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PROFESSIONAL REAL ESTATE CORPORATIONS (“PREC”)

1. **Bill 145:** On March 4, 2020, Bill 145 received Royal Assent. Among other things, the Bill makes various amendments to the *Real Estate and Business Brokers Act, 2002* (the “Act”) including:
 - (a) The Act is renamed to *Trust in Real Estate Services Act, 2002*; and
 - (b) The Act currently prohibits trading in real estate without registering under the Act, subject to various exemptions. The Bill creates a new exemption in respect of personal real estate corporations (“PREC”) and prescribed members of such corporations. This exemption is subject to prescribed conditions.
2. **Proposed Regulations** - At this time, the government is seeking feedback from registrants, members of the public and other stakeholders in respect of the PREC, and has proposed regulations (copy attached) in respect of the qualification, exemptions, and general governance of a PREC. Presently, the proposed regulations provide as follows:
 - (a) **Qualification** - A PREC is a corporation that meets the following prescribed criteria:
 - (i) The corporation must be incorporated pursuant to the *Business Corporations Act* (Ontario).
 - (ii) All voting shares are owned by the controlling individual. A controlling individual must be registered as a broker or salesperson.
 - (iii) All non-voting shares are owned by the controlling individual, a family member (i.e., spouse, child, or parent), or an individual as trustee for a minor child.
 - (iv) The controlling individual is the sole officer and director of PREC.
 - (v) There is no written provision by agreement or otherwise or arrangement that restricts or transfers in whole or in part the powers of the sole director to manage or supervise the management of the business and affairs of PREC.
 - (b) **Exemption from Registration** - A PREC is exempt from registration under the Act if it meets the following prescribed criteria:

- (i) The controlling individual is employed by a brokerage to trade in real estate.
- (ii) PREC does not carry on the business of trading in real estate other than providing the services of its controlling individual to the brokerage.
- (iii) PREC, its controlling individual and its employees do not represent to the public in any manner, directly or indirectly, that PREC carries on the business of trading in real estate.
- (iv) PREC is not a brokerage, and does not hold money or other property of a client, customer or other person in connection with trading in real estate.
- (v) PREC only receives remuneration for trading in real estate from a brokerage.
- (vi) The controlling individual does not receive remuneration for trading in real estate from any person or entity other than the personal real estate corporation or the brokerage.
- (vii) PREC does not, on behalf of the brokerage, directly or indirectly hold any money or other property of a client, customer or other person in connection with trading in real estate.
- (viii) There is a written agreement between PREC, the controlling individual and the brokerage governing the relationship between the brokerage and the corporation and its controlling individual, pursuant to which agreement:
 - (a) PREC does not hinder or obstruct the brokerage or its broker of record in the performance of their duties under the Act and regulations;
 - (b) PREC does not hinder or obstruct the controlling individual in the performance of the individual's duties under the Act and regulations;
 - (c) PREC provides whatever assistance may be reasonably necessary to enable the brokerage and its broker of record to comply with their duties under the Act and regulations and to enable the brokerage and its broker of record to ensure that the controlling individual is complying with the individual's duties under the Act and regulations; and
 - (d) PREC agrees to provide whatever assistance may be reasonably necessary to enable the brokerage to determine whether the conditions set out in this section are met.

(c) Remuneration –

- (i) Under amendment to existing Ontario Regulation 567.05, “Commissions and other remuneration” is replaced with “Remuneration” which is now defined as “any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly”.
- (ii) Brokerage may pay PREC remuneration if Brokerage has confirmed in writing that conditions of exemption of registration have been met.
- (iii) Controlling individual may accept remuneration from PREC if brokerage pays PREC instead of controlling individual and amount paid by PREC to controlling individual is equal to or less than amount paid by brokerage to PREC.

(d) Registrant’s Duties – Controlling individual shall:

- (i) Provide notification to registrar of registration of legal name of PREC and address for service before PREC receives any remuneration from brokerage.
- (ii) Provide notification to registrar of change in circumstance that would affect the PREC’s eligibility for exemption from registration within 5 days.
- (iii) Disclose in writing to every client any property interest that a PREC has in a real estate transaction.

3. Costs –**(a) Incorporation –**

- (i) Lawyer Fees - \$1,200.00 - \$1,500.00 (plus HST), depending upon complexity of authorized capital and structure; plus
- (ii) Disbursements - \$400.00 (plus HST), for conducting name searches, filing of certificate of incorporation, filing initial notices, etc.

(b) Minutes and Resolutions - \$300.00 to \$500.00 (plus HST) per annum.

(c) RECO – Unknown at this time. While PREC is exempt from registration, controlling individuals are still registered to provide notice and update changes, in respect of which RECO may or may not charge a fee.

4. Next Steps:

- (a) Tightening Regulations – Restrictions regarding name, limitation of use of PREC to trading in real estate, etc.

- (b) Promulgation – Date on which Bill is promulgated by the Lieutenant Governor as confirming in force.

