



Final Orders of Foreclosure and Quitclaims in Lieu of Foreclosures

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

- This bulletin outlines compliance requirements in applying provisions of the *Land Transfer Tax Act* (the “Act”) regarding final orders of foreclosure and transfers to mortgagees as a result of a default on a mortgage.
- The Act defines “value of the consideration” in subsection 1(1), clause (a) to include,
 - a) the gross sale price or the amount expressed in money of any consideration given or to be given for the conveyance by or on behalf of the transferee and the value expressed in money of any liability assumed or undertaken by or on behalf of the transferee as part of the arrangement relating to the conveyance and the value expressed in money of any benefit of whatsoever kind conferred directly or indirectly by the transferee on any person as part of the arrangement relating to the conveyance,”
- 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.

Final Orders of Foreclosure

In the case of a final order of foreclosure, clause (b) of the definition of “value of the consideration” in subsection 1(1) of the Act, sets out the value of consideration to be the lesser of:

- i) the value of the consideration determined under clause (a) plus the amount owed under the mortgage or charge at the time it is foreclosed, including principal, interest and all other costs and expenses other than municipal taxes, secured by the mortgage or charge and owing at the time plus the amount owing similarly calculated under any mortgage or charge that is subsequent in priority to the mortgage or charge in respect of which the final order of foreclosure is made and that is held by the mortgagee or chargee in whose favour the final order of foreclosure that is registered is made, or
- ii) an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the mortgage or charge.

Quitclaims in Lieu of Foreclosures (transfers to a mortgagee or chargee from a mortgagor or chargor as a result of a default on a mortgage or charge)

In the case of a conveyance of land to the mortgagee or chargee under a mortgage or charge affecting the land when the conveyance is given in satisfaction of the amount owed under the mortgage or charge, clause (b.1) of the definition of “value of the consideration” in subsection 1(1) of the Act, sets out the value of the consideration to be the lesser of:

- i) the value of the consideration determined under clause (a) plus the amount owed under the mortgage or charge at the time the conveyance is made, including principal, interest and all other costs or expenses other than municipal taxes, secured by the mortgage or charge and owing at the time plus the amount owing similarly calculated under any other mortgage or charge that is subsequent in priority to the mortgage or charge in respect of which the conveyance is made, if that mortgage or charge is held by the mortgagee or chargee to whom the conveyance is made, or
- ii) an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the conveyance.

Documentation required by the Ministry for final orders of foreclosure and quitclaims in lieu of foreclosures

a) **Registered Conveyances**

In the case of a conveyance which will be registered, where the fair market value of the land is used as the value of the consideration, the tax must be paid directly to the Ministry of Revenue and documents endorsed by the Ministry. The following documentation is required:

1. Original, duplicate and one photocopy of the document to be registered.
2. Three original signed Affidavits of Residence and of Value of the Consideration setting out the fair market value.
3. An undertaking made to the Ministry, to accept the payment of the tax based on a tentative value of the consideration ([see copy attached](#)). This undertaking is required because the reported fair market value of the land is subject to Ministry confirmation.
4. Copy of documentation that supports the valuation, such as an appraisal, if available.
5. Cheque for applicable tax.

Note: Documentation is not required to be submitted to the ministry for registered conveyances where the tax is calculated under subclause (i) of either clause (b) or (b.1) of the definition of “value of the consideration”, in subsection 1(1) of the Act.

b) **Unregistered dispositions of a beneficial interest in land**

In the case of an unregistered disposition of a beneficial interest in land which resulted from a final order of foreclosure, the following documentation is required:

1. Return on the acquisition of a beneficial interest in land.
2. Copy of the final order of foreclosure.
3. If fair market value is being used as the consideration, the valuation is subject to the Ministry's confirmation and an undertaking is required ([see copy attached](#)).
4. Copy of documentation that supports the valuation such as an appraisal, if available.
5. Cheque for applicable tax.
6. Other documentation as may be required by the Ministry.

Note: In the case of a final order of foreclosure, the date of disposition is the date the order was issued. Therefore, if registration has not occurred within thirty days of that date, then the transaction is a taxable disposition under section 3 of the Act and a return must be filed.

Additional Information

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

Ministry of Revenue
Land Transfer Tax Program
33 King Street West
Oshawa, ON L1H 8H9

Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Fax: 905 436-4511
Teletypewriter (TTY): 1 800 263-7776

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.

© Queen's Printer for Ontario, 2000

TO: Assistant Deputy Minister
Land Transfer Tax Program
Ministry of Revenue
P.O. Box 625
33 King Street West
Oshawa, Ontario
L1H 8H9

DATE
NAME
FIRM
ADDRESS
PHONE NO.

IN THE MATTER OF the *Land Transfer Tax Act*, R.S.O. 1990, c. L.6.

AND IN THE MATTER OF a conveyance from _____

to _____ of Lot _____, Plan _____ or

Concession _____ Municipality _____ by _____

dated _____.

In consideration of the acceptance by the Land Transfer Tax Section of tax based upon a tentative value of consideration in the amount of \$_____ and the endorsement of the above Instrument by said Section, we hereby undertake as follows:

1. To present such documentation, accounting records and other information relating to the facts and circumstances of the transaction as may be necessary to enable the Land Transfer Tax Section to reach a decision as to the value of the consideration for the purpose of the *Land Transfer Tax Act*.
2. To pay such further Land Transfer Tax as may be exigible, together with interest thereon as provided by the Statute, following perusal of such evidence, and to deliver an amended Land Transfer Tax Affidavit of Residence and Value of the Consideration in respect of any such tax.

We acknowledge that in the event the Minister endorses the conveyance(s) as requested, the Minister does so only for the purpose of facilitating registration, this undertaking stands as security for tax determined by the Minister to be exigible, no final determination of tax liability has been made and the endorsement will not prohibit the Minister from subsequently issuing an assessment for the tax determined to be exigible.

SIGNED _____ (Seal)

WITNESSED _____