



Infill Builds
and Substantial Renos
HST & Tarion

Sept 2014

- HST Overview
- Exemptions from HST
- Tarion Warranty and Exemption
- Common Scenarios
- Risks
- CRA Red Flags
- Protections for a Buyer
- Other Options

- HST is payable on real estate transactions **UNLESS** there is an available exemption
- HST is payable on the entire purchase price (can't deduct land value)
- HST is payable on new construction and substantial renovations (gutting the house – or even adding an addition)
- Adds 13% to the cost of a home (or reduces net sale proceeds by 13%) – builders are incented to cheat
- Big impact on new construction, and particularly, in-fill builders

- **Available Exemptions for real estate (Seller must satisfy all of them):**
 - “used residential complex” – must be lived in by Seller – (risk of CRA disagreeing that property is used)
 - Seller did not acquire or renovate the property “in the course of an adventure in trade”
 - Seller did not claim an HST input tax credits (didn’t deduct HST that he or she paid when building or renovating the property)
 - Seller did not build or renovate the property with the intention to sell it (biggest risk for builder/renovator)

- Provides protection to buyers of new homes and condominiums
- **Builder must register newly constructed homes with Tarion** (Buyer usually pays for the Warranty – can be bought late, but more expensive)
- Cannot buy a Tarion Warranty for houses re-built upon existing foundations (substantial renovation)
- Protects against:
 - deficiencies in workmanship and materials (1 yr)
 - Electrical, plumbing, water damage, HVAC and mechanical (2 yrs)
 - Major structural damage (7 yrs)
- **Exemption for builders own houses (no need to warranty the builder's own house)**

- Seller who “built home for himself” but sold just before completion was contacted by Tarion because the Buyer called Tarion to find out why the home was not registered.
- Our Buyer who bought a “nearly completed” home from a builder, no Tarion Warranty – contacted as part of a Builder investigation
- Tarion contacted RLP (Buyer’s Agent) to visit a property that was recently sold. Property appeared new, but not enrolled with Tarion. Tarion asked agent for copy of Agt of P&S. Agent would not provide without consent of Buyer.

- Seller/Builder knocks down house and builds a new house OR leaves part of the foundation and does a “substantial renovation”
- Seller then sells the house once its complete or slightly before completion, OR
- Seller resides in the property for a short while – (less than 6 months) before selling (there is no set minimum period of time to occupy)
- Seller changes all ID and mailing address to the house as soon as taking possession – to demonstrate longer term residency
- Builder puts the property (and house) in the name of a nominee holder/owner who will “swear” it is a “used residential complex” – possibly tax fraud

- CRA determines that HST was payable because:
 - was not a “used residential complex”
 - Seller built or renovated for purpose of selling the property (not for their own use)
 - Seller serially builds a new house for itself every year or two – could lead CRA to conclusion that Seller is in the business of building and selling houses
 - Seller claimed HST input tax credits on building material and labour costs
 - Builder would not buy a Tarion Warranty for its own house
- Buyer liable for HST if HST is “in addition” to the purchase price in the APS
- Buyer may be liable for HST if Buyer knew or ought to have known Seller was lying about HST exemptions (very low risk, especially if HST included in purchase price)

- Seller sells a new house every year or two – CRA looks for people that seem to move frequently in same jurisdiction (agent and buyer not likely to know this)
- Agreement of P&S sets out additional work to be done on the house before closing – looks like a new construction or renovation - as opposed to “repairs” – may imply Buyer should have known that it is not “used”
- Permits are cleared or occupancy permit issued shortly before closing
- Seller obtains a Tarion Warranty for its own house – may lead to conclusion that it was built for resale

- Ensure HST is “included in” purchase price – so Buyer can say they already paid the HST to the Seller if it is payable
- Seller delivers a Statutory Declaration or Certificate at closing confirming that:
 - “used residential complex”
 - Not renovated or built for resale or as part of an adventure in trade
 - No HST input tax credits claimed
- Buyer is entitled to rely upon Seller’s Statutory Declaration or Certificate, **UNLESS** the Buyer knows, or ought to know, that it is false

- Seller may provide its own limited warranty
- Sellers warranty is only as good as the Sellers financial health and willingness to perform, no provincial backing
- Consider a holdback for warranty enforcement

We, _____, SOLEMNLY DECLARE that:

1. The above property is occupied as a residential unit, and all parts of the property are reasonably necessary for the use and enjoyment of the property as a place of residence for individuals.
2. We did not acquire the property or carry on any construction or renovation of the property in the course of business or adventure or concern in the nature of trade.
3. We have not claimed an input tax credit under the Act in respect of the acquisition of the property or an improvement to it.
4. No part of the property is capital property used primarily in a business of ours.
5. The sale is not being made in the course of a business or adventure or concern in the nature of trade of ours in respect of which we have filed an election under the Act.
6. The property is a "used residential complex" and the sale of the property is exempt from HST under Section 2 and, if applicable, Section 9 of Part I of Schedule V of the Act, and we make this declaration to be delivered to the purchasers with intent that it be relied upon by the purchasers in claiming such exemption as a statement in writing or certificate delivered to the purchasers pursuant to Section 194 of the Act.

- Builder finds property and enters APS
- Builder assigns APS to Buyer, who buys existing house and engages Builder to knock it down and build a new house or substantial Renovation
- Buyer only pays HST on materials and labour, not land
- Risks to Buyer: builder does a poor job, significant cost overruns, long delays, no Tarion Warranty
- Risks to Builder: Buyer can't pay for construction, fires Builder, or Builder can't recover cost overruns due to Buyer feature creep

- Rent or Lease to Own
 - Buyer leases house for twelve months and agrees to buy the house at the end of the lease term for a pre-determined price
OR
 - Lease with Option to Buy at pre-determined price – very clearly a tenancy
- Risks to Seller/Builder: has to wait for closing funds and hold house in inventory and the Buyer may not exercise its option

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