Foreign Ownership & Trades
Dealing with Non-Residents

As investors continue to look at new opportunities, foreign buyers are making inroads in Saskatchewan. This includes all aspects of trades in real estate and property management. There is an extra layer of consideration that should be used in dealing with foreign entities from the basics of confirming the existence/identity of the client to determining any special requirements the brokerages may have to undertake.

The type of contract you sign can have a variety of implications to your brokerage. If you execute an all-inclusive contract for property management services, you will have to meet the requirements of the tax legislation for collecting, reporting and filing various taxes. The contract must be clear and address all relevant duties (including those under *The Real Estate Act*), that must occur. This could include, but is not limited to, the following:

- collecting, deducting and remitting withholding taxes
- filing annual returns for withholding taxes
- reporting of withholding taxes to non-resident owners
- collecting, remitting and reporting provincial sales tax or GST, if applicable
- being liable for any errors, including penalties and interest, related to the above items.

Even if you draft a contract to try and avoid some of these issues or hire a third party to perform these functions; you may still be held legally responsible by the tax authorities for errors that occur. If you use a third party to deduct and remit taxes, you would need to have a contract in place and also receive confirmation on a regular basis that they are properly doing their job. You would want to receive copies of any filings, assessments and returns that are required to be filed with all tax authorities.

For purchases and sales, you will also need to ensure you take extra precautions. You will have to consider the impact of cultural differences as well as language barriers in your ability to serve a client. While non-residents may appear to be fluent in English, the level of comprehension they have may not be sufficient for them to truly understand the documents you are providing to them. This could result in delays or failure to complete and execute documents due to misunderstandings.

When a non-resident disposes of property, taxes may be owing to Canada under *The Income Tax Act*. In order to ensure there are no tax liabilities outstanding, a clearance certificate would have to be obtained from the Canada Revenue Agency. In most cases, the amount of tax would be withheld from the sale proceeds and forwarded to the Canada Revenue Agency. Obtaining a clearance certificate can take precious time and paying of taxes may be an unpleasant surprise for your non-resident client.

If this is a new area of business for the brokerage, adequate consideration should be given to the risks and rewards. A failure to consult with business advisors (legal, accounting, etc.) may result in future issues for the brokerage. Because this legislation changes continually, your best source of knowledge will be your business advisors. Investing a bit of money upfront can prevent large, unexpected headaches and bills down the road.