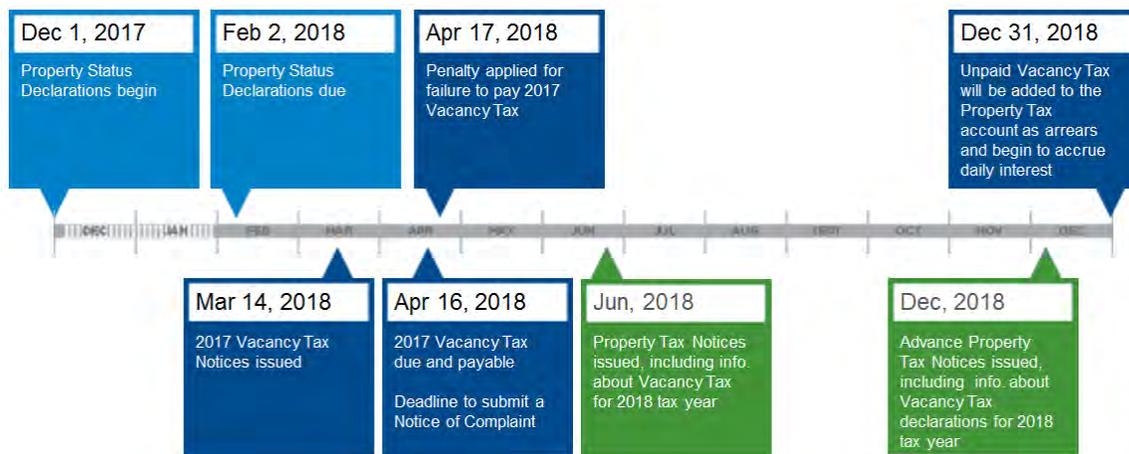


## FAQs About the Empty Homes Tax and Real Estate

This document sets out responses to questions that are frequently asked about the Vacancy Tax which is imposed by Vacancy Tax Bylaw No. 11694 (also referred to as the “Empty Homes Tax”) as it relates to real estate and real estate transactions. The responses set out in this document are for informational purposes only and are not intended as advice or a determination of whether a property will be subject to the tax. If there is any discrepancy between the information provided here and the provisions of the Vacancy Tax Bylaw, the latter will prevail.



### A. About the Tax

#### 1. What is the Vacancy Tax Bylaw and the Empty Homes Tax?

The Empty Homes Tax is a tax on vacant Class 1 residential properties within the city of Vancouver which is imposed pursuant to the *Vacancy Tax Bylaw* enacted by Council on November 16, 2016.

Properties that are determined or deemed to be vacant will be subject to a tax of 1% of the property's taxable assessed value.

Every owner of residential property in Vancouver is required to submit a property status declaration for each vacancy reference period (calendar year) to determine if their property is subject to the tax. The first vacancy reference period is January 1 - December 31, 2017. Vacancy Tax notices for vacant properties will be issued in March 2018.

Most properties will not be subject to the tax, as it does not apply to those that are either principal residences or rented out for at least six months of the year (in periods of 30 consecutive days). Additionally, there are several permissible exemptions to the tax.

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Net revenues from the tax will be invested into affordable housing initiatives after covering implementation and operational costs.

## **2. What is the objective of the Empty Homes Tax?**

The objective of the Empty Homes Tax is to return empty or under-utilized properties to use as long-term rental homes for people who live and work in Vancouver.

The initiative was created to help relieve pressure on Vancouver's rental housing market as the city is in the midst of a severe housing crisis with one of the lowest rental vacancy rates and the highest rental costs in Canada.

The Empty Homes Tax is an important policy initiative for the City of Vancouver given the potential to motivate owners of empty and under-utilized homes to rent out their properties and create a significant increase in rental housing supply.

