

Coal Harbour Residents Association
Questions about the City of Vancouver's Vacancy Tax By-law

1. If an owner lives in his/her Vancouver home for over 180 days, but not as a "principal resident" is that person exempt from having to rent, or pay the tax?

No: in this circumstance, an owner would not be exempt from having to either rent out the property or pay the tax.

The Empty Homes Tax is intended to make empty and under-used homes available for rent to people who live and work in Vancouver. A second home that is used by the owner, or his/her family members or guests, but is not a principal residence and is not occupied by a tenant or subtenant for at least six months of the year (in periods of 30 or more consecutive days), is considered vacant and subject to the tax unless a specific exemption applies. Please see below for the definition of "principal residence" for the purposes of the by-law.

2. If the property is not the owner's principal residence, must it be rented for 180 days to avoid the tax regardless of how many days it is "occupied?"

Yes. Unless an exemption applies, if the property is not the principal residence of an owner, his/her family member, or friend, then it must be rented out for at least six months of the applicable tax year (in periods of 30 or more consecutive days) to avoid attracting the tax.

3. Because of the short time and rapid roll out of this bylaw and very limited time for owners to find renters, and after considering the feedback from residents, is the City considering postponing or phasing in the implementation of this bylaw, amending it, or tabling it?

The Vacancy Tax By-law was enacted on November 1, 2016 and the first tax year commenced on January 1, 2017. The City is not intending to table, postpone, or phase implementation of the by-law and all owners should make decisions based on its current requirements.

The minimum six-month rental requirement enables owners to leave their properties unoccupied for up to 180 days each year in order to find a tenant or occupier, or to make improvements to the property between occupancy periods. As such, owners have until July 1, 2017 (seven-and-a-half months from by-law enactment) to find a tenant. Given the extremely low rental vacancy rate in Vancouver, it is unlikely that owners will have difficulty finding a tenant in that period; therefore, there is no exemption for property that is unoccupied solely because it is being listed for rent.

4. Does the City of Vancouver have requirements or schedules as to what rent amounts I must charge my tenant?

No: the Vacancy Tax By-law does not specify rental rates. Owners are encouraged to reduce the asking rental cost until the unit is rented, as they will not be exempt from the tax on the basis of being unable to find a tenant.

5. Are tenants required to be principal residents?

No: if a property is rented, it must be occupied by a tenant or subtenant for at least six months of the year (in periods of 30 or more consecutive days), but the property is not required to be the principal residence of that tenant or subtenant. This allows rentals for non-consecutive periods of at least 30 days, such as a fixed-term rental to someone who is renovating their home or who has temporary work in Vancouver.

If an owner declares that their property was rented out for at least six months of the applicable tax year, they must be able to provide information or evidence that demonstrates that the property was actually occupied by a tenant or subtenant. False declarations will result in fines of up to \$10,000 per day of the continuing offense, in addition to payment of the tax.

6. This question is about “Vancouver Principal Residence” (VPR) as used in the bylaw.

If an owner has already claimed a Canadian Revenue Agency Principal Residence (CRA-PR) elsewhere, can this person still claim a Vancouver Principal Residence (VPR) under the bylaw? That is, are CRA-PR and VPR mutually exclusive from the City’s perspective? And, does a legal CRA-PR elsewhere in Canada for any part of the year disqualify an owner or a couple from making this/her/their Vancouver home a Vancouver Principal Residence as defined in the bylaw?

The Vacancy Tax By-law defines “principal residence” as: “... *the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills.*”

Therefore, according to this definition, a property owner has only one principal residence at any given time, and this is a factual question that the City may audit.

Questions regarding CRA-PR should be discussed with the owner’s accountant or lawyer.

7. There is a lot of confusion about the various meanings of “principal residence” as used by the province Home Owner Grant (HOG), by Canada Revenue Agency and by the Vacancy Tax Bylaw.

