

RESIDENTIAL REAL ESTATE PRACTICE GROUP

SPECULATION TAX EXEMPTIONS: "PAPER TENANCIES"

Introduced in 2018, the BC speculation tax targets the owners of unoccupied residential properties. Individuals, companies, and trusts that own residential properties within the Kelowna and West Kelowna, amongst other geographic regions, are required to pay the tax or otherwise prove that they qualify for an exemption.

One of the ways that an owner of a property can be exempt from the speculation tax is to have a tenant occupy the property for at least six months in a year (the threshold for 2018 was only three months). This is known commonly as the "long term rental exemption" or the "occupied by a tenant exemption".

A question we have frequently received contemplates avoiding the speculation tax through the creation of what can accurately be described as a "paper tenancy". Please see the following page for further detail.



Speculation Tax Exemptions: "Paper Tenancies"

Scenario:

Homeowner A ("Alan") has a property that is subject to the speculation tax and has a friend, Homeowner B ("Betty") who also has a property that is subject to the speculation tax.

Plan:

To avoid paying the speculation tax, Alan decides that he is going to "rent" his property to Betty, and that Betty will "rent" her property to Alan. They will pay each other rent but neither of them will move into the other's property. When they fill out their speculation tax declaration, they intend to claim an exemption due to the properties being "occupied by renters".

Result:

Importantly, in order for a tenant's use of the property in a month to qualify toward the six-month threshold for the exemption, the property must be the place that the tenant **makes his or her home in each of those months**. This means the tenant has to **actually live** in the property for at least six months in a year.

The fact that the parties may have a written tenancy agreement and the tenant is paying rent will not be enough. Such "paper tenancies" as we like to refer to them – as in the tenancy exists only on paper – do not satisfy the rules to qualify for an exemption.

Consequences:

There would be significant risks to Alan and Betty if they were to file their speculation tax declarations on the basis that their properties were occupied by a tenant.

If the Ministry of Finance were to issue re-assessments in respect of their declarations, Alan and Betty would have the burden of proving that the tenancies were more than "**paper tenancies**". Because they would be unable to legitimately provide such proof, Alan and Betty would each be subject to not only the tax that they avoided but also likely "gross negligence" penalties equal to 100% of that same tax again, plus interest on both amounts.

This is provided as information only and should not be construed as legal advice. You should consult with a lawyer to provide you with specific advice for your own situation. For more information, please contact any member of the Residential Real Estate Practice Group at Pushor Mitchell LLP by calling (250) 762 – 2108 or visiting our website at www.pushormitchell.com/service/real-estate/.