## **3. How will it be implemented?**

Every owner of Class 1 residential property, that is not otherwise exempt from property taxes in Vancouver or does not fall within the definition of "residential property" in the Vacancy Tax Bylaw, will be required to make an annual property status declaration. Owners will receive instructions by December 31<sup>st</sup> of each year outlining how to make this declaration.

Property status declarations for each tax year are due by the second business day of February in the following year. If a property owner fails to make a property status declaration by the due date, the property will be deemed vacant and will be subject to the tax. Additional fines and penalties may also apply.

Properties that are declared as vacant on the property status declaration will be subject to the tax.

Late and unpaid taxes are subject to the same remedies for non-payment as property taxes, including:

- A late payment penalty of 5%
- Daily interest on arrears
- The tax sale process

If an owner makes a false declaration, fails to provide required information or evidence to support a declaration, or provides false information or evidence, then the property will be deemed vacant and subject to the tax. The City may also prosecute, which may result in fines of up to \$10,000 per day of the continuing offence, in addition to payment of the EHT.

## **4. How is the Empty Homes Tax calculated?**

The current rate of the Empty Homes Tax is 1% of a property's assessed taxable value.

## **5. Does the Empty Homes Tax apply to all residential properties in the Lower Mainland?**

No, the Empty Homes Tax only applies to Class 1 residential within the city of Vancouver, including vacant properties

If the property is located in a municipality that does not fall within the city of Vancouver, such as the University Endowment Lands, Burnaby or Surrey, the tax will not apply.

If the property is within the boundaries of the city of Vancouver but is not solely Class 1 residential property, the Empty Homes Tax will not apply and the owner is not required to make an annual property status declaration.

**6. If a property has joint owners, is each owner required to make a property status declaration?**

An Empty Homes Tax property status declaration is required for each parcel of Class 1 residential property and only one registered owner can submit the declaration. Any additional owners will not be able to submit a second property status declaration.

**7. Where will the revenue from the Empty Homes Tax go?**

Net revenues from the Empty Homes Tax will be reinvested into affordable housing initiatives within the city of Vancouver.

***B. Definitions of words or phrases***

**8. What is a “vacant” or an “empty” property?**

Properties are considered to be vacant if they have been unoccupied for more than 180 days during the vacancy reference period, being the calendar year. A property is considered to be “unoccupied” if it is neither the principal residence of the registered owner, their family member or friend, nor occupied by a tenant or subtenant.

Failure to make a property status declaration will result in a property being deemed vacant and subject to the Empty Homes Tax.

**9. What is a “principal residence”?**

A principal residence is the place where someone usually lives and makes their home and conducts their daily affairs. This is the place where someone receives mail and the address where someone pays their bills from, including utility bills.

Someone would use the address of their principal residence for documentation like:

- Income tax returns
- A driver’s licence or other pieces of identification
- Insurance documentation
- Medical Services Plan documentation
- Vehicle registration

**10. What is a “parcel”?**

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A parcel refers to a legal parcel of property.

Each parcel is identified by a unique folio number.

**11. What is meant by the “vacancy reference period”?**

Vacancy reference period is the calendar year for which the annual declaration property status is established. For example, January 1, 2017, to December 31, 2017, is the first vacancy reference period that will be taxed for the Empty Homes Tax.

**12. What is meant when a status is either “deemed”, “declared” or “determined”?**

A property is deemed vacant when an owner fails to make a property status declaration. A property status is declared per each property status declaration. A property status is determined to be either taxable or not taxable by the Collector of Taxes on a review of the property status declaration or through the audit process. A determination can also be made by the Vacancy Tax Review Officer on review of a notice of complaint, or the Vacancy Tax Review Panel, in considering a review request.

***C. Second homes***

**13. If a property is an owner’s principal residence but they spend more than 180 days of the year living elsewhere or travelling, will the Empty Homes Tax apply?**

In this circumstance, the Empty Homes Tax will not apply because the property is the owner’s principal residence.

If a residential property is an owner’s principal residence then it is exempt from the Empty Homes Tax, regardless of how much time the owner actually occupies the property. To be exempt from the tax, the owner is not required to occupy the property for any specific period of time, as long as the property is their principal residence.

