



TAX ISSUES FOR REALTORS®

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BACKGROUND

- Real Estate lawyer – 35 years
- Best selling author
- Guest Real Estate Expert- CTV News, BNN, Global News, City TV, CBC Radio, Newstalk1010
- Columnist – Toronto Star, REM Magazine
- Senior Partner – Real Estate Lawyers.ca LLP





Real Estate Lawyers.ca LLP

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IF YOU ARE IN NEED OF ANY LEGAL ADVICE, PLEASE CONTACT MARK WEISLEDER DIRECTLY AT:

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AGENT INCORPORATION PREC

- Agents are now able to incorporate
- PREC- Personal Real Estate Corporation



AGENT INCORPORATION PREC

- Our firm will provide low-cost incorporation to all agents
- \$1,350.00, includes fee, HST and disbursements
- Will comply with all RECO requirements
- Can be organized in a week
- Will include an agreement to be signed with the agent, PREC and the brokerage.
- Will give instructions on what to email to RECO



LAND TRANSFER TAX FORMULAS

- 0-\$55,000 = \$ x .5%
- \$55,000 - \$250,000 = \$ x 1% - \$275
- \$250,000 - \$400,000 = \$ x 1.5% - \$1,525
- \$400,000 – 2 million = \$ x 2% - \$3,525
- Over 2 million
- If residential home or duplex = \$ x 2.5% - \$13,525
- Everything Else = \$ x 2% - \$3,525
- If in Toronto = double the amount
- Rebates
- Provincial Rebate - \$4,000 Toronto Rebate \$4,475



LAND TRANSFER TAX ACT

- Parking Unit cost \$40,000 = (.5%) $\$40 \times 5 = \200.00
- House cost \$200,000 = (1%) $\$2,000.00 - \$275 = \$1,725$
- House cost \$300,000 = (1.5%) $\$4,500.00 - \$1,525.00 = \$2,975.00$
- House cost \$1,000,000 = (2%) $\$20,000 - \$3,525.00 = \$16,475.00$
- House cost \$3,000,000 = (2.5%) $\$75,000 - \$13,525 = \$61,475.00$
- Plaza cost \$3,000,000 = (2%) $\$60,000 - \$3,525 = \$56,475.00$
- House in Toronto \$1,000,000 = $\$16,475.00 \times 2 = \$32,950.00$
- Land transfer tax rebates $-\$4,000$ in Ontario, extra $\$4,475$ in Toronto
- First time \$1 million buyer outside Toronto = $\$16,475.00 - \$4,000 = \$12,475$
- First time buyer Toronto \$1 million = $\$32,950 - \$8,475.00 = \$24,475.00$
- Rebates deducted right at closing



