

**A. MATTERS NOT NOTED ON TITLE [§5.4]****I. LAND TITLE ACT, SECTION 23 [§5.5]**

Section 23 of the *Land Title Act*, R.S.B.C. 1996, c. 250 lists exceptions to the indefeasibility of the vendor's title that ultimately will encumber the title to be issued to the purchaser. (See chapter 7 (Title to Real Property in British Columbia) for a detailed examination of these exceptions.) These matters are important to both purchaser's and vendor's counsel because the existence of statutory charges may put the vendor in breach of the obligation to deliver clear title. Note that the Contract of Purchase and Sale ("Contract of Purchase and Sale" in chapter 3) releases the vendor from the obligation to deliver title free from some, but not all, of these charges.

The following investigations should be performed for s. 23 charges.

(1) *Municipal charges, rates, or assessments (s. 23(2)(c))*

A written statement of outstanding taxes and arrears must be obtained. In organized areas, this information can be obtained from the local municipal office or city hall. Many municipalities now allow users to conduct tax searches through their myLTSA account with the Land Title and Survey Authority of British Columbia ("LTSA"). In unorganized territories, the information can be obtained from the nearest office of the Surveyor of Taxes or from a BC Registries and Online Services ([www.bcregistry.gov.bc.ca](http://www.bcregistry.gov.bc.ca)) search. In general, taxes are levied for the calendar year but are paid mid-year (although City of Vancouver taxes are also payable, in part, in February). If taxes for the current year have not yet been levied, they can be estimated by checking the previous year's taxes. The parties normally agree on a 5% increase if the current levy is not yet determined (see "Resolutions of the Vancouver Real Property Section of the Canadian Bar Association" in chapter 11). If taxes for the current year have been levied but remain due, the penalty date as well as the amount of the penalty must be determined for the purpose of adjustment. Inquiries should also be made as to whether any local improvement taxes or similar charges have been established, or are in the process of being established, for the subject property (for example, dyking charges). If the property has been subdivided recently, or if buildings have been constructed recently, it may be necessary to settle on a formula for adjusting the taxes (see "Resolutions of the Vancouver Real

Property Section of the Canadian Bar Association” in chapter 11); for example, multiplying the sale price by the previous year’s tax rate. (In these circumstances, the purchaser should be made aware that taxes may increase significantly in the year following subdivision or construction or upon a significant increase in the property’s assessed value.) (Forms of letters requesting tax and utility information are included in this manual.)

It should be noted that many municipalities levy utility charges (e.g., water, sewer, dyking, or other charges) separately from the property tax, and those utilities are often billed and are payable at different times (typically quarterly). These charges also need to be adjusted. The purchaser’s lawyer should consider requesting a special meter reading as of the closing date for any utility meters on the property.

(2) *Vancouver vacancy tax*

With the first tax year beginning January 1, 2017, the City of Vancouver imposed an annual vacancy tax (also known as the “empty homes tax” (“EHT”), and not to be confused with the provincial speculation and vacancy tax), of 1% of the property’s assessed taxable value for the previous tax year, under Vacancy Tax Bylaw No. 11674. The rate was increased to 3% for the 2021 and 2022 tax years. The rate will be increased to 5% for the 2023 tax year. A property that has been unoccupied for more than 180 days during a tax year is considered to be “vacant” for EHT purposes.

Every owner of residential property in the City of Vancouver will be required to make a property status declaration each year in order to determine whether the property is exempt from or subject to EHT; failure to complete the declaration will attract EHT.

“Residential property” is defined in the bylaw as

real property classified only as class 1 property (residential) under the British Columbia *Assessment Act* and its regulations, but does not include phased development parcels or land or improvements or both used solely for nursing homes, rest homes, cookhouses, strata accommodation property or child daycare purposes (including group daycares, preschools, special needs daycares, family daycares, out of school care, residential care, emergency care and child minding), as may be further

described in the British Columbia *Assessment Act* and its regulations[.]

Class 1 (Residential) properties include single-family residences, multi-family residences, duplexes, apartments, condominiums, nursing homes, seasonal dwellings, manufactured homes, some vacant land, farm buildings and daycare facilities (for more detailed information, see “Understanding property classes and exemptions” at [info.bcassessment.ca/Services-products/Property-classes-and-exemptions/understanding-property-classes-and-exemptions](http://info.bcassessment.ca/Services-products/Property-classes-and-exemptions/understanding-property-classes-and-exemptions)).

Exemptions to EHT include:

- where the property forms part of the estate of a deceased;
- where the property is undergoing redevelopment or major renovations;
- where the property is held by an owner in medical or supportive care;
- where rental of a strata lot is not permitted under the strata corporation’s bylaws, but note that *Strata Property Act*, S.B.C. 1998, c. 43 was amended as of November 24, 2022 to eliminate any rental restrictions, so this exemption will not apply for the 2023 and future tax years;
- where title to the residential property was transferred during the applicable vacancy reference period;
- where the property was not a registered owner’s principal residence but was occupied by a registered owner for a minimum of 180 days during the vacancy reference period because the registered owner worked in the City of Vancouver;
- where the property is vacant solely because a court order, court proceedings, or order of a governmental authority prohibits occupancy of the property; or
- where the property is vacant is because
  - (a) the lawful use of the property is limited to vehicle parking; or
  - (b) as a result of the size, shape, or other inherent limitation of the parcel, a residential building cannot be constructed on the parcel.

