



Transactions for Nominal Consideration

This bulletin was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

- This bulletin clarifies the application of the *Land Transfer Tax Act* (Act) on certain transfers of land where nominal consideration is passing between the transferee and transferor.
- This bulletin provides general information. It is not exhaustive and should not be considered as a substitute for the *Land Transfer Tax Act* and its regulations.

Definitions

The following words/phrases are not defined in the *Land Transfer Tax Act* (Act). These definitions have been provided to assist the reader of this bulletin but **do not include all possible meanings/usages** relating to the word/phrase being defined:

encumbrance - a claim, lien, charge or liability attached to and binding real property (i.e. mortgage, lien, security interest, unpaid taxes, etc.).

co-tenancy - a tenancy by several distinct titles but by unity of possession.

intestacy - the state or condition of dying without having made a valid will, or without having disposed by will of a part of his/her property.

joint tenancy - a type of ownership of real or personal property by two or more persons in which each owns an undivided interest in the whole and attached to which is the right of survivorship.

tenancy in common - a form of ownership whereby each tenant (i.e., owner) holds an undivided interest in property. Unlike a joint tenancy, the interest of a tenant in common does not terminate upon his or her prior death (i.e., there is no right of survivorship).

testacy - the state or condition of leaving a will at one's death.

Gifts

The Act does not exempt gifts of land from land transfer tax. However, if on a conveyance there is no consideration passing in any form whatsoever (either directly or indirectly) between the parties, then no tax is payable. Since the rate of tax is applied to the "nil" value of the consideration, the resulting computed tax payable is also "nil". The exception to this is where the Act deems the consideration passing to be the fair market value of the land such as transfers from a corporation to any of its shareholders or leases over 50 years.

For purposes of the Act, consideration includes the assumption of any liabilities. If there is an outstanding encumbrance on the lands, tax will be payable on the amount outstanding at the time of registration, regardless of the relationship between the parties (except for certain transfers between spouses or same-sex partners pursuant to Regulation 696, R.R.O. 1990). This amount of any liabilities assumed is set out in paragraph 4(b)(i) of the *Affidavit of Residence and of Value of the Consideration* (LTT affidavit).

Where there is no consideration passing whatsoever, the consideration will be set out as “nil” in paragraph 4 of the LTT affidavit. The relationship between the parties (e.g. father to son, brother to sister, friend to friend) and the reason for the transfer are to be set out in paragraph 5 of the affidavit. Note: gifts of land for “nil” consideration may occur between arms length parties, (e.g. individual to a charity). Paragraph 6 of the affidavit must be completed to show whether the land is subject to any encumbrance.

Where there is an unregistered disposition of a beneficial interest in land as a result of gift, the provisions of section 3 of the Act apply. In these cases the consideration will be determined in the same manner set out above. A return must be filed and the tax paid on the consideration.

Simple Change in Legal Tenure

Simple changes in the form of legal tenure of land between the same parties from tenancy in common to joint tenancy or vice-versa, are not conveyances of land within the meaning of subsection 1(1) of the Act. The consideration will be set out as “nil” in paragraph 4 of the LTT affidavit, and paragraph 7 must state that the conveyance satisfies these conditions.

Testacy and Intestacy

When a conveyance of land is registered from the personal representative of a deceased person to a transferee who is receiving the property in satisfaction of all or part of his/her beneficial interest in the estate of a deceased person, it is not subject to tax under the Act. The consideration will be set out as “nil” in paragraph 4 of the LTT affidavit, and paragraph 7 must state that the conveyance satisfies these conditions.

Correcting Deed

Where a deed is being registered to correct a description that had been incorrectly set out in a previous instrument and there is no consideration passing, there will be no tax payable if the tax has been properly paid or exempted on the previous document. The consideration will be set out as “nil” in paragraph 4 of the LTT affidavit and paragraph 7 must state that the conveyance satisfies these conditions.

Partitioning of a Co-tenancy

Where a partitioning of land takes place and each or any of the “co-tenants” receives land equal in value to their original interest in the whole parcel, no tax will be payable. This applies where one parcel of land is partitioned, i.e. that the partitioned lands are contiguous.

In the case of a partitioning, the consideration will be set out as “nil” in paragraph 4 of the LTT affidavit, and paragraph 7 must state that the conveyance satisfies the conditions that the conveyance represents a partitioning, and that the transferee is receiving land equal in value to his/her original interest in the whole parcel.

Dissolution of a Partnership

The Ministry takes the position that a partnership is not a legal entity and that the partners have a direct interest in the lands in proportion to their interest in the partnership. Therefore partnerships are treated as tenancies in common for purposes of the tax. Where a dissolution of a partnership that owns land takes place and each or any of the partners receives land equal in value to their original interest in the whole parcel, no tax will be payable. This applies where one parcel of land is distributed among the partners, i.e. that the distributed lands are contiguous.

In these cases, the consideration will be set out as “nil” in paragraph 4 of the LTT affidavit, and paragraph 7 must state that the conveyance satisfies the conditions that the conveyance represents a dissolution of a partnership, and that the transferee is receiving land equal in value to his/her original interest in the whole parcel.

This publication contains general information and is provided for convenience and guidance. It is not a substitute for the provisions of the Act or regulations. Should there be a discrepancy between this document and the Act and its regulations, the provisions of the Act and its regulations apply.

Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

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This bulletin and various other English and French tax materials published by the Ministry of Revenue may be obtained online at ontario.ca/revenue.

The *Land Transfer Tax Act* and Ontario's other public statutes and regulations may be obtained online at www.e-laws.gov.on.ca.

Ce bulletin est disponible en français.

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