



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Lisa M. Wight and the Professional Standards (Real Estate) Committee

Date: February 14, 2023

Subject: Professional Standards (Real Estate) 5.6 Property Tax Standard

For: **Approval** **Introduction** **X** **Information**

DATE February 14, 2023	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a new standard 5.6 - Property Tax – by the Professional Standards (Real Estate) Committee. This standard will be concurrently sent to the Equity Committee for review and comment in accordance with the Society's Equity Lens Application in Policy Development guideline. Following introduction to Council, the standard will be circulated to the membership for review and consultation. The RESC will review any comments received by members and the Equity Committee, and then present the final form, amended if necessary, to Council for approval. An equity lens was applied while revising this standard.

Executive Summary:

One of the Committee's mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. After annual review, the Committee determined that there was no standard but there should be.

Exhibit:

Revised Standard 5.6 – Property Tax - with rationale for the revisions.

RESC – Standard 5.6 Property Taxes

Existing Standard	Proposed Standard	Rationale
<p>There is no existing standard</p>	<p>STANDARD</p> <p>Where acting for one or more of a buyer, a vendor, a borrower or a lender, a lawyer must make reasonable enquiries concerning the payment status of property taxes attributable to the property¹ being transferred and/or mortgaged, regardless of whether the property is real property or a mobile home.²</p> <p>A lawyer should take reasonable steps to ensure any tax information received from the municipal tax authority³ includes any amounts due with respect to demolition and property remediation, municipal improvements, betterment charges and capital improvements for utility or municipal services. For a purchase\sale transaction, a lawyer should make their client aware of adjustments to the purchase price arising out of contractual provisions imposing an obligation on a party to pay property taxes or arising out of a change in use of the property.⁴</p>	<p>The Committee determined that it would be prudent to establish a Property Tax Standard to align with current practice, case law and legislation. This Standard is intended to provide guidance and assistance to lawyers with respect to practices concerning property taxes and other charges.</p>

RESC – Standard 5.6 Property Taxes

	<p>A lawyer must ensure that the payment status of property taxes, including arrears and related amounts, are accurately recorded as an adjustment to the purchase price on closing. A lawyer must determine lender's requirements for collection of and payment of property taxes on closing. Where appropriate, a lawyer may recommend an undertaking to re-adjust between the parties, and obtain an undertaking⁵ from the opposing party to pay any outstanding property taxes and related amounts.</p> <p>In the case of a mobile home, a lawyer acting for a buyer should take the necessary steps to provide notice of a change of ownership to the municipal tax authority.⁶</p> <p>PRACTICE NOTES</p> <p>Reasonable enquiries can take the form of obtaining a tax certificate⁷ or a verbal confirmation from the municipal tax authority where the property is located; however, said enquiries should be independent of information received from the opposing party.</p> <p>It is prudent for a lawyer to determine the juncture of the transaction when they ought to initiate</p>	
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RESC – Standard 5.6 Property Taxes

