



REAL ESTATE LAW

HST Rules for residential real estate



Jacques Robert
**REAL ESTATE
LAW**

When Ontario changed its tax system from collecting PST and GST to collecting HST, the changes were felt in many goods and services. Residential Housing was also affected. HST applies to residential real estate transactions in some cases and not in others. This article is a brief overview of some of those rules. For specific information on HST and its applicability, see the Canada Revenue Agency's bulletins on their website.

Residential Resales

For resale homes of purely residential purposes, HST does not apply. In the Agreement of Purchase and Sale, the HST clause will state that the HST is "included in" the purchase price. However, if the property was used as partially commercial and partially residential, HST would apply on the percentage of the property that was used for commercial purposes.

Vacant Land

HST does not apply to vacant land sales when the seller used the property for personal use. For example, the seller had bought the property several years earlier with the intention of building a home, but did not follow through on the original intention. Now the seller is not interested in building on the property and sells it. HST would not apply in this case.

New Construction Homes

HST rules about new construction homes are a little more complex. HST applies on all new construction homes. However, the provincial and federal governments provide a rebate towards the HST. Large builders factor both the HST and the HST rebate into the purchase price of the home.

When a buyer purchases a home from a builder at a purchase price of \$400,000, that 400,000 purchase price includes both the HST and the HST rebate.

In order to qualify for the rebate automatically with the builder, the home must be the primary residence of the purchaser or the primary residence of a blood-relative such as a parent, sibling, or child. However, not all family relations will qualify as a blood relative. For example, the automatic rebate will not apply if the home is used as the primary residence of a cousin.

If the purchaser is using the property as an investment property and will be renting the property to a third party, the purchaser will not qualify for the rebate automatically. Instead, the purchaser will have to pay the full amount of the HST on closing. Because the rebate was already calculated into the original purchase price, the purchaser will have to pay the equivalent of the rebate amount in addition to the agreed purchase price to the builder on closing. Then, when the purchaser has a signed one-year lease agreement with a tenant, the purchaser can apply to the CRA directly for the HST rebate.

The difference between the home being a primary residence and an investment property affects the timing of the rebate. When it is a primary residence of the purchaser or a blood relative, the purchaser obtains the rebate automatically. When it is an investment property, the purchaser has to pay the full HST up front and the wait until they have a signed one-year lease to obtain the rebate from the CRA.

Real Estate Agent's Commission

It should be noted that HST is applicable on the

real estate agent's commission because it is payment for a service being provided. Therefore, a real estate agent's commission of 4.5% on a \$400,000 home will cost the purchaser \$18,000 of

commission plus \$2,340 for HST, totalling \$20,340.

HST rules can be quite detailed and complex. If you are unsure whether HST will apply in your real estate transaction, please seek the

advice of the professionals assisting you in your transaction or inquire with the Canada Revenue Agency.

co-authored with Robin Goski, associate lawyer



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Jacques Robert is an Ottawa real estate lawyer. For more information, visit www.jacquesrobert.com