



Friday, September 16, 2022

Canada Mortgage and Housing Corporation

RE: Consultation on the “Prohibition on the purchase of residential property by non-Canadians”

We are writing to share views as part of the government’s proposed consultation on the “Prohibition on the purchase of residential property by non-Canadians.” We do so on behalf of The Canadian Real Estate Association (CREA), and its membership of more than 155,000 REALTORS® in every community across the country.

For several years REALTORS® have advocated in support of drastically increasing the supply of housing, available to Canadians, across the entire housing continuum. As this government acknowledged in Budget 2022, a range of initiatives are required to ensure Canadians can find a home they can afford to live and thrive in. From supports for the unhoused, to affordable rentals, to market housing, Canadians need more.

CREA has focused on initiatives that acknowledge the scale of the housing crisis, with a focus on leveraging the federal government’s convening power on a national scale through a national housing roundtable, and the use of federal infrastructure dollars to incentivize the creation of net new housing units. In our view, this is where significant progress can be made on behalf of Canadians.

Canada has built a reputation as a multicultural nation that welcomes people from around the world. As currently proposed, the prohibition on the purchase of residential property by non-Canadians can impact our reputation as a welcoming nation.

The potential benefits of the ban are likely to be modest. The experience with British Columbia’s Speculation and Vacancy Tax (SVT) (introduced in the province’s Budget 2018), provides some indication on the impact of a ban on foreign buyers. Their experience suggests such a measure can have a small effect on real estate markets, housing availability and affordability. These effects are largely isolated to condominium markets, with no statistically significant impact in smaller communities or other forms of real estate.

To have a balanced approach, we believe the federal government should proceed with caution and consider the following recommendations in terms of implementing such a prohibition, so the right sector of the housing market is targeted and the benefits to the Canadian economy are not compromised.



A. CREA's Recommendations for the prohibition:

RECOMMENDATION ONE: The prohibition on the purchase of residential property by non-Canadians' should include a CUSMA exemption, treating property owners from the U.S. and Mexico in a similar fashion to Canadians, to avoid a reciprocal response from two of our largest trading partners.

Canadians purchase vacation and residential properties in many countries, but particularly in the United States. In the 12-year period from 2010-2021, Canadians purchased 419,200 existing homes in the United States¹, according to data from the National Association of REALTORS®, making Canadians the largest foreign purchasers of American properties. More than half of the properties purchased by Canadians were in Florida and Arizona. These provide Canadians with a place to spend the winter months and are a form of savings for Canadian retirees. If Canada places a ban on Americans owning property in Canada, we should expect them to respond in kind.

RECOMMENDATION TWO: The federal ban should consider exempting the purchase of established dwellings for redevelopment, provided the redevelopment genuinely increases the housing stock, the project is completed within a specified time of the date of approval, and the existing dwelling is not rented out prior to demolition and redevelopment. This would include purchase of vacant land for residential dwelling development, subject to the development being completed and evidence of the project's completion being submitted within a specified time of the date of approval.

CREA has consistently emphasized increased housing prices are due to a lack of supply. To combat this, the government needs to identify and implement measures to tackle the housing supply crisis. One such measure was introduced in Australia through a limited ban on foreign buyers that includes an exemption if a purchase by a foreign buyer genuinely increases housing stock. An increase in stock is generally taken to mean that at least one additional dwelling is created on the land. This could include proposals to:

- Retain an established dwelling and build one (or more) new dwellings (not just expansion of existing development) on the land alongside the established dwelling.
- Demolish an established dwelling and build multiple new dwellings in place of it.
- Build multiple dwellings on land that is currently vacant but previously had a dwelling on it. It is expected for each dwelling demolished, at least two new dwellings are built in replacement of it.

Furthermore, the following conditions would apply:

- the property being vacant at settlement, and remaining vacant prior to demolition;

¹ [Commercial Real Estate Lending Survey \(nar.realtor\)](https://www.nar.realtor/commercial-real-estate-lending-survey)



- based on market conditions reasonable timelines are put in place from the date of notice of approval for the construction of all additional dwelling(s) to be completed and evidence of completion of the dwelling(s) submitted to the government;
- the existing dwelling not being rented out prior to construction of the additional dwelling(s) being completed; and
- once construction of the new dwelling(s) is complete, one or more of the dwellings on the land being made available for use by independent third parties (e.g. by renting out or selling the dwelling(s)).

This measure would help channel foreign investment into new dwellings, as opposed to established dwellings, which in turn will help create housing that improves density and supports the need to add stock to the 'missing' middle in the Canadian housing market. Additionally, it will create jobs in the construction industry and help support economic growth.

RECOMMENDATION THREE: The federal ban should consider existing measures at the provincial/territorial and municipal level when setting eligibility criteria, rates, and information disclosure requirements.

A federal ban layered on top of existing taxes and restrictions introduces an additional layer of administrative and verification work for property owners and government departments. If a ban is to be introduced, the federal government should work with provincial/territorial and municipal partners to minimize and align information to ensure that there is no overstepping of roles as well as undesirable duplication. Attention should be paid to how all such restrictions and taxes interact with each other.

RECOMMENDATION FOUR: The ban should be re-evaluated once the impact of similar policies such as Underused Housing Tax (UHT) as well as evolving economic conditions can be reviewed.

As economic conditions change, it will be important for the federal government to review the impact of these policies on an ongoing basis to determine their efficacy and impact. This would ensure the policies in place are responsive to the current economic conditions and any lessons observed can be used to modify the ban to make it more effective.

RECOMMENDATION FIVE: The government should take into consideration the compliance burden of implementation.