Property status declarations may be subject to an audit process and if a property is selected for audit, the owner will be required to provide information or evidence in support of their declaration.

Types of information or evidence that may be required to prove a property is a principal residence include:

- Vehicle insurance and registration
- Government-issued personal identification including a driver’s licence
- BCID card
- British Columbia Services Card
- Medical Services Plan invoices
- Income tax returns
- Notices of assessment
- Employment contracts or other records of employment

- Pay statements
- Insurance certificates for homeowners insurance

**14. If an owner occupies his/her residential property for more than six months, but the property is not their principal residence, will the Empty Homes Tax apply?**

The amount of days that a property is physically occupied by an owner, his/her family members or guests, does not determine whether the property is exempt from the tax.

If the property is not used as a principal residence by the owner, a family member or friend for at least six months or rented to a tenant or subtenant for at least six months (in periods of 30 or more consecutive days), and does not otherwise qualify for an exemption, it is considered vacant and the Empty Homes Tax will apply.

**15. 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 to and occupied by a tenant or subtenant for at least six months of the applicable tax year (in periods of 30 or more consecutive days) to avoid the tax.

**16. If a property is listed for rent but the owner cannot find a suitable tenant, will the Empty Homes Tax apply?**

In this circumstance, the Empty Homes Tax will apply if the property was not rented out for at least six months of the tax year, in periods of at least 30 consecutive days.

Owners are encouraged to ask reasonable rental rates until the unit is rented because they will not be exempt from the tax on the basis of being unable to find a tenant.

**17. Does the City of Vancouver have requirements or schedules as to what rent amounts an owner must charge a tenant?**

No. The Vacancy Tax Bylaw does not specify rental rates. Owners are encouraged to ask reasonable rental rates until the unit is rented, as they will not be exempt from the tax on the basis of being unable to find a tenant.

**18. Are tenants required to be principal residents?**

No. If a property is rented to a tenant or subtenant for at least six months of the year (in periods of 30 or more consecutive days), 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.

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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 rented by a tenant or subtenant. False declarations will result in fines of up to \$10,000 per day of the continuing offence, in addition to payment of the tax.

**19. If an owner's second home is not their principal residence but they live in the property to work in the city of Vancouver, will the Empty Homes Tax apply?**

The Empty Homes Tax will not apply if the registered owner occupied their second home for at least 180 days of the tax year because their work required a physical presence in the city of Vancouver. Their work must be full-time for this exemption to apply. This exemption only applies to work in the city of Vancouver, not Metro Vancouver. The registered owner is still required to submit a property status declaration and declare that this exemption applies.

#### *D. Property exemptions*

##### **Court Order**

**20. If a property is under court order prohibiting occupancy, will the Empty Homes Tax apply?**

Properties that are empty for more than 180 days because of a court order, court proceedings or order of a governmental authority will not be subject to the Empty Homes Tax; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

##### **Strata Restriction**

**21. If strata bylaws impose restrictions on renting property, will the Empty Homes Tax apply?**

The Empty Homes Tax will not apply to properties that were empty for more than 180 days because they are subject to a strata rental bylaw as of November 16, 2016, where the bylaw restricts rentals altogether or restricts the number of rental units, and the maximum number of units have been rented; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

The exemption is not applicable to strata units where there is a restriction on the minimum duration of a rental agreement.

##### **Limited property use**

**22. If a property is limited in use, for example, it can only be used for vehicle parking, will the Empty Homes Tax apply?**

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Properties that are unoccupied for more than 180 days because they are limited in use will not be subject to the Empty Homes Tax; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

"Limited in use" means that the property is restricted for a specific use, such as vehicle parking, or the shape, size, or other inherent limitation of the property precludes it from having a residential building constructed on the site.