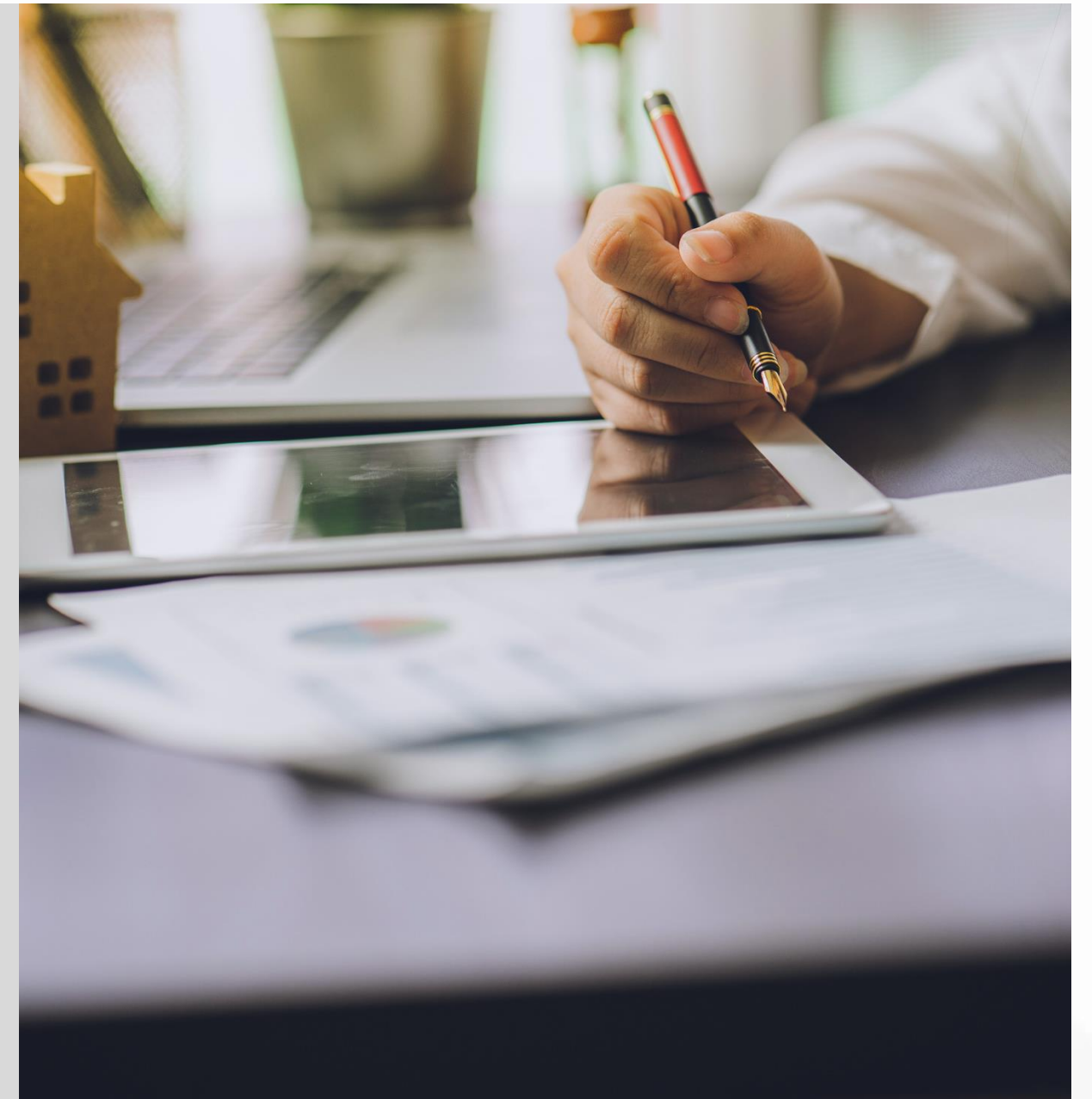
LAND TRANSFER TAX ACT

- Land Transfer Tax Rebates
- Available to first time home buyers
- If in Ontario – one rebate – maximum \$4,000
- If in Toronto – second rebate – maximum \$4,475
- You cannot have owned a home before anywhere in the world or your spouse as well while they were married to you



LAND TRANSFER TAX ACT

- If spouse sold a home before getting married to you, then you can still claim a full share of the rebate
- You Must be a permanent resident or Canadian Citizen as well to claim this rebate
- Similar to 15% tax on non-residents in Golden horseshoe
- If a non-resident becomes a PR within 18 months of closing, they can still claim the rebate
- Must occupy home within 9 months of closing as your primary residence
- Cannot be a rental property



