



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

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

Date: November 6, 2025

Subject: Professional Standards (Real Estate) – New Standard – Non Resident Dispositions

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

DATE November 6, 2025	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a New Standard – Non Resident Dispositions of Real Property - by the Professional Standards (Real Estate) Committee. This standard has been sent to the Equity Committee for review and comment in accordance with the Society's Equity Lens Application in Policy Development guideline, and comments were provided. 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 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 review, and evolving legislative requirements, the Committee determined that there should be a standard addressing the obligations of lawyers when being retained to dispose of real property for owners not resident in Canada.

Exhibit:

New Standard – Non Resident Dispositions of Real Property - with rationale.

Non Resident Dispositions of Real Property – New Standard

Existing Standard	Proposed Standard	Rationale
There is no existing standard	## NON RESIDENT DISPOSITIONS OF REAL PROPERTY STANDARD <u>NON-RESIDENT VENDORS</u> A lawyer, when representing a Seller(s), must as soon as possible after being retained, ascertain the residency of the Seller(s). Once a lawyer has ascertained the residency of the Seller(s), if the lawyer has determined that the Seller or any one of the Sellers are non-residents of Canada pursuant to the <i>Income Tax Act</i> (Canada)¹, the lawyer must advise the Seller(s) of the requirement of a non-resident of Canada to make application to Canada Revenue Agency for a Clearance Certificate, either prior to the closing or within the prescribed time following the closing. A lawyer representing a non-resident Seller must advise the Seller that the failure to comply with the application for the Clearance Certificate could result in the Seller being subject to interest and penalties from Canada Revenue Agency. A lawyer, representing a non-resident Seller, must advise the Seller of the lawyer's requirement to withhold, in trust, twenty-five (25) percent (or other amount as stipulated in the <i>Income Tax Act</i>) of the sale price, pending the lawyer for the Seller receiving a	The Committee determined that it would be prudent to create a standard to assist lawyers representing Non Canadian Resident clients who are disposing of real property.

Non Resident Dispositions of Real Property – New Standard

	Clearance Certificate from Canada Revenue Agency. A lawyer representing a Buyer must request from the lawyer representing a Seller, as soon as possible after being retained, confirmation of the residency of the Seller(s). Once advised of the residency of the Seller(s), if any of the Seller(s) are non-residents of Canada, the lawyer for the Buyer must advise the lawyer for the Seller that the lawyer for the Buyer shall require an undertaking from the lawyer for the Seller(s), on closing, to withhold twenty-five (25) percent of the sale price, (or other amount as stipulated in the <i>Income Tax Act</i>), pending the lawyer for the Buyer being provided with a copy of the Clearance Certificate issued by Canada Revenue Agency, relating to this transaction. Any capital gains tax relating to this transaction, payable by the Seller(s) to Canada Revenue Agency, may be paid by the lawyer for the Seller(s) from the funds being held by the lawyer for the Seller(s). FOOTNOTES <i>Income Tax Act</i> R.S.C. 1985, c.1 (5th Supp.)	