#### Medical care

**23. If a property is empty because the occupier is undergoing medical care, will the Empty Homes Tax apply?**

A property that is unoccupied for more than 180 days of the year because the occupier is undergoing medical care elsewhere or is residing in a hospital, long term or supportive care facility will not be subject to the Empty Homes Tax; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

This exemption is not allowed for more than two consecutive tax years.

#### Property uninhabitable

**24. If a property is empty because it is uninhabitable, will the Empty Homes Tax apply?**

If a property is not used as a principal residence, rented for at least six months of the year, and does not qualify for an exemption, the Empty Homes Tax will apply. Under the current bylaw, there is no exemption for a property that is wholly unimproved or unoccupied solely because it is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation pursuant to issued permits (discussed further below).

A property will not be subject to the Empty Homes Tax if the lands are unimproved without any dwelling units, or is heritage property, or is part of a phased development, and a permit application or enquiry to redevelop is submitted and under review; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

#### Under construction

**25. If a property is empty because it is under construction will the Empty Homes Tax apply?**

If a property is unoccupied for more than 180 days because it was undergoing major renovations or redevelopment and all the necessary permits were issued, the Empty Homes Tax will not apply; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies. The construction

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work must be carried out diligently and without unnecessary delay for this exemption to apply.

This exemption is only applicable to properties that are undergoing active construction where permits have been issued. Improved properties that are planned to be undergoing renovations, but their permits are pending, will be subject to the Empty Homes Tax.

*Minor renovations do not qualify for an exemption.*

There are many types of renovations that may make occupancy unsafe or impractical while work is underway. However, very few of these will require the property to be unoccupied for more than 180 days. The vast majority of renovation projects can be completed in less than six months.

If a renovation project can be completed in less than six months, the property must continue to be the principal residence of the owner, a friend or family member, be rented out (in periods of 30 or more consecutive days) for at least six months of the tax year, or be eligible for one of the other exemption categories, to be exempt from the Empty Homes Tax.

#### **Vacant land**

**26. Does the Empty Homes Tax apply to a Class 1 residential property that is vacant land without a house on site to occupy?**

If a property is unoccupied for more than 180 days because it is unimproved land without an existing dwelling unit, a development permit or rezoning application to create housing supply must be under review with the City and being pursued diligently by the owner for the property to be exempt from the Empty Homes Tax. For vacant land without a development permit or rezoning application under review, the registered owner is still required to submit a property status declaration and unless another exemption applies, the property will be subject to the Empty Homes Tax.

#### **Leased land**

**27. Does the Empty Homes Tax apply to leased land, including land leased from the City and other organizations?**

The Empty Homes Tax could apply to Class 1 Residential leasehold parcels, for example, leasehold strata parcels. Some leasehold tenants, particularly with respect to leasehold strata units, are recorded on the property tax roll as the owner responsible for paying regular property taxes. These long-term leaseholders are responsible for ensuring the property is occupied and are required to make an annual property status declaration in the same way that an owner of non-leased land would be.

For leaseholds where the property is on one parcel and in a purpose-built apartment building with separate rental units, only one unit would need to be used as a principal residence or rented for at least six months of the tax year to be exempt from the Empty Homes Tax; however, the registered owner is still required to submit a property

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status declaration. To determine if other types of leasehold property are subject to the tax, more information—including the civic address—will be needed.

### **Multi-unit buildings**

#### **28. What is the difference between a declaration for a stratified and non-stratified duplex?**

A non-stratified duplex occupies a single parcel of land, so only one property status declaration is required. In order to be exempt from the Empty Homes Tax, only one of the properties in the duplex needs to be a principal residence for at least six months of the current year or rented for at least six months of the current year in periods of 30 consecutive days.

In a stratified duplex, each dwelling occupies a separate taxable parcel of land so a property status declaration must be made for each parcel. In order to be exempt from the Empty Homes Tax, each property needs to be either a principal residence for at least six months of the current year or rented for at least six months of the current year in periods of 30 consecutive days.

