



Regulations Announced

FOR PERSONAL REAL ESTATE CORPORATIONS

On October 1, 2020, the Ontario government announced the first phase of regulatory changes allowing real estate agents to incorporate in Ontario. The regulations will closely align real estate agents with modern business practices. As a result, realtors can begin to incorporate as of October 1, 2020.

There are several advantages to incorporating including access to corporate tax rates and income tax deferral opportunities as well as income splitting opportunities with family members in limited circumstances. The tax benefits of incorporating were discussed in detail in our previous publication [*Government proposes allowing real estate agents to incorporate in Ontario.*](#)

The regulations released lay the foundation for realtors to incorporate and be paid through their Professional Real Estate Corporations ("PREC"). We have summarized some of the notable regulations below regarding the shareholdings and conditions required to be considered a PREC. The conditions noted below are not an exhaustive list as the regulations contain several other regulatory requirements that both the brokerage and the PREC must adhere to. It is recommended realtors interested in incorporation reach out to their brokerage to discuss the other regulatory requirements for registration.



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Shareholdings

- All of the equity shares of the corporation must be owned by the “controlling shareholder” which is defined as the broker or salesperson.
- The non-equity shares of the PREC can be owned by:
 - The controlling shareholder;
 - A spouse, parent or non-minor child of the controlling shareholder; or
 - A trustee in trust for one or more minor children of the controlling shareholder

Conditions to be a PREC

- Must be incorporated under the Business Corporations Act and the sole director and president is the controlling shareholder.
- The controlling shareholder is employed by a brokerage to trade in real estate.
- The PREC does not carry on the business of trading in real estate other than providing the services of its controlling shareholder to the brokerage. Given this condition, separate holding corporations would be required to own and manage other investment and business activities.
- There must be an agreement between the PREC, the controlling shareholder and the brokerage which governs the relationship between the parties.
- It cannot be a brokerage or receive remuneration from any entity or person other than the brokerage that it works for.
- The PREC cannot hold any money or property of a client or customer.

The second phase of regulations, expected to be announced later this fall, will include public consultations with consumers and real estate professionals that focus on measures to support trustworthiness and the highest ethical standards in the real estate sector. This is a major goal of the original legislation as the Ontario government looks to improve consumer protection and choice in the market whilst improving professionalism among real estate professionals.

Should You Incorporate?

Incorporation is not for everyone and each individual's situation differs. A full review of an individual's particular situation is required to assess whether incorporation is beneficial. Deciding whether or not to incorporate can be difficult given the advantages and disadvantages the structure provides. Access to a tax deferral is a major benefit however there are additional compliance costs that comes with incorporation. For instance, record keeping and filing requirements are far more stringent for corporations. Furthermore, there are set-up costs and annual maintenance costs that need to be paid by corporations. There are also indirect taxes, such as payroll withholdings, WSIB, Employer Health Tax, and GST/HST on commissions earned, all of which add additional complexity. Nonetheless, the ability to incorporate is a big win for Ontario realtors.

Resources

[Ontario Removing Hurdles for Real Estate Professionals and Addressing Consumer Concerns](#)

[Ontario Regulation 536/20 Personal Real Estate Corporations](#)

[OREA - Ontario Realtors Win Big with PREC](#)

The information in this article is of a general nature and is in summary form. Contact one of our tax professionals to discuss these matters in the context of your situation before acting upon such information.