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Vancouver Introduces Empty Homes Tax

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1. Vancouver's new Empty Homes Tax became effective January 1, 2017.

Targeting the approximately 10,000 year-round empty and 10,000 under-occupied homes in Vancouver, homes which are unoccupied for six full months of the year or more, will be subject to the new 1% Empty Homes Tax (the "EHT") imposed by Vancouver's new [Vacancy Tax By-law No. 11674](#) (the "By-law"). Homes that are determined or deemed to be vacant will be subject to an EHT equal to 1% of the property's taxable assessed value in addition to the existing property tax. The EHT will be applied annually, with the first taxation year beginning January 1, 2017. The tax for 2017 would be payable by April 2018.

2. Who won't be subject to the tax?

Most Vancouver homes will not be subject to the EHT. Residences being used as a principal residence by the owner, a family member or a friend for at least six months of the tax year will not be charged the EHT, nor will properties that are rented long-term (with a written tenancy agreement), for at least 30 days in a row for a minimum of six months in aggregate over the course of a year. So for example, an investor renting their investment property out for six 30-day terms throughout the year will be exempt from the tax, even if those six 30-day terms are not consecutive. An investor using their property as a short term rental (AirBnB) without a hotel or B&B license (which would be in breach of the City's Zoning & Development By-law), currently will be subject to the EHT, if those rental periods are shorter than 30 days long.

3. What is a vacant home?

A home is not a vacant home and thus not subject to the EHT when it is being used as a principal residence by the owner or the owner's family or a friend for at least six months of the year. The By-law has its own definition of what is a principal residence, which is not necessarily the same as other laws. The By-law provides that a principal residence is defined as:

"The usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills."

A residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; or
- (b) the residential property is not occupied by a tenant or subtenant for a term of at least 30 consecutive days.

A residential property is considered to be a vacant property if:

- (a) it has been unoccupied for more than 180 days during a calendar year period; or
- (b) it is deemed to be vacant property in accordance with the By-law.

4. Pied-de-terres and Snowbirds.

Many people maintain second homes in Vancouver some distance away from their primary residence. It may be a vacation home used for a few weeks a year, or purchased as a future retirement home. If the Vancouver home is their principal residence, it is not subject to the EHT. If their other home is their principal residence and the owner does not rent out their Vancouver home for at least six months of the year (or another exemption applies), their Vancouver home will be subject to the EHT.

Where a home is a person's principal residence, but it is vacant for more than 180 days a year, it will not be subject to the EHT. So the home of a "snow bird" who spends 179 days in the USA each year, and a few more weeks each year travelling the world such that the home is empty more than 180 days a year, will not be subject to the EHT if the home is their principal residence.

Under the EHT each spouse can have their own principal residence, even if they own both properties as joint tenants. The husband's principal residence can be the home in Vancouver, while the wife's principal residence can be a home in Creston. So spouses can have 2 principal residences between them under the EHT, which is different from the provisions of the [Income Tax Act](#) and [Home Owner Grant Act](#). You can also have two separate principal residences within Vancouver (i.e. the spouses are having a trial separation – one lives in a condominium they own downtown, the other owns the traditional family home in East Vancouver – as long as the homes are actually being used as the principal residences.

5. Vacant residential land will also be subject to the Tax.

Any property, including vacant property, is potentially subject to the EHT if the property is classified as [Class 1, Residential](#) by BC Assessment. The City has decided to impose the EHT on vacant property to avoid owners "prematurely" demolishing homes and not promptly rebuilding a home on the property so as to avoid the EHT. This may catch a homeowner whose home consist of two 2 adjacent lots, with all of the improvements located on 1 of the 2 lots.

6. Apartment Buildings.

The EHT potentially applies to non-stratified apartment buildings. However, if the building is not stratified and is one legal parcel and one unit is occupied, the whole building is exempt. The EHT is applied at parcel level. Purpose-built rentals are not the main concern as these are 99.4% occupied according to CMHC.

7. Annual Declaration.

In December of each year, all owners of residential properties in Vancouver will receive instructions to complete a Property Status Declaration (a “**PSD**”) from the City that must be completed and returned to the City on or before the 2nd business day of the following February. If the owner fails to submit the PSD, the property will be deemed to be vacant and subject to the EHT. The City may also pursue fines.

8. Tax Notice.

The City will review the completed PSD and determine whether or not the property is subject to the EHT. Where a residential property is determined or deemed to be vacant, it will be subject to the EHT.

The City will mail an EHT notice to each registered owner of a property that is subject to EHT by the end of the 2nd week of March each year.

An owner who disputes the EHT notice may submit a complaint to the Vacancy Tax Review Officer regarding the City’s decision to impose the EHT on the basis that an error or omission was made by the City, or by the owner in completing the PSD. The decision of the Vacancy Tax Review Officer can be further appealed to the Vacancy Tax Review Panel.

