

Land Transfer Tax In Ontario

First Time Buyers vs. Home Purchasers who have Previously Owned Property

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The following is intended to be only a brief review of the Land Transfer Tax in Ontario. The intended readers are primarily real estate and mortgage professionals. For complex inquiries or questions please contact the author.

Land transfer tax is paid in Ontario when a person purchases an interest in Land. Land includes buildings for the purpose of calculating the tax, for example, a high rise condominium. Land transfer tax is based on the amount paid for the land and any amount remaining on any mortgage or debt assumed to buy the land.

The higher the amount paid to buy the land or value of any mortgages assumed, the higher the land transfer tax. Without going into the formula used to calculate the tax here are some examples of land transfer taxes payable based on different home purchase prices.

PURCHASE PRICE	LAND TRANSFER TAX PAYABLE
\$150,000.00	\$1225.00
\$250,000.00	\$1975.00
\$350,000.00	\$3725.00
\$450,000.00	\$5475.00

Pursuant to the *Land Transfer Tax Act*, individuals who have previously owned an Eligible Home as defined by the Act, anywhere in the world, must pay land transfer tax.

FIRST TIME BUYERS

Individuals and spouses who are first time home buyers under the *Land Transfer Tax Act* may qualify for a \$2000.00 exemption from the tax. Whether the property is being purchased by an individual or by spouses, the maximum exemption per property is \$2000.00. Prior to the closing of their purchase, first time buyers will execute an affidavit swearing to their status as first time buyers. The lawyer submits this document on behalf of the first time buyers.

The following are examples of the application of the *Land Transfer Tax Act* and the land transfer tax exemption rules surrounding first time buyers:

1. Scenario: A single first time home buyer purchases a home for \$150,000.00.
Result: Normally the land transfer tax payable is \$1225.00. As a first time buyer the purchaser is entitled to an exemption up to \$2000.00, the land transfer tax payable is therefore \$0.00.
2. Scenario: A single first time home buyer purchases a home for \$350,000.00.
Result: Normally the land transfer tax payable is \$3725. Deducting the \$2000.00 exemption results in land transfer tax of \$1725.00 payable.
3. Scenario: First time home buyer married couple purchases for \$350,000.00.
Result: Same as above for a single person. The maximum exemption is \$2000.00. Therefore land transfer tax payable is \$1725.00.
4. Scenario: A married couple purchases a home for \$350,000.00. Wife is not a first time buyer but husband is.
Result: The *Land Transfer Tax Act* prescribes that if a first time purchaser has a spouse, that spouse cannot have owned a home, or had any interest in a home anywhere in the world, while he or she was the purchaser's spouse. If this is the case, no refund is available to either spouse. For the purposes of the *Land Transfer Tax Act*, Spouse is defined as people married to each other or unmarried people who have lived together continuously for a period of not less than three years or have been in a relationship of some permanence if they are the natural or adoptive parents of a child. For example, if the couple does not fit the definition of Spouse as they have been living common law for only a year, or if a home was owned by the home owner spouse not while the couple fit the definition of Spouse, then the first time buyer, in the case of joint tenancy ownership, can qualify for up to 50% of the total land transfer tax exemption. In the case of the above purchase, the land transfer tax payable is \$3725.00, we deduct one half of the maximum exemption and therefore land transfer tax payable is \$2725.00.
5. Scenario: Husband and wife as first time buyers want to purchase a home. They do not qualify for a mortgage on their own. The wife's mother wants to help her daughter and son in law purchase the home. The bank insists that the wife's mother go on title to the property as a part owner if she will be using her credit and employment history to help her daughter and son in law qualify for a mortgage.
Result: The parties should consult their lawyer. A possible scenario would be for the husband and wife to take title to the property as joint tenants. This ownership would be over a 98% share of the property. The wife's mother will take title to the property as a 2% tenant in common owner. This ownership strategy allows the husband and wife to take advantage of the of their land transfer tax exemption as much as possible. For example, if the purchase price on the home is \$200,000.00, the land transfer tax payable is normally \$1,725.00. The wife's mother, as a 2% owner, pays 2% of the total land transfer tax being \$34.50. The first time buyer husband and wife take advantage of their land transfer tax exemption and owe \$0.00 in land transfer tax.

6. Scenario: Husband and wife have never owned a home in Canada. They are new Canadians and moved here from South America. In South America they owned a modest home.
Result: *The Land Transfer Tax Act* prescribes that a person qualifying for an exemption cannot have owned an Eligible Home anywhere in the world. Therefore there is no exemption available.

7. Scenario: A husband and wife have never owned a home. They wish to purchase in Ontario. They own a time share property in Florida along with 15 other couples. They visit the property only once every 2 years in the off season.
Result: The *Land Transfer Tax Act* states that the first time buyers cannot have owned an Eligible Home, it is important to check the definition of Eligible Home in the Act. One of the definitions of Eligible Home in the Act is “*A share or shares of the capital stock of a cooperative corporation if the share or shares are acquired for the purpose of acquiring the right to in-habit a housing unit owned by the corporation.*” This is an unfortunate example of the application of the Act. Consultations with Government officials have confirmed that time share interests void one’s right to a land transfer tax exemption. A home purchaser may appeal to the Government for special consideration but the tax must be paid up front and there is no guarantee of the success of the appeal.

Thank-you for reading. Please contact the undersigned for further inquiries. We would ask that you consider our firm for any future real estate, wills and estates, and/or corporate law assistance you, your clients, or your family may require.

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