1, 2022.

The Government is seeking feedback on a proposal to provide an exception for recreational property, which means residential property that:

- Is not located within a Census Metropolitan Area or Census Agglomeration.

B. Vacant Land

The Act does not explicitly apply the prohibition to vacant land, including in larger population centres in Canada. Absent clarification in the Regulations, residential property could be made or deemed vacant for the purposes of avoiding the prohibition. This could include situations where residential property is demolished, condemned or deemed uninhabitable.

The Government is seeking feedback on a proposal to clarify that residential property would include vacant land, which is land that:

- Does not contain any habitable dwelling units;
- Has been zoned for residential use or mixed use by municipal authorities; and
- Is within a Census Metropolitan Area or Census Agglomeration.

3. Indigenous Peoples and Communities

The Act contains a specific exemption for persons registered under the *Indian Act* from the application of the prohibition, in addition to Canadian citizens and permanent residents. These persons have a right to enter and remain in Canada, even if, in some cases, they may not be a Canadian citizen or a permanent resident. These particular circumstances may arise in certain Indigenous communities located at or near the Canada-United States border. However, this exemption needs to be expanded upon to fully capture other Indigenous peoples who also hold rights further to Section 35 of the *Constitution Act, 1982*. Section 35 recognizes and affirms the existing Indigenous and treaty rights of Indigenous peoples of Canada. These may include ownership rights to land, rights to occupy and use lands and resources, land to be set aside for First Nation use only, self-government rights, and cultural and social rights.

The Government intends to expand on the existing exemption in the Act to clarify that all persons to whom Section 35 rights apply are exempted from the application of the prohibition and, for greater certainty, affirm that the Act does not purport to interfere with the exercise of any treaty protected rights to determine who may or may not purchase a residential property.

4. Other Concepts and Definitions

The Act enables the Regulations to prescribe what constitutes a “purchase” for the purposes of the prohibition, as well as to define the term “control”. The Act also enables the Regulations to further prescribe what is meant by the definition of “non-Canadian”.

Elaborating these concepts is necessary to provide clarity around the scope of the prohibition, including its application to purchases of residential property made through structures such as corporations, trusts and other entities.

A. Purchase

The Act establishes that the prohibition applies to the purchase of residential property by non-Canadians, whether directly or indirectly. The policy intent is to establish an all-encompassing definition of purchase, which reflects the fact that non-Canadians may structure purchases directly, or through vehicles such as corporations, partnerships, trusts or other entities.

The Government also recognises that there may be certain circumstances arising from transitional or life events where the application of the prohibition could lead to unforeseen or unavoidable undue hardship. For example, there may be situations where non-Canadians acquire residential property as a result of unexpected life events or other arrangements determined in advance of the coming into force of the prohibition.

The policy intent is to avoid the arbitrary and undue hardship in the application of the prohibition, while establishing clear and transparent criteria to enable non-Canadians to assess the application of the prohibition to their respective circumstances.

The Government is seeking feedback on a proposal to define “purchase” as:

- Acquire, or agree conditionally or unconditionally to acquire, a legal or equitable interest or an immovable real right in a residential property including, in Quebec, a right or co-ownership, superficies, usufruct or emphyteusi.

Acquisition by a non-Canadian of control of a corporation or entity which has an interest, or in Quebec an immoveable real right, in residential property constitutes a purchase for the purposes of the Act and these Regulations.

A “purchase” would not include:

- The acquisition by an individual of an interest, or for Quebec, an immoveable real right, resulting from succession (under a will or intestacy or by reason of the death of a joint tenant);
- The acquisition by an individual of an interest, or for Quebec an immoveable real right, resulting from divorce or separation;
- The rental of a dwelling unit to a tenant for the purpose of the occupation of such dwelling unit by the tenant;
- A transfer of an interest to an individual under the terms of a trust created prior to the coming into force of the Act; and
- An order of foreclosure of a mortgage, charge or hypothec registered prior to the prohibition coming into effect.

