

## **Non-resident Individuals Owning Canadian Real Estate - Section 116 Tips and Traps**

Non-residents disposing of certain taxable Canadian property must file a T2062 in order to obtain a Section 116 Certificate of Compliance. This certificate, once obtained, is presented to the purchaser. If the purchaser does not receive such a certificate, they are required to withhold and remit tax from the purchase proceeds on behalf of the non-resident vendor. The following will shed some light on some traps that can be overlooked and provide a few tips as well.

1. Notification of a sale must be sent to Canada Revenue Agency within 10 days of a sale as required in subsection 116(3), and can be by fax~~ed~~, providing names and address of the vendor and purchaser, description of the property, its proceeds and cost. Failure to notify Canada Revenue Agency within 10 days of a sale can result in late filing penalties of up to \$2,500.
2. When determining residency, relying on an affidavit is probably not enough for the purchaser. It should be supported with documentation such as driver's licence, birth certificate, income tax return, health card, etc. If you as the purchaser are not certain of the vendors residency, you may want to request that the vendor obtain confirmation of their residency in their country of residence or simply request that they provide a Certificate of Compliance.
3. Each vendor must obtain an Individual Tax Number or Social Insurance Number. If the individual non-resident vendor does not have an Individual Tax Number or a Social Insurance Number, complete form T1261 and submit it along with the required supporting documentation. A complete list of required documents can be found on form T2062. Look under "Forms and Publications" on the Canada Revenue Agency website at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca).
4. Proper documentation is critical. You may experience delays in obtaining a Certificate of Compliance unless all the appropriate supporting documentation is submitted with your application for the certificate. Depending on the type of real estate you are ~~disposing~~selling, specific supporting documents will be required. For a complete list of supporting documents, please review the form T2062 application by looking under "Forms and Publications" on the Canada Revenue Agency website at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca).
5. Capital gains were not taxed in Canada prior to 1972. Capital gains of a resident of the United States from Canadian real estate accruing before 1985 are not taxable in Canada provided the property was owned on September 26, 1980 (see paragraph 9 of Article XIII of the Canada – US Tax Treaty). If you are making a claim for a treaty exemption, appraisals for 1971/1984 value may be required under paragraph 9 of Article XIII of the 1980 Canada-United States Income Tax Convention ("Convention"), which provides a transitional tax treaty rule recognizing that Canadian properties held by a US resident on September 26, 1980 and disposed of after December 31, 1984 are eligible for a reduction in the capital gains in certain situations.
6. If a Certificate of Compliance is required quickly, the T2062 can be completed based on the original cost and the sale price and subsequently amended for additional costs, such as capital improvements, either by refileing the T2062

requesting ~~anfer~~ amendment or by claiming the costs when preparing the T1 return if required under Section 115.

7. There are more cases of the purchaser's lawyer not accepting the vendor's lawyer's undertaking to obtain a Section 116 Certificate of Compliance when the vendor's non-residency status is established. It can be a real burden when, days before closing, the purchaser's lawyer decides he wants to only provide 75% of the proceeds until the Certificate of Compliance is received, which by law is their right. There could be a mortgage that has to be discharged and insufficient funds to complete this transaction. Or the vendor may be relying on the proceeds to cover another purchase. The solution is to defer the closing until the certificate is received or get the T2062 approved prior to closing, subject to the completion of the transaction. The Canada Revenue Agency will provide a comfort letter to the vendor or purchaser upon request. The letter will indicate that the T2062 application is under review and the tax withheld on behalf of the vendor is to be retained by the purchaser as required until tax payment is determined.
8. Additional deductions, such as capital improvements, are often overlooked when receipts and cancelled cheques have been misplaced. There may be other methods to substantiate these expenditures. When real property is purchased and sold in US dollars, you will want to ensure that the appropriate exchange rates are selected.

The local Tax Services Office handles hundreds of T2062 Certificate of Compliance applications annually and is more than fair to deal with. Ensure that you save yourself problems by submitting a properly completed application on a timely basis.

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