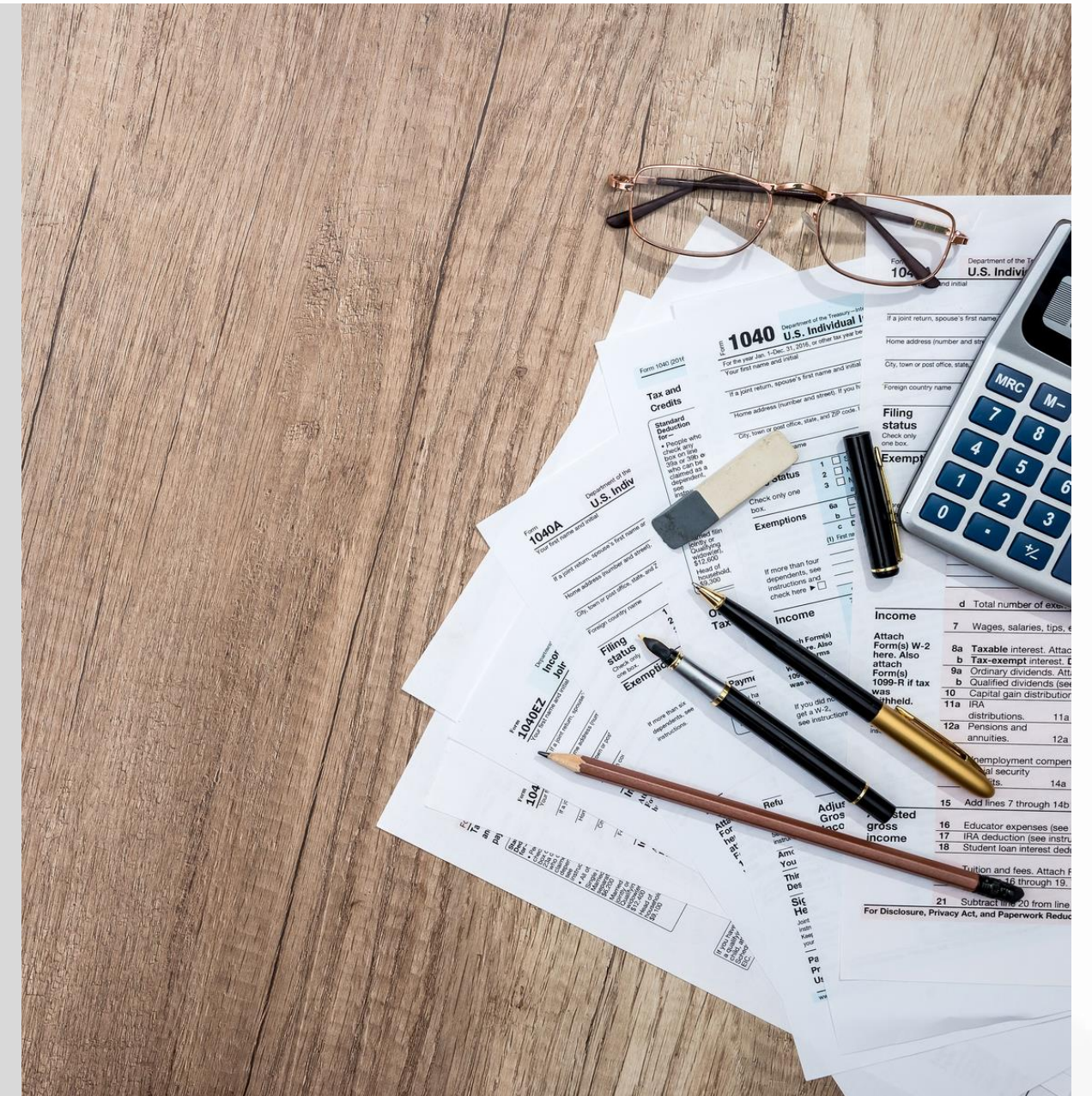
LAND TRANSFER TAX ACT

- Spouse includes common-law spouse as well
- If you received home as a gift before or inherited a home, you cannot claim the refund on a home that you buy later



LAND TRANSFER TAX ACT

- The first-time buyer needs the parent to co-sign the mortgage
- Buyer takes 99%, parents, 1%
- Receives 99% of the Land Transfer Tax rebate
- Be careful if sibling co-signs 1% – need trust agreement
- Boyfriend and girlfriend buy together
- Girlfriend never owned home, the boyfriend did
- If they take title 50/50 – she gets 50% of rebate, he gets 0%
- If she takes 99%, she gets 99% of the rebate but may require a trust agreement or pre-marriage contract



LAND TRANSFER TAX ACT

- Is there a situation where you will pay no land transfer tax?
- If the property is given as a gift
- If you inherit property
- A spouse can transfer property to their spouse with no land transfer tax payable
- If transferring to a child as a gift, land transfer tax payable on the value of any mortgage being assumed by the child
- If transferring property to a corporation, land transfer tax will usually be payable



LAND TRANSFER TAX ACT

- But there may still be income tax consequences on the person making the gift
- Never advise on this
- Refer people to their accountants or lawyers for advice on any estate planning



