

LAND TRANSFER TAX AFFIDAVIT UPDATES, COMING DECEMBER 16, 2017

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The following practical guide sets out some pending changes to the Land Transfer Tax statements in Teraview. These changes relate not just to the Non-Resident Speculation Tax (NRST), but to the broader application of Land Transfer Tax generally.

Statements discussed below will be loaded into the system on Saturday, December 16, 2017. With one exception, there will be a transitional period and the new statements will not become compulsory until December 30, 2017. Payment of NRST will be possible as part of electronic registrations on December 30, 2017.

FIRST-TIME HOME BUYER REBATE – AMENDED STATEMENT 9131

Statement 9131 relating to first-time home buyer rebate entitlements is being amended to include a more detailed explanatory note relating to entitlement to the rebate:

Current Text:

(b) The spouse(s) NAME(S) previously owned an eligible home at ADDRESS, but sold it on YYYY/MM/DD (Note: In order to qualify for a refund, any spouse must have sold any eligible home prior to becoming the spouse of the first time home purchaser)

New Text:

(b) The spouse(s) NAME(S) previously owned an eligible home at ADDRESS, but sold it on YYYY/MM/DD (Note: In order for a qualifying home purchaser to claim the entitlement of a spouse pursuant to clause 9.2(3)(b) of the Act, the spouse must have sold any eligible home prior to becoming the spouse of the qualifying home purchaser, and if the agreement of purchase and sale was entered into after November 14, 2016, and the conveyance occurs on or after January 1, 2017, the spouse must be a Canadian citizen or a permanent resident of Canada on the date of the conveyance or disposition.)

This update on December 16 will have the effect of invalidating some previous signatures. Per Teraview bulletin 17-29 (Dec. 11/17), "If, prior to December 16, you have any signed work in progress Instruments with statement 9131 selected, you will have to resign your Instrument. If you do not resign the Instrument, you will receive the following error at registration: 'Verification of Party From Completor signature failed'."

Transactions closing on or after December 16, 2017 will accordingly require fresh signatures if Statement 9131 has been selected.

NRST STATEMENTS TO FACILITATE PAYMENT THROUGH TERAVIEW – STATEMENTS 9170 TO 9181

Statements in support of the Non-Resident Speculation Tax will be introduced on December 16, 2017. They are detailed in the attached Ministry of Finance memorandum, "Remitting Non-Resident Speculation Tax Through Teraview."

Statements of Statements 9170 to 9172 address situations of the NRST being payable. Statements 9173 through 9181 address exemptions from NRST.

All transfers across the province will need to complete these statements. Those outside of the geographical region of NRST's applicability should complete Statements 9173 and 9174.

These statements will not become mandatory until December 30, 2017, thus any Land Transfer Tax affidavits that currently have the "free text" statement in Statement 9151 can continue to be registered until the end of the year. Practitioners are encouraged to transition to the new statements as soon as possible.

An upgrade to Teraview on December 30, 2017 will permit registrations after that date to be paid through Teraview in the same manner as Land Transfer Tax. Until that time, NRST payments must still be made in person at the Ministry of Finance offices at Oshawa.

Payment logistics of NRST on *Registry Act* transactions should be confirmed in advance, as it is understood that after December 30, 2017, the collection of NRST on paper-based registrations will remain in person at the Ministry of Finance offices at Oshawa, and will not be accepted at the local Land Registry Office.

LAND TRANSFER TAX ACT RECORD KEEPING REQUIREMENTS – STATEMENTS 9182 TO 9184

Three new statements are detailed in the memorandum "Acknowledging Record Keeping Obligations: Land Transfer Tax Act" (attached). These statements of the transferee acknowledge their obligation "to keep such documents, records and accounts in such form and containing such information as will enable an accurate determination of taxes payable under the Act" for a period of seven years, and to make them available to the Ministry of Finance.

These statements apply to all matters of Land Transfer Tax, not just the NRST.

A custodian of these records may also be designated by the transferee. The solicitor may be the custodian. Acting in such custodial capacity may impose on solicitor-custodians a burden to deal with future Ministry of Finance audits, and should not be undertaken lightly.

Clarification has been sought of the Ministry of Finance as to what documents, form and information they contemplate being kept by the transferee, so that this information may be communicated to transferee clients in the course of engagement and reporting letters. Any clarification will be provided once received.

These statements will be optional from December 16, 2017 to December 30, 2017. They will be required for all Transfers tendered for registration after that date.

SOLICITOR OBLIGATIONS – STATEMENT 9185

In situations of a solicitor acting as the declarant of the Land Transfer Tax affidavit, the attached memorandum "Solicitor Confirmation of Obligations: Law Society Rules of Professional Conduct" details a new statement whereby the lawyer must confirm that they are in compliance with the *Rules of Professional Conduct*, and have reviewed the transferees' Land Transfer Tax obligations with them.

Given the limited circumstances in which solicitors are the declarants of Land Transfer Tax affidavits, this statement should be seldom used. It should not be completed in situations of the solicitor not serving as the declarant of the affidavit.