

FOCUS

Real Property

Test yourself with the land transfer tax quiz

If you practice commercial real estate law, chances are that you've had to consider some concepts concerning the *Land Transfer Tax Act*, R.S.O. 1990, c.L.6, as amended. What is the "value of the consideration"? Is this transaction exempt? Is this even a taxable "conveyance" of "land"?

Test yourself and see if you know whether, and when, land transfer tax is payable in the following perhaps less common situations:

1. A disposition of a beneficial interest between affiliated corporations

Land transfer tax is payable at the time of disposition in this circumstance unless the corporation acquiring the beneficial interest applies for, and the Ministry of Finance grants, a deferral of the tax payable. Under subs. 3(9) of the Act, the minister can defer the payment if the corporation acquiring the beneficial interest meets prescribed criteria, including undertaking that it will continue to own the beneficial interest and will remain an affiliate of the corporation making the disposition for a three year period, submitting security for the tax (i.e. a letter of credit), and not registering any conveyance, instrument or electronic document evidencing the disposition.



SYLVIA
ADRIANO



BRADLEY
MCLELLAN



Under subs. 3(11) of the Act, at the end of the three-year time period, the minister must return the security provided and the amount of the tax deferred is no longer owing under the Act if the minister is of the opinion that the undertaking given has been satisfied and no conveyance or instrument evidencing the disposition of the beneficial interest in land was registered.

2. The registration of an assignment of lease

When an assignment of lease is registered for a lease with an existing, unexpired term (as of the date of the assignment) that can exceed 50 years, land transfer tax is payable upon registration of the Notice of Assignment of Lessee's Interest in a Lease. The

tax is calculated on the fair market value of the land to which the lease extends, as determined at the time of registration.

Subsection 1(6) of the Act provides that tax is payable on "the registration of the transfer of the interest of a lessee under a lease of land...or a notice of any kind in writing signifying the existence of a transfer of the interest of a lessee under a lease of land" if, at the time of registration, the unexpired term of the lease can exceed 50 years, including any renewal or extension rights of the term.

3. The granting of a lease containing a right of first refusal or option to purchase

Tax is payable upon the registration of a lease containing an option to purchase, regardless of the term or potential term of the lease. This is because the definition of "convey" in the Act includes "the giving of an option upon or with respect to any land in Ontario." However, the tax is payable upon the consideration that passes to acquire the option and not on the fair market value of the land, as would be the case for a lease over 50 years.

No tax is payable upon the registration of a lease with a right of first refusal in favour of the

tenant. A right of first refusal is not equivalent to an option to purchase. For example, if no third party offer was ever submitted to the landlord for the leased lands, the tenant would never have an opportunity to exercise his or her right in a typical right of first refusal situation.

4. The registration of a Notice of Sublease for a term exceeding 50 years

According to the Ministry of Finance's Land and Resources Taxes Section, land transfer tax is payable upon the registration of a Notice of Sublease with a term that can exceed 50 years, including renewal and extension rights.

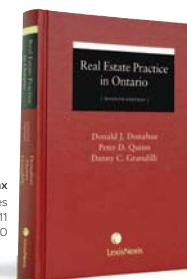
This is the case even where a notice of the head lease was registered with a potential term that exceeds 50 years and land transfer tax had already been paid upon registration of notice of the head lease. According to the ministry, tax is payable in this situation since a "sublease" is no different from a "lease" pursuant to the Act, and it would consider the granting of a long-term sublease to be a grant of a new interest in land, even if the land has already been leased pursuant to a head lease. ■

Sylvia Adriano and Bradley McLellan are both partners in the Real Estate Group at Weir-Foulds LLP.

Butterworths®

Real Estate Practice in Ontario, 7th Edition

Donald J. Donahue, Q.C.,
Peter D. Quinn, B.A., LL.B. &
Danny C. Grandilli, B.A., J.D.



\$135 + tax
480 Pages
Hardcover | March 2011
ISBN: 9780433467700

A Comprehensive Overview of Procedural and Substantive Issues

"Donahue and Quinn" has been within arm's reach of real estate practitioners, conveyancers, articling students, paralegals and law clerks for over 35 years. Six previous editions have tracked the evolution of Ontario real estate law and provided comprehensive and expert guidance on issues that arise day-to-day.

This new edition continues to be the real estate authority providing a comprehensive overview of the myriad of procedural and substantive issues that underlie every real estate transaction. It features discussion of changes to the electronic registration system and document automation, land transfer tax, HST and other tax programs, and recent issues of interest to the profession such as real estate fraud. It also includes discussion of recent developments affecting:

- Tax issues
- Easements
- Real estate agents
- Agreement of Purchase and Sale
- Sales of condominium units and new homes
- Proper execution of documents for registration

Order Today! Take advantage of the 30-Day Risk-Free[†] Examination. Visit www.lexisnexis.ca/bookstore or call 1-800-668-6481



[†] Pre-payment required for first-time purchasers.

Price and other details are subject to change without notice. We pay shipping and handling if payment accompanies order.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under licence. Other products or services may be trademarks or registered trademarks of their respective companies. Butterworths is a registered trademark of Reed Elsevier (U.K.) Limited and its affiliated companies. © 2011 LexisNexis Canada Inc. All rights reserved.



An oddity in *Real Property Law*

Green thumb liability

Growing your own organic vegetables at home could end up costing you a lot more than going to the grocery store, at least in Oak Park, Mich.

Julie Bass, plant lover and mother of six, was charged with a misdemeanour for violating the City of Oak Park's planning code because she dug out a portion of her front yard to plant zucchinis, tomatoes and other garden vegetables.



The city claimed that vegetables are not "suitable" for the front yard. Bass faced the possibility of 93 days in jail, but luckily for her the city dismissed the case, according to montrealgazette.com.

Bass created a blog and Face-

book page titled "Oak Park Hates Veggies" which garnered attention and support from around the world. She even had to go so far as to ask her supporters to stop harassing city officials on her behalf. —Anum Lateef