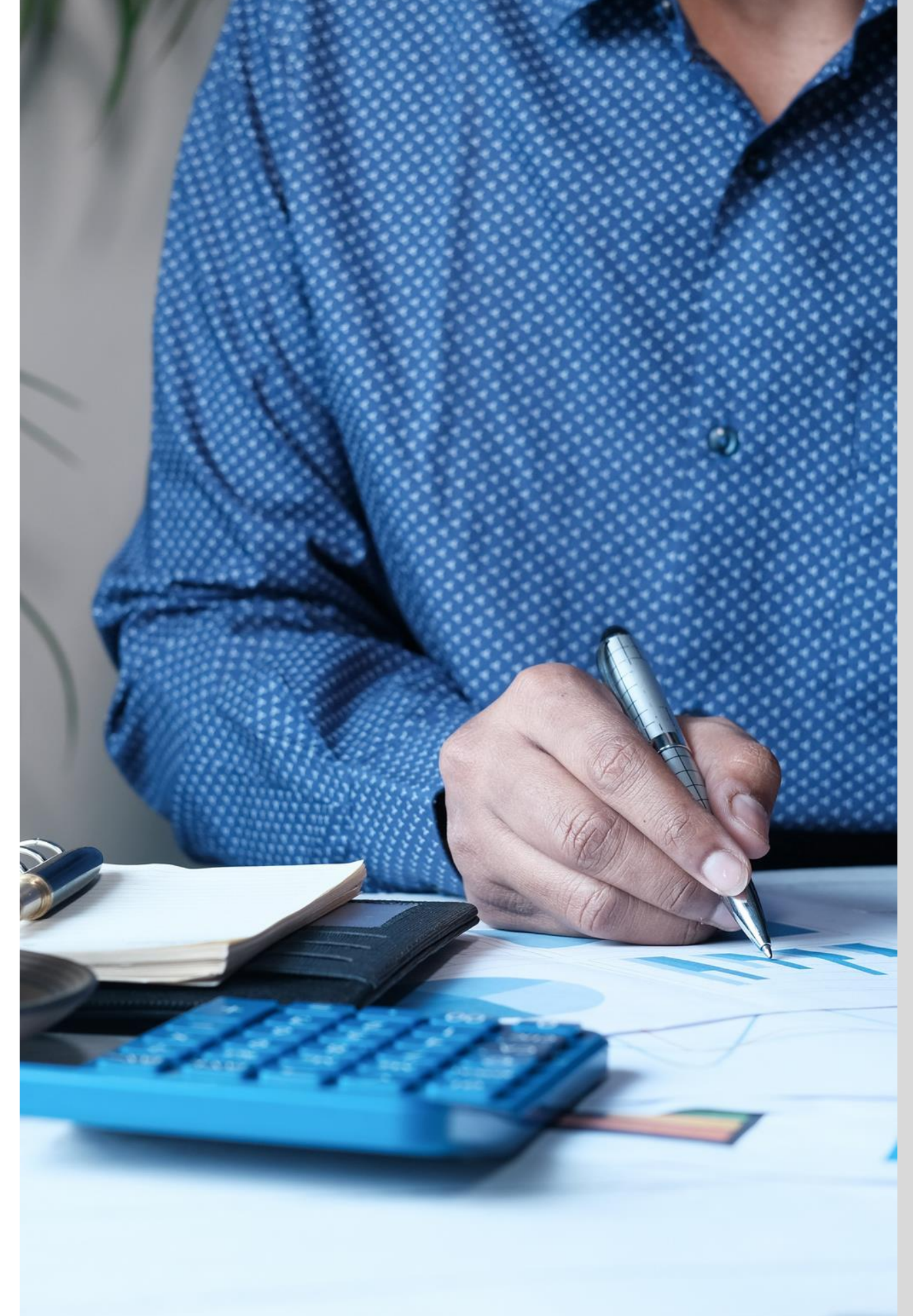
LAND TRANSFER TAX ACT

- Have you seen a situation where the purchase price is not on the title?
- It just said \$2
- Can you keep the purchase price off the title?
- Answer is yes
- By paying land transfer tax BEFORE closing
- Then on closing, the deed will only show \$2
- Must do in advance of closing due to the pandemic – staffing issues at Ministry



LAND SPECULATION TAX

- Extra 15% tax payable on closing if buyer a non-resident
- \$1,000,000 property – tax is \$150,000
- Even if non-resident owns only 1% of the title - \$150,000
- In the entire golden horseshoe area
- Unless the buyer is a Canadian Citizen or Permanent Resident
- Or has been Nominated by Ontario Ministry under the Ontario Immigrant Nominee Program
- Or refugee protected under immigration Law
- Or if non-resident if buying with a Canadian Citizen spouse and living in the property as their primary residence



LAND SPECULATION TAX REBATE

- A non-resident can get 15% tax paid back if:
- Non-resident becomes permanent resident within 4 years of closing
- A non-resident is working full-time under a valid work visa for 1 year from the date of closing
- A student on title who attends Ontario university for 2 continuous years after the closing date
- You have 90 days from the date you become a permanent resident to make the rebate request
- Or else you lose it



HST REBATE

- Buying a new home or condominium from a builder
- Example– purchase price - \$500,000
- Real price is \$524,000
- Buyer is entitled to HST rebate if they move in on closing
- HST Rebate ranges from \$18,000 - \$28,000, depending on the purchase price
- In this case, the rebate is \$24,000
- This is assigned to the builder on closing
- So, the net price becomes \$500,000