Can a married or common law couple in various circumstances, relationships, and living arrangements be allowed by the bylaw:

- a) Two Vancouver Principal Residences (as defined in the bylaw)?
- b) One HOG defined PR elsewhere in BC and one VPR?
- c) One CRA defined PR and a VPR?
- d) One PR elsewhere in the world and a VPR?
- e) If a couple owns 2 homes – one in Vancouver and one elsewhere in Canada under terms of this bylaw can one person continue to call their Manitoba home a CRA principal residence, for example, while the other makes their Vancouver home as a Vancouver Principal Residence (VPR)?

The definition of “principal residence” in the Vacancy Tax By-law is specific to the by-law and is not the same as the definition used by the province or CRA for the purposes of the HOG or federal taxes, respectively. As noted above, owners should direct questions concerning the programs of other jurisdictions to their accountant or lawyer.

However, it was noted to Council in considering the by-law that spouses (whether married or common law) can have different principal residences for the purposes of the Vacancy Tax By-law so long as that is where each “*individual lives, makes his or her home and conducts his or her daily affairs.*”

If spouses declare different principal residences, they must be able to provide information or evidence that demonstrates that each property was used in accordance with the by-law’s definition for at least six months of the applicable tax year. False declarations will result in fines of up to \$10,000 per day of the continuing offense, in addition to payment of the tax.

8. Confusing Terminology Questions:

Context:

Many residents in our community have said that they have found the overlapping bylaw terminology to be confusing and confounding. Press coverage has often added to the confusion.

Questions:

- A) Obviously truly vacant homes will be subject to the tax, but is it possible that a home that is actually occupied continuously by the resident owner and/or his family members be considered “unoccupied” and “vacant”?

Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; or
- (b) the residential property is not occupied by a tenant or subtenant for a term of at least 30 consecutive days.

If the residential property was unoccupied for more than 180 days during the applicable tax year, it will be considered vacant and the tax will apply unless an exemption applies.

B) Does the City of Vancouver take the position that a home with real occupants (as per definition 1.2), that are non “principal residents” but is occupied by the owner and his/her family members continuously, be construed to be “vacant” when the owner or relatives - real people, are living in it? (Some cultural groups in our community share their homes in this way with their family members. The terminology and applications of this bylaw are illogical and confusing). Is the vacancy tax bylaw forcing the family living in their home in this circumstance to move out, rent, pay the huge vacancy tax, or sell?

As noted above, if a property does not qualify for an exemption, it will be considered vacant and subject to the tax. In this case, the owner may choose to:

- Become a landlord by renting the property for at least six months of the year, in periods of 30 or more consecutive days;
- Enlist a property management firm to rent the property for the required duration, or consider a lease with a company (e.g. a business whose employees work periodically in Vancouver) that can sublease to individuals who will occupy the home for at least six 30-day periods;
- Invite a family member or friend to occupy the property as their principal residence for at least six months of the year;
- Occupy the property as their own principal residence for at least six months of the year;
- Keep the property as-is and pay the tax; or
- Sell the property.

9. When a property is rented its status changes from a personal residence to an investment property and is subject to capital gains tax. Was this considered in writing the bylaw?

Does the City plan to explain capital gains deferral requirements to assist home owners who may experience the piling on of taxes?

The rules regarding Capital Gains Tax are implemented by the Government of Canada. As noted above, owners should direct questions concerning the programs of other jurisdictions to their accountant or lawyer.

10. What are the “sufficient criteria” (i.e. in Bylaw Section 4.9) and “sufficient” standards of proof” to establish one’s home as his/her Vancouver Principal Residence? The phrase (“may include but is not limited to”) is not reassuring guidance.

The City of Vancouver can request information and evidence, not limited to, the items listed in section 4.9 of the by-law; it is for the Collector of Taxes to determine what information is sufficient.

If the evidence provided by the owner is deemed to be insufficient, the City has the ability to request additional information in order to validate that the property was used in accordance with the owner’s property status declaration for the applicable tax year. False declarations will result in fines of up to \$10,000 per day of the continuing offense, in addition to payment of the tax.

11. Does the City of Vancouver consider the written answers to questions that property owners are receiving from the City to be a legally binding determination? Yes or no?

No. Responses from City staff are for informational purposes only and are not intended as advice or a determination of whether a property will be subject to the Empty Homes Tax. If there is any discrepancy between the information provided by staff and the provisions of the Vacancy Tax By-law, the latter will prevail.