9. Deemed to be Vacant.

A parcel of residential property is deemed to be vacant property and is subject to the EHT where the owner:

- a) fails to file a PSD as required by the By-law;
- b) makes a false PSD;
- c) fails to provide the information or to submit required evidence to the Collector of Taxes in accordance with the By-law; or
- d) provides false information or submits false evidence to the Collector of Taxes.

10. Empty Home Tax Due Date and Penalty.

The EHT is due and payable by the owner on or before the 10th business day of April of the year that the EHT Notice is issued. So the EHT for a property that was vacant in 2017 will be due in April of 2018. The EHT which is unpaid as of the 10th business day of April incurs a penalty of 5% and interest in the same amount as unpaid property taxes. The EHT together with any penalties will be added to the property tax roll.

The bill is sent in March with payment required by April so it would appear that a debt arises in April and is owed by the then homeowner. The City of Vancouver can theoretically sue the owner after April based on a debt claim but will normally just add the debt to the property tax roll the same way as unpaid property taxes are – on December 31 of the year in which they were due.

11. Tax Exemptions.

The By-law provides for 8 exemptions:

(a) Major Renovations.

If the home is vacant because the property is undergoing major renovations, or is under construction or redevelopment (with permits), the EHT is not payable. The EHT is not payable if the residential property:

- was unoccupied for more than 180 days during the year in order to redevelop the property or safely carry out major renovations; and
- was undergoing redevelopment or major renovations,
 - for which permits have been issued by the City, and
 - which, in the opinion of the City's Building Official, are being carried out diligently and without unnecessary delay.

Any period when the home is empty but the permit has not yet been issued will not be considered for the exemption. The fact that an owner has applied for a permit and the City has not yet processed it or issued it, currently does not qualify for the exemption for the period prior to the permit being issued. The period while the home is empty, or the land remains unimproved, and does not have a valid permit, will be counted towards the 180 day vacancy period and it will be considered a vacant home and subject to the EHT if the 180 day period is exceeded.

The City will determine if the renovations are: (a) "major renovations or repairs"; and (b) if the repairs are being carried out diligently and without unnecessary delay.

For a property to be eligible for this exemption, the owner may be required to submit a short description of redevelopment/renovation project and their permit application number when submitting their PSD.

(b) Illness.

The EHT is not payable if the residential property was unoccupied for more than 180 days during the year because the occupier, tenant or subtenant is undergoing medical care or is residing in a hospital, long term or supportive care. This exemption will not be allowed for more than two consecutive years.

For a property to be eligible for this exemption, the owner or their representative must be prepared to submit contact information for the applicable care facility and a letter from the care facility confirming the owner or their tenant is undergoing medical/supportive care when they file their PSD.

(c) The Owner is Deceased.

The EHT is not payable if the residential property is unoccupied for more than 180 days during the year because the registered owner is deceased and neither a grant of probate of the will of the deceased, nor a grant of administration of the estate of the deceased has been issued. For a property to be eligible for this exemption, the executor or administrator must be prepared to submit a death certificate for the registered owner when filing the PSD.

(d) Ownership of the property changed during the previous year.

The EHT is not payable if the title of the property was transferred during the previous year.

For a property to be eligible for this exemption, the owner must submit a title search or certificate of title showing the date that title was transferred when filing the PSD. This potential exemption will be the one that will most commonly impact real estate licensees. Take the following examples

Example A:

- A house sits vacant for 9 months of 2017;
- The contract of purchase and sale is entered into in December of 2017, and the completion date is March 12, 2018.

In December of 2017 the seller will receive a PSD and will return it to the City by February of 2018, saying the house was vacant for more than 180 days in 2017. As the transfer occurred in 2018 (not 2017), the property will be subject to the EHT for the 2017 tax year, which will be payable in April of 2018 (after the change in ownership). If it is not paid, the EHT will be added to the 2018 property taxes.

Example B:

- A house sits vacant for 9 months of 2017;
- It is sold on November 15, 2017 with the completion date being December 30, 2017.

The seller of the house, as owner of the house in December of 2017 will receive a PSD from the City for completion. The seller may complete the PSD (though as it is not due until early February, so they may contract to leave it to the buyer to complete), stating that the house was vacant for more than 180 days in 2017. As the transfer occurred in 2017, the EHT will not be payable in 2018. However, if the seller does not complete and return the PSD, how will the buyer complete the PSD if they do not have accurate information? If neither the seller nor buyer return the PSD, the property will be deemed to be vacant and the property will be subject to the EHT, subject to being reversed under the appeal process.

Example C:

A home sits empty for over 180 days in 2017. The property is sold on January 30, 2018 and closes on March 1, 2018. The seller would have received the PSD in 2017 and filed it in early 2018. The property would be subject to EHT for 2017, but at the time of closing a tax search

may not show that the property is subject to the EHT, and the conveyancer may not adjust for the EHT. The City does plan to update the tax certificate form to show the vacancy tax information, but it is not clear when that will occur.