#### **29. If a property is a purpose built apartment building (i.e. a non-stratified building with multiple apartment units), will the Empty Homes Tax apply?**

If a parcel of Class 1 Residential property has more than one dwelling unit on it, it is taxed as a single parcel. A property will not be subject to the tax if at least one dwelling on the property is a principal residence or it is rented for at least six months of the current year in periods of 30 or more consecutive days; however, the registered owner is still required to submit a property status declaration.

#### **30. If a property has a secondary suite and/or a laneway home and all units are not occupied, will the Empty Homes Tax apply?**

If a parcel of Class 1 Residential property has more than one dwelling unit on it, it is taxed as a single parcel. A property will not be subject to the tax if at least one dwelling on the property is a principal residence or it is rented for at least six months of the current year in periods of 30 or more consecutive days; however, the registered owner is still required to submit a property status declaration.

### **Listed for sale or transferred (See Section F for Real Estate specific FAQ's)**

#### **31. If a property was empty because it was listed for sale and was not sold, will the Empty Homes Tax apply?**

If a property was unoccupied for more than 180 days of the year solely because it was listed for sale, the Empty Homes Tax will apply; however, the registered owner is still required to submit a property status declaration. There is no exemption for property that is empty solely because it is listed for sale.

#### **32. If the ownership of a property was transferred in the tax year, will the Empty Homes Tax apply?**

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The Empty Homes Tax will not apply to properties that have had a transfer of legal ownership during the tax year; however, the registered owner is still required to submit a property status declaration and declare that this exemption applies.

#### Owner passed away

### **33. Will the Empty Homes Tax apply to a property if the registered owner has passed away?**

If a property was unoccupied for more than 180 days because the last remaining registered owner is deceased, and a grant of probate or a grant administration of the estate was pending, then the Empty Homes Tax will not apply; however, a property status declaration is still required and the exemption must be declared to apply.

If a grant of administration or probate has been issued by a date that would have allowed the property to have been occupied for six months of the applicable calendar year, then the property will be subject to the tax unless it was occupied for at least six months.

#### *E. Timeline for the Empty Homes Tax*

### **34. When are property status declarations due?**

Every owner of Class 1 Residential property is required to make a property status declaration by the second business day of February. For the first taxable year, the due date is February 2, 2018. Failure to make a declaration will result in the property being deemed vacant and subject to the tax and the owner may attract additional fines and penalties.

### **35. If a property is declared vacant, when will owners receive their Vacancy Tax notices?**

The City will issue Vacancy Tax notices to vacant property owners in March 2018 for the 2017 vacancy reference period.

### **36. If an owner is issued a Vacancy Tax notice, when will payment be due? How much are the penalties if the owner fails to make payment by the due date?**

Payment of the Empty Homes Tax (Vacancy Tax) is due by the tenth business day of April. For the first taxable year, the due date is April 16, 2018. If the owner fails to make a payment, a 5% penalty will be applied to any outstanding balance on the Vacancy Tax account after the due date. Any outstanding balance on December 31, 2018 will be added to the property tax account as arrears and begin to accrue daily interest.

#### *F. Real Estate Impacts*

For purchase and sales of residential properties in Vancouver that are closing during the property status declaration period (November 2017 to February 2, 2018), property status declarations should be made by the seller prior to the transfer of property. The tax certificate will show whether a declaration has been made, what has been

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declared and whether there is a tax liability. This document reflects the changes to the tax certificate's Empty Homes Tax section as of January 25, 2018.

The City is working with the real estate industry on a standard set of conveyancing forms and practices to deal with the Empty Homes Tax and this information will be updated as soon as it is available. At this point, buyers should consider requesting the following to be included into the Contract of Purchase and Sale terms:

- That the seller of the property provide a copy of the completed and filed property status declaration;
- That the seller provide a statutory declaration at closing confirming the filed property status declaration is true and correct;
- An express representation and warranty confirming that the property has not been vacant (as defined by the Vacancy Tax Bylaw) for more than 180 days during the current or prior year;
- Providing that the City has not yet determined if a property is subject to the tax, provide for a holdback of the potential tax pending the City's determination;
- Where the property is clearly subject to the Vacancy Tax, provide that an adjustment be carried out by the Buyer's conveyancer and the Vacancy Tax will be borne solely by the seller.

