

# Mobility: Immigration alert

December 2022

## Canada

### Prohibition on the purchase of residential property by non-Canadians

#### Executive summary

The Canadian government has passed the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the Act), which comes into effect on 1 January 2023, and is currently scheduled to be in place for two years. The policy intent behind the Act is an effort by the Canadian government to cool the housing market and prevent foreign investors from purchasing residential property in Canada when they have no intention to settle in Canada. The regulations confirm prohibition for non-Canadian citizens or permanent residents from directly or indirectly purchasing property in Canada unless they meet certain exceptions. The Act prohibits foreign nationals in Canada from purchasing property, unless they meet one of the limited exceptions.

#### Key developments - Analysis

Prior to the coming into force of the Act, foreign nationals, including those in Canada with valid temporary resident status including students and foreign workers, were not subject to any restrictions in their ability to purchase residential real estate in Canada. Under the Act, there will be a two-year ban on the purchase of residential property within a 2021 Census metropolitan or census agglomeration area by anyone who is not a Canadian citizen, permanent resident of Canada or a corporation incorporated other than under the laws of Canada or a province or a corporation that is controlled by non-Canadians. Exceptions to the prohibition on

purchasing residential property include the acquisition of a legal or equitable interest or a real right in a residential property resulting from death, divorce, separation or as a gift; the rental of a dwelling unit to a tenant for the purpose of its occupation by the tenant, transfer under the terms of a trust that was created prior to the coming into force of the Act or a transfer resulting from the exercise of a security interest or secured right by a secured creditor. Certain foreign nationals are also exempted from the prohibition including:

- ▶ Eligible refugee claimants
- ▶ Individuals who purchase residential property with their Canadian spouse or common law partners
- ▶ Diplomatic, Consular, official, or other special representative passport holders with an acceptance issued by the Chief of Protocol by the Department of Foreign Affairs, Trade and Development
- ▶ Temporary residents whose status was granted based on public policy considerations to provide haven to those fleeing conflict
- ▶ Some limited instances of work permit holders. Specifically, those who for at least three of the past four years preceding the residential property purchase worked in Canada on a full-time basis (at least 30 hours per week) and filed all required income tax returns under the *Income Tax Act* and who have not purchased more than one residential property.



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Canadian study permit holders must meet the following conditions in order to purchase residential property:

- ▶ The foreign national must hold a valid study permit and be enrolled in a program of study at a designated learning institution
- ▶ Have filed all the required income tax returns under the *Income Tax Act* for each of the five years preceding the year in which the purchase was made
- ▶ Have been physically present in Canada for a minimum of 244 days in each of the five calendar years preceding the year in which the residential purchase was made
- ▶ The purchase price does not exceed CAD\$500,000
- ▶ They have not purchased more than one residential property

Under the Act, there are no grandfathering provisions, meaning that foreign nationals who have purchased or entered into a sale agreement for residential property by 31 December 2022, who elect to sell their property after this date will not be able to purchase another property unless they meet one of the exceptions under the Act.

### Impact - what this means

Foreign nationals who do not meet one of the exceptions set out in the Act and regulations will be prohibited from purchasing residential property in one of the census metropolitan or agglomerations areas for two years starting on 1 January 2023.

Employers who rely on international talent to support their talent agenda should consider a communication regarding the Act and potential application to your workers and their families.

Recruiters, managers and foreign nationals should be made aware of the Act and the limitations on residential property ownership when advancing new offers of employment or considering relocation within Canada.

As permanent residents are exempt from the prohibition in the Act, employers may want to encourage foreign nationals to apply for permanent residence sooner or prior to coming to Canada to minimize the impact of the Act.

### Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

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