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT**[Bilingual]****ONTARIO REGULATION**

to be made under the

REAL ESTATE AND BUSINESS BROKERS ACT, 2002**PERSONAL REAL ESTATE CORPORATIONS****Interpretation**

1. (1) In this Regulation,

“controlling individual” means, in respect of a personal real estate corporation, the individual who is the sole holder of all the equity shares of the personal real estate corporation; **[FRENCH]**

“non-equity share” means, in respect of a personal real estate corporation, a share that is not an equity share; **[FRENCH]**

“child”, in relation to a shareholder of a personal real estate corporation, includes a person whom the shareholder has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; **[FRENCH]**

“family member” means, in relation to a shareholder of a personal real estate corporation, the shareholder’s spouse, child or parent; **[FRENCH]**

“parent” in relation to a shareholder of a personal real estate corporation, includes a person who has demonstrated a settled intention to treat the shareholder as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; **[FRENCH]**

“spouse”, in relation to a shareholder of a personal real estate corporation, means a person to whom the shareholder is married or with whom the shareholder is living in a conjugal relationship outside marriage. [FRENCH]

Personal real estate corporation, criteria

2. The following criteria are prescribed for the purposes of the definition of “personal real estate corporation” in subsection 1 (1) of the Act:

1. The corporation is incorporated or continued under the *Business Corporations Act*.
2. All of the equity shares of the corporation are legally and beneficially owned, directly or indirectly, by the controlling individual.
3. The sole director of the corporation is the controlling individual.
4. The president, being the sole officer of the corporation, is the controlling individual.
5. The controlling individual is registered as a broker or salesperson.
6. Each non-equity share of the corporation is,
 - i. legally and beneficially owned, directly or indirectly, by the controlling individual,
 - ii. legally and beneficially owned, directly or indirectly, by a family member of the controlling individual, or
 - iii. owned legally by one or more individuals, as trustees, in trust for one or more children of the controlling individual who are minors, as beneficiaries.
7. There is no written provision by agreement or otherwise or arrangement that restricts or transfers in whole or in part the powers of the sole director to manage or supervise the management of the business and affairs of the corporation.

Exemption from registration, conditions

3. The following conditions are prescribed for the purposes of subsection 5 (3) of the Act:

1. The personal real estate corporation’s controlling individual is employed by a brokerage to trade in real estate.

2. The personal real estate corporation does not carry on the business of trading in real estate other than providing the services of its controlling individual to the brokerage.
3. The personal real estate corporation, its controlling individual and its employees do not represent to the public in any manner, directly or indirectly, that the corporation carries on the business of trading in real estate.
4. The personal real estate corporation does not carry on business as a brokerage.
5. The personal real estate corporation does not receive, directly or indirectly, remuneration for trading in real estate from any person or entity other than the brokerage.
6. The controlling individual does not receive, directly or indirectly, remuneration for trading in real estate from any person or entity other than the personal real estate corporation or the brokerage.
7. The personal real estate corporation does not, on behalf of the brokerage, directly or indirectly hold any money or other property of a client, customer or other person in connection with trading in real estate.
8. There is a written agreement between the personal real estate corporation, the controlling individual and the brokerage governing the relationship between the brokerage and the corporation and its controlling individual.
9. Under the agreement mentioned in paragraph 7, the personal real estate corporation agrees not to,
 - i. hinder or obstruct the brokerage or its broker of record in the performance of their duties under the Act and regulations, or
 - ii. hinder or obstruct the controlling individual in the performance of the individual's duties under the Act and regulations
10. Under the agreement mentioned in paragraph 7, the personal real estate corporation agrees to provide whatever assistance may be reasonably necessary to enable the brokerage and its broker of record to comply with their duties under the Act and regulations and to enable the brokerage and its broker of record to ensure that the controlling individual is complying with the individual's duties under the Act and regulations.
11. Under the agreement mentioned in paragraph 7, the personal real estate corporation agrees to provide whatever assistance may be reasonably necessary

to enable the brokerage to determine whether the conditions set out in this section are met.

Remuneration, personal real estate corporation

4. A brokerage may pay remuneration to a person referred to in clause 30 (b) of the Act, if,

- (a) the person is a personal real estate corporation that is exempt from registration under subsection 5 (3) of the Act; and
- (b) the brokerage has confirmed in writing that the conditions set out in section 3 entitling the personal real estate corporation to the exemption are met.

Remuneration, broker, salesperson

5. A broker or salesperson who is the controlling individual of a personal real estate corporation that is exempt from registration under subsection 5 (3) of the Act is entitled to and may accept remuneration for trading in real estate from the personal real estate corporation if the following circumstances exist:

1. The brokerage that employs the broker or salesperson to trade in real estate pays the remuneration for the broker or salesperson to the personal real estate corporation instead of to the broker or salesperson.
2. The amount of the remuneration paid by the personal real estate corporation to the broker or salesperson is not greater than the amount of the remuneration received from the brokerage for the broker or salesperson.

Notice to the registrar

6. (1) A broker or salesperson who is the controlling individual of a personal real estate corporation that is exempt from registration under subsection 5 (3) of the Act shall, before the personal real estate corporation receives any remuneration from a brokerage, provide written notice to the registrar of the following information:

1. The legal name of the personal real estate corporation.
2. The address for service of the personal real estate corporation.

(2) A broker or salesperson referred to in subsection (1) shall notify the registrar in writing of any change in circumstances that would affect the personal real estate corporation's eligibility for the exemption from registration or any change to the information in subsection (1) within 5 days after the change takes place.

Requirement on broker, salesperson re: non-exempt corporation

7. (1) This section applies with respect to a broker or salesperson who is the controlling individual of a personal real estate corporation that is not exempt from

registration under subsection 5 (3) of the Act because one or more of the conditions listed in section 3 is not met.

(2) The broker or salesperson must ensure that the corporation, if not registered as a brokerage, does not perform an action for which registration is required.

Commencement

8. [Commencement]