

Toronto Law Journal

Toronto Vacant Home Tax in Real Estate

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On February 3, 2022, the City of Toronto passed By-Law 97-2022, enacting the Vacant Home Tax (“VHT”).¹ The VHT levies a one percent annual tax on the Current Value Assessment (“CVA”) of vacant properties in the Greater Toronto Area (“GTA”).² This tax is one way in which the City of Toronto is attempting to increase housing supply within the City, hoping that the tax will disincentivize property owners from leaving housing supply vacant. All residential property owners are required to declare the occupancy status of properties owned by them, through an online declaration form.³ Those who declare their property as vacant (without a qualifying exemption) or fail to make a declaration are subject to the VHT.⁴

When is a Property Considered Vacant?

The vacancy of the property is determined based on the following factors:

- 1) Is the property a principal residence of the registered owner or a permitted occupant for a period of not less than six months of the taxation year? A permitted occupant can be a family member or friend of the owner; OR
- 2) The property is occupied by one or more tenants for at least six months of the taxation year.⁵

If neither of these circumstances apply, then the property is considered vacant for VHT purposes, unless one of the following exemptions applies.

Exemptions

If any one of the following exemptions applies to a property, the VHT will not apply; however a declaration must be filed for each property, indicating the status and the applicable exemption:⁶

1. Death of the owner in the current or previous taxation year.
2. Repairs or renovations have taken place meeting all of the following criteria:
 - a) occupation and normal use are prevented by the repairs/renovations;

¹ A full overview of the UHTA can be found here: <https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>.

² City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 3.1.

³ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 4.1.

⁴ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 4.1.

⁵ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 2.1.

⁶ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 3.3.

- b) all necessary permits have been issued; and
 - c) the City's Chief Building Official believes that the repairs/renovations are being actively carried out without unnecessary delay.
3. Principal resident is in a hospital, long-term or supportive care facility for at least six months of the taxation year. This exemption can be claimed for up to two consecutive taxation years.
 4. Legal ownership of the property was transferred to an arm's length transferee in the taxation year.
 5. The vacant property is required to be occupied by its owner for employment for at least six months in the taxation year who has a principal residence outside the GTA.
 6. A court order prevents the occupancy of the property for at least six months of the taxation year.

The intentions behind this list are clear: if you are actively improving the property or certain life events have occurred, such as the death of the owner or transfer to long term care, then the VHT is not expected to apply. While the intentions are good, there are a few underlying assumptions built into these. For those individuals who undertake renovations outside of the permitted process with the City of Toronto, no exemption will be provided. Given the prevalence of 'illegal' basement suites in Toronto, it begs the question if this is intended to encourage renovators to pursue a permitted process for the creation of additional suites. If so, there may be potential for some owners be more reluctant to renovate or improve spaces, due to permitting costs and delays.

Additionally, the exemption for owners residing in a long-term care facility is only available for a consecutive two-year period. While this may seem like a reasonable period, much of our aging population can live for periods much longer, and the transfer, sale, or renting out of a property may be beyond their means during this time. Without the support of family members or paid help, it can seem daunting for those living in long-term care to part with potentially one of their biggest assets or manage a landlord-tenant relationship.

How to Declare

The declaration is submitted through the online declaration portal of the City of Toronto, or through a paper declaration form.⁷ Owners who fail to make a declaration by the deadline and/or provide supporting documentation will have their property deemed vacant and be subject to the tax.⁸ The deadline this year was February 28, 2023.⁹ Owners who are obligated to pay the tax will have received a Vacant Home Tax Notice at the end of March and should

⁷ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 4.1(B).

⁸ City of Toronto, by-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 4.2.

⁹ City of Toronto, "Vacant Home Tax", online: *City of Toronto* <<https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>>.

have made the appropriate payments in three instalments over the summer months.¹⁰ Failing to declare or making a false declaration bears a risk of a fine of \$250.00 to \$10,000.00.¹¹ Any property declared as occupied may be inspected by the City of Toronto through an audit procedure to ensure compliance.¹² Those chosen for an audit must provide information to support their claim of occupancy or an exemption.¹³

Notice of Complaint and Appeals

If an individual disagrees with their Vacant Home Tax Notice, they can file a Notice of Complaint to trigger a review by the City of Toronto.¹⁴ Complaints can be filed not only to dispute the application of the VHT, but also to correct mistaken filings or a failure to file the declaration.¹⁵ There is a appeals process should an owner disagree with the decision following the Notice of Complaint filings. This appeals process is only available for a 90-day period following the receipt of the decision from the complaint filings.¹⁶ The appeal is limited to the same issues raised in the Notice of Complaint unless the outcome of the complaint lead to a reassessment or varied assessment.¹⁷

Change of Ownership

During a conveyancing transaction, it is prudent for real estate lawyers to ensure that the declaration has been submitted for the property. The timing of the transaction will determine who will receive the notice. Declarations are due on February 2nd for the preceding calendar year.¹⁸ As the VHT may form a lien against the property, if the closing occurs prior to this declaration deadline, the vendor must submit the declaration before the closing.¹⁹ If the closing occurs after the declaration deadline (i.e. during the period from February 3rd to December 31st) the purchaser must file a declaration in the following year and can indicate the “transfer of legal ownership” exemption in the current year.²⁰ Real estate lawyers should ensure that they get the appropriate declarations from vendors prior to closing to ensure the correct filing of the declarations.

Conclusion

While the VHT is something that will impact practice for lawyers in the real estate bar, it is also something that estates lawyers and corporate counsel should be aware of. Lawyers with clients who run rental properties as their business should take extra caution to advise clients

¹⁰ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 1.1.

¹¹ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 11.1

¹² City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 7.2.

¹³ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 7.2.

¹⁴ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 9.1.

¹⁵ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 9.1.

¹⁶ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 10.1.

¹⁷ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), ss 10.4-10.5.

¹⁸ City of Toronto, By-law No 97-2022, *Vacant Home Tax* (3 February 2022), s 1.1.

¹⁹ City of Toronto, “Vacant Home Tax”, online: *City of Toronto* <<https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>>.

²⁰ City of Toronto, “Vacant Home Tax”, online: *City of Toronto* <<https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>>.

appropriately given the various exemptions. The online filing portal leaves little excuse for failure to declare and lawyers should encourage clients to make timely filings to avoid the Notice of Complaint and further appeals process. The number of properties selected for audit by the City remains to be seen, but lawyers may be called upon to assist clients through this process as the City starts providing auditing properties and requiring additional documentation to support client declarations.