For more information and instructions on completion of the declaration, see [www.vancouver.ca/home-property-development/empty-homes-tax.aspx](http://www.vancouver.ca/home-property-development/empty-homes-tax.aspx).

For more information, see “Special Considerations for the City of Vancouver’s Vacancy Tax” in chapter 3.

See the Forms and Precedents section for:

- Sample Statutory Declaration Regarding Empty Homes Tax

(3) *Speculation and vacancy tax*

In 2018, the Province adopted the *Speculation and Vacancy Tax Act*, S.B.C. 2018, c. 46 (the “SVTA”), which introduced the new speculation and vacancy tax (the “SVT”) on residential property owners in:

- municipalities within the Capital Regional District;
- municipalities within the Metro Vancouver Regional District, excluding Bowen Island, the Village of Lions Bay, and Electoral Area A, but including the University of British Columbia and the University Endowment Lands;
- the City of Abbotsford;
- the District of Mission;
- the City of Chilliwack;
- the City of Kelowna and the City of West Kelowna; and
- the City of Nanaimo and the District of Lantzville.

The SVT applies to residential property and is in addition to any municipal levies, such as the City of Vancouver’s empty homes tax. All residential property owners in the designated taxable regions must complete an annual declaration to claim any relevant exemption. The amount of SVT will vary depending on the owner’s tax residency, the owner’s citizenship status, and what portion of the owner’s annual income was earned in Canada. The SVT is 2% for foreign owners and satellite families and 0.5% for Canadian citizens and permanent residents.

Any purchaser of residential property in the designated areas must consider the impact of the SVTA on the transaction and carry out the required due diligence, seek the appropriate representations and warranties or provide for holdbacks in the

purchase agreement, and make any required adjustments on the statements of adjustments.

It is important to note that there are significant differences between Vancouver's EHT and the provincial SVT. For example, the exemptions are different. A property owner may be subject to tax under one act and not the other.

There is no need to contemplate a holdback in respect of the SVT. The Province has published guidance confirming that absent a title registration of outstanding lien, no such tax will be carried forward to be borne by a subsequent purchaser. The Canadian Bar Association B.C. Branch website provides guidance from the Ministry of Finance in a document entitled "Speculation and Vacancy Tax: Real Estate Sales" available at [www.cbabc.org/CBAMediaLibrary/cba\\_bc/pdf/SVT\\_distribution.pdf](http://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/SVT_distribution.pdf).

For more information, see "Speculation and Vacancy Tax on Residential Property" in chapter 4.

(4) *Federal Underused Housing Tax ("UHT")*

The *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10 (the "UHTA") is in force as of January 1, 2022. The UHTA implements a tax of 1% on the value of vacant or underused residential property directly or indirectly owned by non-resident non-Canadians. This legislation arose from a proposal by the Department of Finance in response to growing interest from multiple jurisdictions across Canada. For more information, see "Underused Housing Tax" in chapter 4.

(5) *Leases or agreements to lease for a term not exceeding three years when there is actual occupation of the property (s. 23(2)(d))*

The client must be advised that such leases, including basement suites and other month-to-month tenancies, are exceptions to clear title under the *Land Title Act*. The client must determine whether such tenancies exist. If there are such tenancies, but the purchaser is to be provided with vacant possession under the contract, the vendor should be advised to ensure that appropriate steps have been taken to provide vacant possession. If the property is subject to a lease, the client should ask the licensee or vendor whether there is a written lease, the amount of any damage deposit, the date of the last rent increase, whether the tenants pay for their own utilities and cablevision and whether these are separately metered, and whether the suite is an "illegal suite".

Information about the legality of a suite can be obtained by the client from the relevant city or municipal authorities; the lawyer can seek information from the municipality on a “no names” basis. The lawyer should obtain instructions on this matter before conducting such a search.

(6) *Incorrect boundaries* (s. 23(2)(h))

The land title office does not warrant the accuracy of plans filed with the land title office. The boundaries shown on the plans may be incorrect, resulting in portions of the parcel of land being improperly included in the title. If the client is concerned, or the lender requires it, a survey or survey certificate should be ordered to locate the boundaries of the property. Many lenders will accept title insurance in lieu of a certificate. The Western Law Societies Conveyancing Protocol, which is not commonly used, allows a lawyer carrying out a transaction in accordance with the Protocol to advise a lender that they need not obtain a survey certificate. See also “The Retainer Letter on a Conveyance File” in chapter 1 and “Encroachments” in this chapter.

(7) *Other s. 23 charges*

In most cases, it is not necessary to make further investigations of other s. 23 charges unless the events surrounding the transaction, such as the identity of the parties, the location, or the history of the property, arouse suspicion or the purchaser wants to obtain title to resources. In the latter situation, a Crown grant search should be conducted (see *Land Title Act*, s. 23(2)(a)). For further information, see chapter 4 (Searches and Investigations for Development) of the *British Columbia Real Estate Development Practice Manual* (CLEBC, 1994–).

If the purchaser’s lawyer has not conducted such additional searches, the reporting letter should advise the purchaser that additional searches are not being conducted.

See the Forms and Precedents section for:

- Property Tax and Utilities Information Request Letter (Before Tax Bill Rendered)
- Property Tax and Utilities Information Request Letter (After Tax Bill Rendered)
- Western Law Societies Conveyancing Protocol