	<p>enquiries for tax information and the form of the tax information requested.⁸</p> <p>Lawyers should be aware that other types of charges (i.e. sanitary sewer charges) can have the same status as a lien against real property as property taxes, that the same be administered by different municipal tax authorities and non-taxing authorities. When obtaining tax information, it is prudent to confirm whether that property tax information includes all charges, including sewer charges and road maintenance fees (private subdivisions).⁹</p> <p>Various provisions of the <i>Assessment Act</i>, including but not limited to Sections 42, 45A, 52 and 57, allow a municipal tax authority to re-assess a property at a future date. Therefore, a lawyer should be cautious in relying exclusively on a tax certificate\verbal confirmation, and should consider recommending title insurance to mitigate the risk of reassessment.</p> <p>A lawyer should be aware of when a change in use tax may apply to a transaction.¹⁰</p> <p>If property taxes are unpaid on closing, counsel for the parties should confirm in writing which party (as between the lender¹¹, vendor, or buyer, as the context requires) will pay the outstanding property taxes.</p>	
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	<p>It may be helpful for a lawyer acting for a buyer to determine whether a portion of the risk for outstanding taxes can be mitigated by recommending title insurance to a buyer, a lender or both.</p> <p>It may be helpful for a lawyer acting for a buyer to advise their client about the timing for payment of property taxes (interim and final).</p> <p>It may be helpful for a lawyer acting for a buyer (including a transferee for nominal value) to make their client aware that the transfer could impact whether the property continues to receive a capped assessment.¹²</p> <p>When verifying property taxes for mobile homes situate in a land-lease community or mobile home park, it may be helpful for a lawyer to contact the administrator for the community\park in order to determine whether the lot has previously received a tax assessment number.¹³</p> <p>ADDITIONAL RESOURCES</p> <ul style="list-style-type: none">• O'Brien Edmonds, Erin, "Tax Adjustments", (1994) Continuing Legal Education Society of N.S., 1994 Apr• Cameron, John R., "Highlights of the provisions of the new Municipal Government	
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	<p>Act”, (1999), Continuing Legal Education Society of N.S., 1999 Mar</p> <ul style="list-style-type: none">• MacLean, Ian H., “Change in Use Tax”, Real Estate Lawyers of Nova Scotia, 2017 Conference.• Nova Scotia Department of Municipal Finance and Statistics – Link (https://novascotia.ca/dma/finance/municipal-property-tax-rates.asp)• Property Valuation Services Corporation – Link (https://www.pvsc.ca/en/home/default.aspx) <p>FOOTNOTES</p> <p>¹ Different types of real property in Nova Scotia (i.e. residential, commercial, forest, etc.) are subject to property tax pursuant to the <i>Assessment Act</i>.</p> <p>² Section 133(1) of the <i>Municipal Government Act</i> states that, “Taxes levied in respect of real property are a first lien upon the real property”. Section 133(2) states that, “Taxes levied in respect of a mobile home are a first lien upon the mobile home”. Section 133(8) states that, “Taxes in respect of business occupancy assessments are not a lien upon property.”</p>	
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	<p>³ Municipal tax authorities can include villages and marsh bodies, which can also levy other charges.</p> <p>⁴ For residential transactions, the standard form agreement of purchase and sale provides that, “The cost of municipal improvements, betterment charges and capital improvements for utility or municipal services completed as of the date of this Agreement, whether billed or not, <u>are to be paid by the Seller on or before the closing date unless otherwise stated.</u>” See also <i>Stevens et al. v. Grant et al.</i>, [1976] N.S.J. No. 556.</p> <p>⁵ See Real Property Practice Standard 4.6.</p> <p>⁶ For transfers of mobile homes, Buyer’s counsel typically will file notice of the transfer (http://www.pvsc.ca/site/media/PVSC/Documents/Manufactured%20Home%20Transfer%20Form_Truo_2015%2007%2003.pdf)</p> <p>⁷ See Sections 132 of the <i>Municipal Government Act</i>.</p> <p>⁸ See Footnote 3.</p> <p>⁹ Sometimes, other charges (e.g. sanitary sewer charges), may be levied by a village or marsh body. If the village (or the marsh body) has not delegated the collection of those charges to the municipal tax authority, a separate request may be required to verify their payment status. Private road</p>	
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	<p>maintenance fees are another example of “other charges” that may not be captured in property tax information received from a municipal tax authority. These “other charges” can have the same status as a lien against real property as property taxes and may be administered by different municipal tax authorities and non-taxing authorities.</p> <p>¹⁰ For more detail, see Ian MacLean’s article, “Change in Use Tax” which is noted in Additional Resources.</p> <p>¹¹ A discharge statement received from a lender should be reviewed to determine whether a lender has made provision for and provided directions concerning the payment of outstanding taxes.</p> <p>¹² See Section 45 of the <i>Assessment Act</i>. In certain circumstances, a capped assessment can be retained if appropriate documentation is filed: see Property Valuation Services Corporation’s Form 3 – Notice of Residency (http://www.pvsc.ca/site/media/PVSC/Documents/CAP%20Residency%20Form.pdf).</p> <p>¹³ In transactions involving the purchase and installation of a new mobile home in a trailer park or land lease community, it is possible that the lot may not have been previously issued a property tax assessment.</p>	
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