### **Tax Certificate**

This document reflects the changes to the tax certificate's Empty Homes Tax section as of January 25, 2018.

#### **37. What information will be on the tax certificate with respect to the Empty Homes Tax?**

The tax certificate will include the following:

- whether a declaration has been submitted,
- if a declaration has been submitted, the declared status of the property,
- any potential liability,
- amounts for levy, penalty, payment and adjustment amounts,
- the outstanding amount owing,
- whether the property was selected for an audit\*,
- whether a complaint has been submitted.

\*Note: a property may be audited up to two years after the vacancy reference period.

#### **38. Will there be any indication on the tax certificate that the property is eligible for the transfer of property exemption if the property is sold during the vacancy reference period?**

There is general information about the Empty Homes Tax on the tax certificate header, however the details provided on the tax certificate will be specific to the declared

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property status, amount owing, any potential liabilities and whether the declaration is under audit, complaint, or review.

**39. Will there be any indication on the tax certificate of whether or not a property status declaration has been made for the property?**

If a property status declaration was made during the declaration period, the tax certificate will indicate if a property is declared occupied, declared exempt or declared vacant. During this period an undeclared property will remain in pending status and the tax certificate will warn: "A declaration must be submitted prior to the completion of sale of this property otherwise the property will be deemed vacant and subject to the Vacancy Tax". If a declaration is not submitted by the due date, the property will be deemed vacant and subject to the Vacancy Tax, so this is a recommendation wherever possible.

After the declaration period closes, the tax certificate will indicate if a property is declared occupied, declared exempt, declared vacant or undeclared. The potential liability will reflect the levy amount based upon the current assessed value of the property and any other levies, penalties or miscellaneous charges.

**40. If the property is under audit, complaint or review, will the tax certificate indicate that the property is undergoing each process and will the potential liability be displayed?**

If the property is undergoing audit, complaint or review, the tax certificate will display the declaration status and state that the audit, complaint or review is "open".

If a property is undergoing audit, the tax certificate will indicate any potential liability. If a property is undergoing complaint/review, the tax certificate will remain as-is and indicate the status of the complaint or review because a complaint/review would only occur on property that is deemed vacant and will therefore show in the Billing Summary section as a levy. The exception to this is that if a complaint/review is occurring on a property that has declared vacant and has not yet been billed, it will show as a potential liability.

**41. How will the liability appear on the tax certificate for a property that is declared vacant?**

If a property is declared vacant, but a bill has not yet been generated, the tax certificate will show 1% of the property's assessed taxable value as a potential liability. Once a bill has been issued, the Vacancy Tax amount will appear as a levy under the Balance Summary section.

**42. How will an outstanding Vacancy Tax amount be displayed on the tax certificate when it has been added to the property tax account as arrears?**

Any Vacancy Tax balance at the end of the 2017 year will be added to property taxes and be displayed on the tax certificate as property taxes in arrears.

**43. Can a new owner rely solely on the tax certificate which states that a declaration has been made where the property status is declared occupied? Will the new owner be expected to provide evidence or information to support a previous owner's property status declaration?**

Where there is a transfer of legal ownership of property that closes outside of the vacancy reference period (e.g. the purchase and sale agreement was entered into in 2017 but the transaction does not close until 2018), the exemption for the transfer of property does not apply. If the property was vacant, the City may still impose the Empty Homes Tax and this should be accounted for during the conveyancing.

Buyers of residential property should consider requesting that the seller provide a statutory declaration at closing confirming the filed property status declaration is true and correct to be included as additional terms in the Contract of Purchase and Sale.

