

# Guide to the Requirements to Evidence NIL Value of Consideration for Conveyances Involving Trusts

## Land Transfer Tax Act

In order to evidence “NIL” value of consideration for land transfer tax purposes the facts and circumstances should substantiate that the conveyance is a transfer between a trustee and a beneficial owner, or between two trustees for the same beneficial owner. The beneficial owner must be the same beneficial owner during the entire period the lands have been or will be registered in the name of the trustee(s). In order for the conveyance to be registered without payment of the tax the following are required:

1. An affidavit (supplemental to the Land Transfer Tax Affidavit) which will set out a brief legal description of the lands involved together with a statement of the facts and circumstances of the trust (including in detail the reasons for the transfer taking place). This affidavit may be expanded as determined by the type of transaction and may be made by the transferor, transferee or the solicitor for either.

The affidavit **must** also contain the following statements:

- (A) that all the monies and other consideration utilized in the acquisition of the land relating to the conveyance were beneficially owned by the beneficial owner (*set out name*) and the source of the funds was (*set out name*) (*If the consideration was advanced or emanated from other than the beneficial owner, explain circumstances*);
- (B) that (*set out name*) is the beneficial owner of the said land and always has been since (*set out date*) when the beneficial ownership was acquired either by way of an unregistered disposition or the registration of instrument no. \_\_\_\_\_ and the applicable land transfer tax was paid in the amount of \$ \_\_\_\_\_;
- (C) that no value of consideration in any form whatsoever passed between the parties, directly or indirectly, **for this transfer**;
- (D) that all obligations, including any mortgage obligations, responsibilities, acts or omissions pertaining to the land during the period of time it was or will be vested in the trustee(s) (*set out name(s)*) were and/or will be performed by the beneficial owner (*set out name*);
- (E) that the trustee(s) (*set out name(s)*) was and/or will be indemnified and saved harmless by the beneficial owner (*set out name*) from all claims, charges, encumbrances, obligations, responsibilities, acts or omissions during the entire period of time that the land was/and or will be vested in the said trustee(s) (*set out name(s)*);
- (F) that attached hereto as an exhibit is a photocopy of the document or writing setting out the terms of the trust (*if there is no document or writing and the trust is oral, set out reasons why the terms and conditions of the trust were not reduced to writing and the date the trust was duly authorized*);
- (G) if the trustee(s) is a firm, corporation, partnership, association or syndicate: that the books and records of the trustee(s) have never recorded and/or will not record the property as an asset;

- (H) if the beneficial owner is a corporation:

- (i) that either the corporation existed, or application for incorporation or reservation of a name was filed prior to or at the time the property was transferred to the trustee for the company;
- (ii) that the books and records of the beneficial owner have recorded the property as an asset since (*date*); and
- (iii) for each of the transferor, the transferee or the beneficial owner whether they are or are not the subject of an application for deferral pursuant to subsection 3(9) of the *Land Transfer Tax Act*, R.S.O. 1990 as amended, with respect to these lands. If an application for deferral is pending or has been granted, provide details.

In cases where the transferor is a trustee, the affidavit must also contain the following statements:

- (I) that the trustee (*set out name*) obtained registered title to the property on (*set out date*) pursuant to an agreement of purchase and sale or pursuant to a transfer from either the beneficial owner(*set out name*) or a trustee (*set out name*). Attached as exhibits, are a photocopy of the agreement of purchase and sale by which the trustee took title (where appropriate) and a copy of the conveyance to the trustee.

If after April 9, 1974 and before May 7, 1997, insert the following:

- (i) that at the time the trustee-transferor obtained registered title to the property, the beneficial owner was (was not) a “non resident person” or a “non resident corporation” as defined in subsection 1(1) of the *Land Transfer Tax Act*, R.S.O. 1990. c.L.6.
- (ii) that the trustee-transferor has read over and considered the definitions of “non-resident corporation” and “non-resident person” set out in subsection 1(1) of the *Land Transfer Tax Act*, R.S.O. 1990, c.L.6;

2. The Land Transfer Tax Affidavit should be completed showing consideration “NIL” and one of the following explanations must be set out in section 5 of the said affidavit:

“Trustee to beneficial owner: The transferee has been the sole beneficial owner during the entire period the lands have been registered in the name of the transferor.”

“Trustee to trustee: The lands have been beneficially owned by the same beneficial owner during the entire period the trustee-transferor has been the registered owner thereof. The trustee-transferee is a new trustee for the same beneficial owner.”

“Beneficial owner to trustee: The transfer is from the beneficial owner to the trustee for the same beneficial owner.”

Note: The Land and Resources Taxes section of the Ministry of Revenue may require further evidence of the trust and the circumstances surrounding the conveyance.

### Enquiries

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