

Property transfer tax could disrupt deals yet to close

Realtors warn of unintended consequences

B.C.'s new tax for foreign buyers could end up causing a "huge mess" that hurts Canadian property owners if the province doesn't exempt soon-to-close contracts and condo presale agreements, real estate insiders say.



NICK PROCAYLO Real estate insiders warn the new property transfer tax will affect foreign buyers who entered presale agreements with condo developers but will not be able to close the sale before the Aug. 2 deadline.

The tax, announced Monday by the B.C. government, imposes an additional 15 per cent property transfer tax on sales of residential property to foreign buyers that close and are registered after Aug. 2.

"I personally have two (Canadian) clients who have signed contracts and have had the subjects removed, so these are firm and binding contracts, but unfortunately they do not close until later in August," said Dan Morrison, president of the Real Estate Board of Greater Vancouver.

Morrison said because the tax is retroactive for contracts in the process of being finalized, it could hypothetically harm a Canadian seller if a foreign buyer who put \$100,000 down on a deal were to renege on closing because he is being billed an extra \$300,000 under the new tax law.

Morrison said if the buyer walks away, it would leave the Canadian seller — who may have already begun the process of building or purchasing a house elsewhere — left trying to find a new buyer.

“They can sue the buyer but if they’re a foreign buyer, good luck trying to find them, let alone trying to sue them,” he said. “Because of the domino effect, it could end up affecting five different deals down the chain and you’ve got a huge mess,” he said. “These are not foreigners we’re hurting, they’re local Canadians.

“There could be hundreds and hundreds of these situations out there,” he said.

Morrison and others in the B.C. real estate industry say the tax could also hurt presales of condos — those deals that were entered into with condo developers months or years ago but close after Aug. 2.

“Presales are a big part of our business,” said Neil Chrystal, president and CEO of Polygon Homes. “The potential is there for chaos in the market.

“It would be so easy to grandfather all existing contracts. It’s just not fair to those people who may have bought (through a presale) two years ago.”

Royal LePage agent Adil Dinani agrees.

“It’s a pretty big blunder,” he said. “What’s the fallout going to look like? Changes in tax policies have never been retroactive before.”

Figures released by Finance Minister Mike de Jong on Tuesday showed 10 per cent of the total value of residences bought in Metro Vancouver were by non-Canadians in the five-week period between June 10 and July 14.

NDP Leader John Horgan said the new tax — which he calls a “hamfisted” attempt to curb speculation — has a huge loophole that would allow foreign buyers to buy a condo through a presale and then flip it for a profit before closing, thereby dodging the property transfer tax. “It’s not capturing the speculator,” he said.

An anti-speculation tax should apply to each of those reassignments, and not just on closing because that would harm eventual homebuyers, such as an American university professor who moves to Vancouver for a temporary contract and contributes to the economy, Horgan said.

“How do you ferret out speculative buyers who are laundering money or just out to create capital but not penalize contributing members of society?” he said.

“If I’m an international investor looking to avoid that tax,” said NDP MLA David Eby, “I’m going to buy a presale condo, hold it until the building is near completion and then sell it just before completion and not have to pay the tax. The ultimate buyer is the one who registers at the land title office.”

De Jong confirmed Tuesday that any transaction registered at the land title office after Aug. 2 will be taxed and said existing contracts, or presales, won’t be exempt.

He also admitted people recruited to work in B.C. on a work visa or student visa would pay the foreign buyer tax, but said the government chose the best method it could for defining who is eligible.

“There will be impacts,” he said. “There will be reputational impacts that relate to how people view us. I think that is true of other jurisdictions and has occurred in other jurisdictions where a foreign purchase tax has been applied.”

Vancouver lawyer Peter Anderson said governments are free to impose a transfer tax for foreigners but, “when significant land transfer tax policy changes have occurred in the past, there has been a recognition that transactions already in the pipeline, i.e., where a contract has already been signed, should be given special treatment.”

Buyers who have already signed contracts “will be stuck having to pay the tax without the ability to renegotiate the purchase price to reflect the higher cost,” he said in an email.

“Some purchasers will refuse or be unable to complete as a result. This could then trigger further failures,” if sellers were relying on sales proceeds to complete purchases of their own.

“The solution would be to grandfather existing contracts,” he said.