Pursuant to the Vacancy Tax Bylaw, the Collector of Taxes may audit up to two years after the applicable vacancy reference period and request an owner to provide evidence or information to support a property status. If the Collector of Taxes reviews the evidence or information and determines that the declaration was false, then the property would be subject to the tax.

Any penalties for non-declaration would be applied against the owner(s) on record who received a notification to declare for the reference period and who failed to make a declaration. A new owner would not be responsible for these penalties.

Additional fines for false information or evidence would be applied against the owner(s) who submitted the false property status declaration and not the property.

**44. Will the Vacancy Tax account always show on the tax certificate?**

If a property is not subject to the Empty Homes Tax because it is not solely Class 1 residential, it is tax exempt or it is excluded based on the definition of residential property in the Vacancy Tax Bylaw, then there will not be a Vacancy Tax section on the tax certificate.

**45. If a property is subject to the tax, will the Vacancy Tax amount show on the property inquiry website ([vancouver.ca/propertyinquiry](http://vancouver.ca/propertyinquiry)) that is available to the public?**

The Vacancy Tax amount or potential liability will not be displayed on these publicly available reports. All properties will have a note within both the Property Inquiry Report and the Account Balances Report that states, "Any liability for Vacancy Tax is not included as part of this report. For more information on Vacancy Tax, visit [Vancouver.ca/ehf](http://Vancouver.ca/ehf). For questions, call 3-1-1".

## Property Status Declaration

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**46. When do owners get instructions and an access code to make a declaration?**

Owners of Class 1 residential property will receive instructions on how to make a declaration with their advance property tax notice each year. Access codes are issued to registered owners regularly as part of the tax administration process. When a property transfers to a new owner, a new access code will be issued and the previous owner's access code will expire.

The access code for a Vacancy Tax account and property tax are the same. To avoid possible delays with mailing, new owners can contact 3-1-1 to setup an online property services account and sign up for eBilling to receive the notification by email.

**47. When a property sale has occurred, which owner can make a declaration, provide audit submissions, submit a complaint or request a review?**

Only the current registered owner has the ability to provide submissions related to the Vacancy Tax Bylaw. The current owner is the registered owner - on title, on the property tax roll and has a valid access code with the City of Vancouver.

**48. Is a property status declaration still required if the property is sold?**

All owners of residential property in the City of Vancouver are required to make a property status declaration to determine if the property is subject to the tax. If legal ownership of the property changed, a property status declaration is still required and the registered owner can claim the title transfer exemption.

If the property is selected for audit, the City may request evidence including a title search proving that a new title number was issued and legal ownership of the property changed during the reference period.

**49. Does the transfer of property exemption apply when an owner submits an address or name change as a transfer at the Land Title Office?**

The exemption applies when there is a title transfer resulting in a new title number being issued. The use of "transfer" is based on the definition of "transfer" in the Land Title Act, being a conveyance, a grant and an assignment.

**50. If a property sale is completed after the declaration period has opened, who is responsible for making a property status declaration?**

Property status declarations are to be made by the seller **prior** to the transfer of the property.

The City is working with the real estate industry on a standard set of conveyancing forms and practices to deal with the Empty Homes Tax and this information will be updated as soon as it is available. At this point, buyers should consider requesting the following to be included into the Contract of Purchase and Sale terms:

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- That the seller of the property provide a copy of the completed and filed property status declaration;
  - That the seller provide a statutory declaration at closing confirming the filed property status declaration is true and correct;
  - An express representation and warranty confirming that the property has not been vacant (as defined by the Vacancy Tax Bylaw) for more than 180 days during the current or prior year;
  - Providing that the City has not yet determined if a property is subject to the tax or not, provide for a holdback of the potential tax pending the City's determination;
  - Where the property is clearly subject to the Vacancy Tax, provide that an adjustment be carried out by the Buyer's conveyancer and the Vacancy Tax will be borne solely by the seller.

