

November 7, 2017

## FACT SHEET

# Foreign Ownership of Agricultural Land in Alberta

### What laws affect foreign ownership of land in Alberta?

The *Agricultural and Recreational Land Ownership Act* and *Foreign Ownership of Land Regulations* are designed to restrict the acquisition of prime agricultural and recreational land by non-Canadians and foreign-controlled corporations. This applies to any transaction involving controlled land, including a lease, option to purchase, sale agreement, right of first refusal, asset purchase, or share transfer. This legislation does not apply to Crown dispositions.

### What land is included?

The legislation refers to prime agricultural and recreational land as “controlled land.” Urban lands are not affected by this legislation as the definition of controlled lands does not include land within the boundaries of a city, town or village. If there is doubt on whether or not land constitutes “controlled land,” the Land Titles Office can determine if the lands are within urban boundaries.

### Who is affected by these laws?

This legislation affects non-Canadian individuals and organizations or foreign-owned corporations that are seeking to buy land in Canada. It does not affect the ability of Canadian citizens or permanent residents to buy agricultural land, though it does place limitations on who it can be sold to. Note that these laws do not apply retroactively.

### What is a foreign controlled corporation?

The legislation clarifies that a foreign-controlled corporation is one where the percentage of foreign ownership is 50% or greater. It further clarifies that if the corporation has shares that are traded on the stock exchange in Canada, at least 2/3 of the directors must be Canadian citizens (or permanent residents).

### How much land can be owned by foreign citizens and foreign controlled corporations?

Unless an exemption is applied for, non-Canadians and foreign-controlled corporations may only own up to two parcels of controlled land, which cannot exceed 20 acres in total. Note that your lawyer may have a Foreign Ownership of Land Declaration signed and submitted to the Land Titles Office with the transfer of land, even if the parcel involved is less than 20 acres. This is done in order to prevent delays in sales of acreages that can arise if a Land Titles Office examiner has questions, even if the title shows the number of acres included.

### What exemptions exist?

There are exemptions in limited circumstances:

- A right of entry order under the *Surface Rights Act*, pipeline and pipeline facility under the *Pipeline Act*, or various utilities under the *Water Act*, *Gas Act*, *Electric and Telephone Act*, or *Telephone Companies Act*;
- Acquiring an interest for the purpose of establishing an industrial, processing, manufacturing, commercial or transportation facility less than 80 acres;

- Extraction for sand, gravel, clay or marl under 160 acres;
- A residence under 20 acres or residential development under 80 acres;
- Acquisition by a foreign state for diplomatic or consular purposes;
- An executor who manages an estate on behalf of a deceased person;
- The courts can order that an owner's interest can be put to benefit a spouse, independent partner, or child of the owner; or
- Burial lots under the *Cemeteries Act*.

Any non-Canadian or foreign controlled corporation seeking an exemption other than what has been outlined above has the option of apply for an Order in Council to Foreign Ownership of Land Administration with Alberta Land Titles. Typically these are limited to situations where the transaction is related to estate planning matters or a development that would provide an economic benefit to the province of Alberta. These applications are assessed on a case-by-case basis.

#### **How do these laws affect leases?**

A non-Canadian can hold a lease on controlled lands if the term is no longer than 20 years and there is no renewal option that enables the extension of a term longer than 20 years.

#### **What about options-to-purchase?**

A non-Canadian may enter into an option-to-purchase on controlled lands. However, the option must be exercisable within 1 year. Additionally, it can only be exercised if the non-Canadian becomes eligible under the regulations by becoming a Canadian citizen or permanent resident, using an applicable exemption, or obtaining an Order in Council.

#### **What about "indirect" acquisition of controlled lands?**

An indirect acquisition refers to a change in control of a corporation, either through a share sale, share transfer, merger or amalgamation. If such a transaction takes place, the now foreign-controlled company must divest its interest in the controlled lands within 3 years, unless it ceases to be foreign-controlled for a period of 12 months during the 3 year period.

#### **What about mortgages?**

A mortgage interest in controlled land is not restricted unless a foreclosure occurs, in which case an ineligible person or foreign controlled corporation must divest themselves of any interest in the controlled land within 3 years.

#### **How are these laws monitored?**

When land transactions such as transfers, caveat transmissions or leases are registered with the Foreign Ownership of Land Administration in Land Titles Office, a statutory declaration confirming Canadian ownership or explaining the structure of the corporation will be required.