For greater certainty, this definition would apply to conditional offers or arrangements to purchase residential property, leases structured to include purchase options, and purchases involving the use of nominee buyers.

B. Control

The Act establishes that the prohibition applies to corporations incorporated in Canada, where the corporation is privately held (i.e., is not listed on a stock exchange in Canada) and is controlled by a non-Canadian. The Act enables the Regulations to define the concept of control; that is, the nature and degree of foreign ownership or control of the corporation necessary to trigger the application of the prohibition.

The Government is seeking feedback on a proposal to define “control” as:

- Direct or indirect ownership of shares or ownership interests of the corporation or entity representing 3 per cent or more of the value of the equity in the corporation or entity, or carrying 3 per cent or more of the voting rights of the corporation or entity; or
- Control in fact of a corporation or entity, whether directly or indirectly, through ownership, agreement or otherwise.

C. Foreign Entities

The Act contains a definition of non-Canadian that captures both natural persons and corporations. The Act enables the Regulations to further prescribe what is meant by the definition of non-Canadian. The policy intent is to capture other legal structures, in addition to corporations, that could be used by non-Canadians to purchase residential property in Canada. This provides greater certainty with respect to foreign entities to which the prohibition would apply that may not otherwise fit within the Canadian understood definition of a corporation.

The Government is seeking feedback on a proposal to clarify that the definition of non-Canadian would also include:

- An entity formed otherwise than under the laws of Canada or a province;
- An entity that is formed under the laws of Canada or a province that is controlled by a non-Canadian.

For the purposes of the Act, entity means any organization, structure or relationship that is not a corporation, and includes, a partnership, trust, or an unincorporated association.

5. Enforcement Elements

The Act establishes penalties that apply to non-Canadians that purchase residential property, whether directly or indirectly, in contravention of the prohibition. The Act sets out a penalty of not more than \$10,000 for an offence upon summary conviction.

The Act also establishes penalties that apply to any persons or entities that counsel, induce, aid or abet or attempt to counsel, induce, aid or abet a non-Canadian to purchase, directly or indirectly, any residential property, knowing that the non-Canadian is prohibited under the Act from purchasing the residential property.

In the case of a corporation or entity, anyone who directs, authorises or assents to the commission of the offence is deemed to be a party to the offence. This includes an officer, director, agent, mandatory of the corporation or entity; a senior official of the corporation or entity; or any individual authorized to exercise managerial or supervisory functions on behalf of the corporation or entity. This ensures that corporate actors are not able to hide behind the corporate veil and can be penalised as individuals for transgressions that are undertaken in the name of the company.

For greater certainty, the sale of a property in breach of the prohibition does not affect the validity of the sale.

A. Court Orders

The Act establishes that, if a non-Canadian is convicted of having contravened the prohibition, the superior court of the province, in which the residential property to which the contravention relates is situated, may on application of the responsible Minister, order the residential property to be sold. The Act provides that any such court-ordered sale will result in the non-Canadian receiving no more than the purchase price paid for the residential property.

The Act enables the Regulations to further elaborate the making of orders in relation to the court-ordered sale process established in the Act, including the disposition of funds in excess of the purchase price.

The Government is seeking feedback on a proposal to clarify that an order may only be issued where:

- The non-Canadian has been convicted of contravening Section 4 of the Act and has ownership of the residential property at the time the Order is issued;
- Notice has been given to those who may be entitled to receive proceeds from the sale; and
- The court is satisfied that the impact of an order for sale would not be disproportionate to the nature and gravity of the contravention, the circumstances surrounding the commission of the contravention and the resulting conviction.
- The Government is also proposing to clarify that an order provide for the proceeds of a sale to be distributed as follows:
 - Firstly, to pay the costs of the sale, including the administrative costs incurred by the Government in bringing the application for the sale and any unpaid fines under the Act;
 - Secondly, to pay those who are entitled to receive the proceeds in such amounts and according to such priorities as the court may determine, except that the convicted non-Canadian may not receive from the proceeds an amount greater than the purchase price they paid for the residential property; and
 - Finally, with any residue to the Receiver General of Canada.