**51. What if a property is sold and the previous owner did not make a property status declaration?**

If the legal ownership of the property transferred prior to December 31 and the City has issued an access code to the current owner, the current owner can make a property status declaration for a transfer of property and can claim the title transfer exemption. If the property is selected for audit, the City may request evidence including a title search proving that a new title number was issued and legal ownership of the property changed during the vacancy reference period.

If the legal ownership of the property transferred after January 1 of the following year, the current owner may have difficulty making a property status declaration because they were not responsible for occupying the property for at least six months of the vacancy reference period nor did the ownership of the property change during that period. If no property status declaration is made, the property will be deemed vacant and subject to the tax. The current owner will be held responsible for the payment of the Vacancy Tax as the tax is attached to the property account.

If the City has not yet determined if a property is subject to the tax, it is recommended that the contract provide for a holdback of the potential tax pending the City's determination, or where the property is clearly subject to the tax, provide that an adjustment be carried out by the buyer's conveyancer and the Vacancy Tax will be borne solely by the seller.

### Liabilities

**52. If a property is subject to the Vacancy Tax plus fines and penalties due to a failure to declare, who is responsible for the liability?**

Vacancy Tax is assessed on a property and therefore any unpaid Vacancy Tax and late payment penalty remains as a liability on the Vacancy Tax account or, if left unpaid, in subsequent years on the property tax account. A change in ownership does not relieve the new owner of this liability. If a property is declared vacant or the City has not yet determined whether a property is subject to the tax, it is recommended to

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provide a holdback for 1% of the previous year's assessed value pending the City's determination.

If ownership changed and a property status declaration was not submitted to the City by the due date, the bylaw fine for a failure to declare will be issued to the owner(s) on record who received a notification to declare for the reference period and who failed to make a declaration. For example, if an owner changed after December 31, and the previous owner did not declare, then the previous owner would be responsible for the bylaw penalty amount.

**53. If the City determines that the property status declaration is false or non-compliant due to failure to comply with the audit process and the property is subject to the Vacancy Tax and a penalty of up to \$10,000 a day of the continuing offence, who is responsible for the liability?**

Vacancy Tax is assessed on a property and therefore any unpaid Vacancy Tax and late payment penalty remains as a liability on the Vacancy Tax account or, if left unpaid, in subsequent years on the property tax account. A change in ownership does not relieve the new owner of this liability. If the City has not yet determined whether a property is subject to the tax, it is recommended to provide a holdback for 1% of the previous year's assessed taxable value pending the City's determination.

The owner(s) responsible for the declaration and who failed to provide the evidence and information is guilty of an offence under the bylaw and is liable to the penalties imposed - punishable on conviction by a fine of not less than \$250.00 and not more than \$10,000 per day. The fines are not imposed on the property, but instead follow the owner who submitted the property status declaration. The previous owner who made the false declaration would be responsible for any fines.

**54. What is the complaint process regarding bills received by new owners for prior owners' outstanding liabilities?**

A registered owner who receives a Vacancy Tax notice or supplementary Vacancy Tax notice may submit a complaint regarding the decision to impose the Vacancy Tax on the grounds that:

- 1) an error or omission on the part of the City resulted in the imposition of the tax and/or
- 2) an error or omission on the part of the registered owner in completing the property status declaration resulted in the imposition of the tax.

The process is not open for a new owner to submit a complaint solely on the basis that they were not the owner during the applicable vacancy reference period. As such, the new owner would need to gather information from the previous owner to support a claim that there was an error resulting in the tax and obtain a statutory declaration or affidavit from the seller as part of the purchase and sale as to the status of the property (together with any substantiating documentation) which could be forwarded with the notice of complaint. It is recommended that the buyer provide for a holdback of the potential tax pending the City's determination, or where the property is clearly

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subject to the Vacancy Tax, provide that an adjustment be carried out by the buyer's conveyancer and the Vacancy Tax will be borne solely by the seller.