(e) **Strata Rental Restrictions.**

The EHT is not payable if the residential property was unoccupied for more than 180 days during the year because:

- a) the residential property is a strata unit;
- b) prior to the Vacancy Tax By-law being adopted (November 16, 2016), the Strata Corporation's bylaws restricted the number of strata units that could be rented; and
- c) rental of the residential property is not permitted because the maximum allowable number of permitted strata rentals for the strata development has already been reached.

For a strata unit to be eligible for this exemption, the owner must be prepared to submit a copy of strata bylaws and a letter from strata council confirming the maximum number of units have been rented when filing a PSD.

This exemption will not be applicable where the strata corporation bylaw was amended to reduce the number of permitted rental units after November 16, 2016, thus blocking the owner from renting their unit. An owner cannot work with a strata corporation to orchestrate a change to the strata rental bylaw to get around the EHT. If a strata corporation reduces the number of units that can be rented in their building after November 16, 2016, it may have the unfortunate consequence of prohibiting owners from renting their unit by virtue of the strata bylaw, and still leave the unit subject to the EHT. This exemption also would not apply if the strata by-laws simply prevent owners from renting out their units for periods of less than 12 months of the year. If any owner wants to retain some use of the unit and rent out their unit for a length of time between 6 and 12 months of the year so that the EHT would not apply, then the strata corporation may need to consider an amendment to the strata by-laws to allow this.

(f) **Homes used for work purposes.**

The EHT is not payable if the residential property is not the principal residence of a registered owner during the year, but it was occupied by a registered owner for a minimum of 180 days during the year because the registered owner works in the City of Vancouver. (Note: The By-law provides the workplace must be located in the City of Vancouver, not Metro Vancouver.) This exemption will be applicable in situations such as where the owner declares their home outside of Vancouver as their principal residence, but work in Vancouver and live in their home during certain work weeks.

In order to claim this exemption the owner must provide the City with:

- The address of their principal residence outside of Vancouver;
- Contact information for their Vancouver employer; and
- A letter from their Vancouver employer confirming full time employment status and required physical presence for purposes of work.

(g) **Court Order.**

The EHT is not payable if the residential property was unoccupied for more than 180 days during the year solely because a court order prohibits its occupancy. For a property to be eligible for an exemption, the owner must be prepared to submit a copy of the court order.

(h) **Restricted Property.**

The EHT is not payable if the residential property was unoccupied for more than 180 days during the year because the lawful use of the property is limited to vehicle parking, or as a result of the size, shape or other inherent limitation of the parcel, a residential building cannot be constructed on the property. For the property to be eligible for the exemption, the owner must be prepared to submit a land survey or legal description of parcel that clearly illustrates the limiting aspects of the property.

12. The Empty Homes Tax Applied. What now?

If a property is subject to the EHT and the owner wishes to avoid the tax, the owner may:

- Become a landlord by renting the property for a minimum of six months of the year, in periods of at least 30 consecutive days (ie. a month to month or fixed tenancy agreement);
- Enlist a property management firm to rent the property for the required duration, or consider a lease with a company (e.g. a business who has employees who work periodically on Vancouver, or a film company) who can sublease or license to individuals who will occupy the home for at least 6 months of the year for periods over 30 days;
- Invite a family member or friend to occupy the property as their principal residence for at least 6 months of the year. If the owner has a family member or friend occupy the unit, they do not have to pay rent but a rental agreement should be entered into confirming the terms of the tenancy and the occupier must occupy the property as their principal residence for at least 6 months of the year;
- Keep the property as-is and pay the EHT; or
- Sell the property.

13. Impact on Realtors.

Realtors acting for buyers and sellers will want to make inquiries of the seller as to the vacancy status of the property during the current and previous year. Realtors acting for buyers will also want to consider inserting into the Contract of Purchase and Sale terms providing:

- that the seller must provide the buyer with a copy of the completed and filed PSD;
- that the seller will provide a statutory declaration at closing confirming the filed PSD is true and correct;
- an express representation and warranty confirming that property has not been vacant (as defined by the By-law) for more than 180 days during the current or prior year;
- providing that where the City has not yet determined if a property is subject if the EHT is applicable or not, provide for a holdback of the potential tax pending the City's determination;
- where the property is clearly subject to the EHT, provide that an adjustment to be carried out by the Buyer's conveyancer and the EHT will be borne solely by the seller.
- Realtors who are licensed as strata managers must be aware of the way rental restriction bylaws impact the strata lots and EHT. This may over time result in changes to rental restriction bylaws and result in more administrative work on their part.

For more information, please contact [Edward Wilson](mailto:Edward.Wilson@lawsonlundell.com) at 604.631.9148 or ewilson@lawsonlundell.com or a member of our [Real Estate](#) group.

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