Unlike banks with significant infrastructure, employees, and thousands of transactions, most REALTORS® are entrepreneurs and small businesspeople. Most of our members conduct fewer than 10 transactions a year. For them, simplicity is key, time is precious, and regulatory compliance is increasingly complicated and burdensome. Therefore, it is important any new compliance measures are reasonable



and align with the information available to our members. The measures should consider any costs associated with its implementation and give REALTORS® time to adapt to any new requirements. It is imperative that the enforcement of the proposed ban is delayed by at least 12 months and begins only after discussions with the provinces who are responsible for rules related to the trade in real estate as well as real estate professionals.

RECOMMENDATION SIX: The ban should recognize housing needs vary across provinces and territories; therefore, a quota system should be considered to provide provinces and territories some authority to tailor the ban as per their housing market requirements.

The federal government's National Housing Strategy recognizes housing needs vary across the country, and it is evident by the government's variation in amount of investment in each of the provinces and territories. Keeping that in mind it is important to be mindful that a rigid federal ban may not have the desired impact across all provinces and territories. Therefore, there is a need to adopt a system that provides provinces the authority to implement a variation of the ban based on their own provincial or territorial housing market needs.

Like Switzerland, Canada could adopt a quota system, where each year, the government (Housing Minister) assigns quotas to the country's provinces, limiting the number of residential properties that can be sold to foreigners. The provinces can then be given the authority to determine the distribution of these quotas among their communities. The provinces can also be given the authority to further structure the ban in their localities, such as restricting the type of property and size that can be purchased by foreigners under these quotas.

RECOMMENDATION SEVEN: The ban should include a sunset provision.

The ban is proposed to be implemented for a period of two years. It is important a sunset provision is added to the ban. After the two-year period, the ban should be evaluated based on its effectiveness before any changes or extensions are considered.

B. CREA's comments for the proposed legislation/regulation:

In addition to our recommendations, CREA and its members have reviewed the proposed legislation/regulations and have the following comments and suggestions:

1. Enforcement: CREA supports enforcement of regulations but has some concerns regarding the suggested penalty. Firstly, we believe that having a clear understanding of the rationale for penalties helps ensure better compliance. The legislation and regulations propose a penalty of a "summary conviction to a fine up to \$10,000". However, the Criminal Code suggests that "summary conviction is liable to a fine of not more than \$5,000" therefore it is important to clarify the rationale behind such a penalty and this



discrepancy. We understand there is some interplay with the Citizenship Act, but it needs more clarification. Secondly, criminalizing a sales transaction negatively impacts our members. We do not believe REALTORS® should be convicted with a criminal charge for a selling a home. While our members exercise due diligence to ensure compliance with Canadian laws and regulations, such a penalty puts the burden of compliance on our members when in all fairness it should be on the foreign buyer. Lastly, we are concerned that practical implementation of this measure would not be possible by January 2023. Therefore, consideration needs to be given to extending the implementation date to provide adequate time to prepare for compliance.

2. Criteria for exemption for international students on pathway to permanent residency: International students have a direct impact on Canada’s economic growth as they play an important role in filling gaps and diversifying the Canadian labour market. These students also make a significant contribution to innovation and knowledge development. The possibility of acquiring permanent residency and setting roots in Canada through homeownership is considered an important motivational factor for international students to make Canada their home. Therefore, CREA is concerned that setting limitations such as a filing income tax for five taxation years, physical presence in Canada for a minimum of 275 days in each of the five calendar years and a limit on purchase price, especially without any rationale acts as barriers to Canada’s immigration strategy to attract and retain qualified professionals in the Canadian labour market. For example, a regular full-time school year requires two full terms (eight months) which translates into approximately 244 days a year, adding a restriction of a minimum of 275 days eliminates their option to be able to utilize the rest of the year based on their own professional/ educational needs and thus disincentivizing them. It also does not consider any disruptions and delays caused by the pandemic.

3. Criteria for exemption for foreign nationals with work permits: Like international students, foreign nationals with work permits help contribute to the Canadian economy and the labour market. It is important to ensure none of the conditions listed act as a barrier to their long-term settlement and economic contribution in Canada. The proposed criteria require work experience in Canada for a minimum ‘continuous period’ of three years within the past four years. However, to be fair and give everyone an equal chance it is important to consider the disruption caused in the labour market and the unavoidable job losses with the onset of the pandemic. Therefore, it is recommended that a clause is included that takes into consideration the economic and labor impact of the pandemic.

4. Clarification on treatment of certain types of residential property: Clarification is needed on what types of properties are included in the prohibition. The document states “The Act defines residential property to include any real property or immovable of not more than three dwelling units. This definition includes detached houses or similar buildings, as well as parts of buildings, such as semi-detached houses, condominium units or other similar premises. For greater clarity, larger multi-unit properties of four or more units are not subject to the prohibition.” Based on this we would like to get



clarification that it does exempt multiplex towers of more than three dwelling units such as high-rise buildings and in doing so exempts corporate ownership? If it does, why are we privileging corporate owners and the financialization of housing. Furthermore, does this mean that the sale of each of the units within those towers will not be exempt (as the definition of residential property includes “parts of buildings, such as condominium units”)?

5. Exemption of recreational property: We believe the ban is trying to target popular housing markets for foreign ownership which are largely restricted to the urban areas of Canada, therefore properties within a census agglomeration should be exempted from the prohibition. The ban could consider defining recreational property as “properties or buildings not occupied or used on a permanent basis and used as a secondary place of residence for vacation or leisure activity”.

Conclusion

Thank you for the opportunity to participate in this consultation. We are encouraged by government’s interest in ensuring housing is available and attainable for all Canadians. The potential benefits of a prohibition on the purchase of residential property by non-Canadians in achieving this goal are modest and we believe it should be designed in a way to minimize potential unintended consequences. We have provided several recommendations that we believe could assist its implementation.