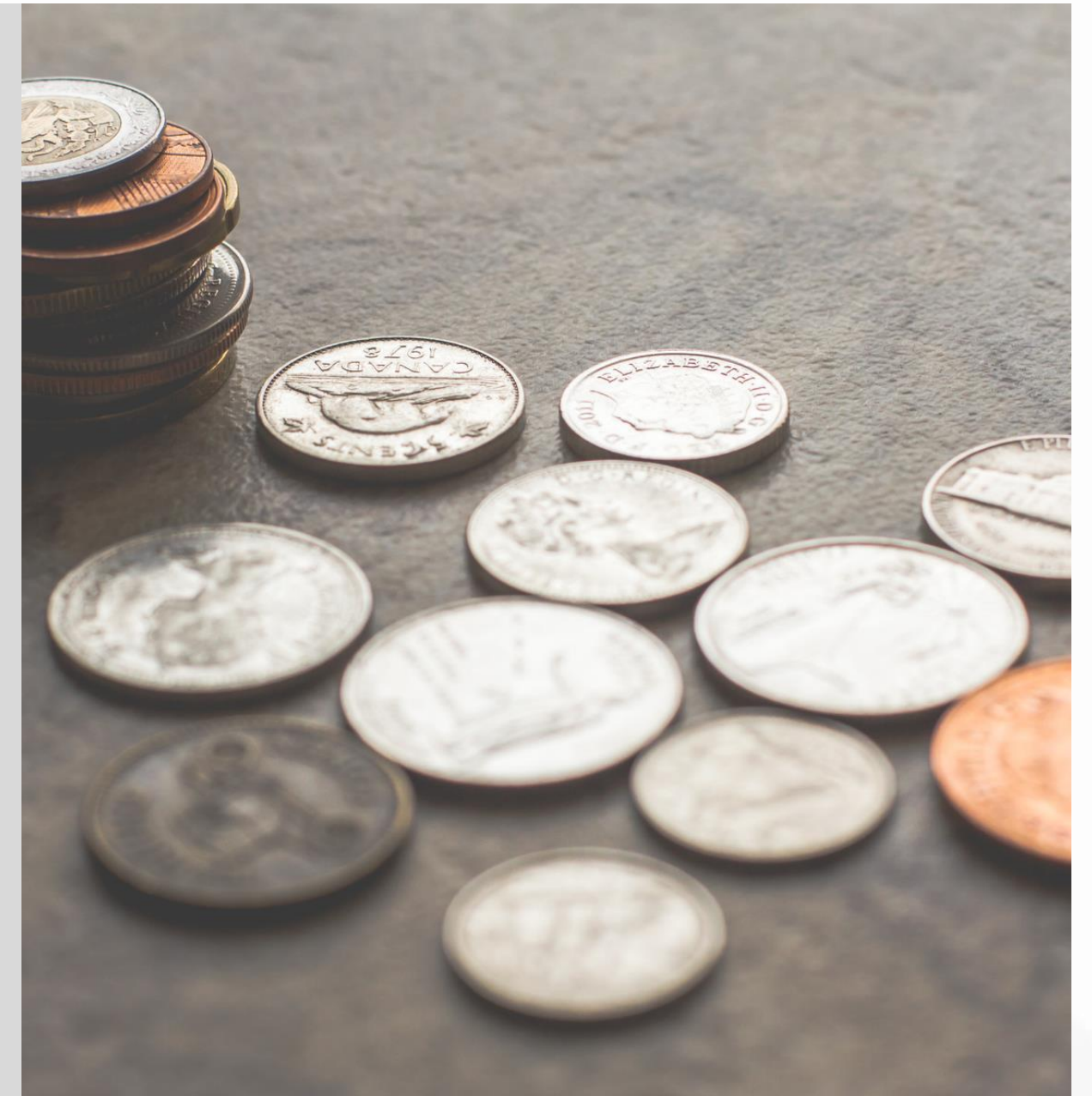
HST REBATE

- If buyer rents it out, they will pay the \$524,000 on closing
- But then the buyer can apply separately for a \$24,000 refund
- It takes 8-12 weeks after closing to obtain the rebate



HST REBATE

- If the buyer sells on assignment, then the new buyer will likely have to pay in this example the extra \$24,000 HST on closing to the builder
- But then the buyer can apply separately for a full \$24,000 refund



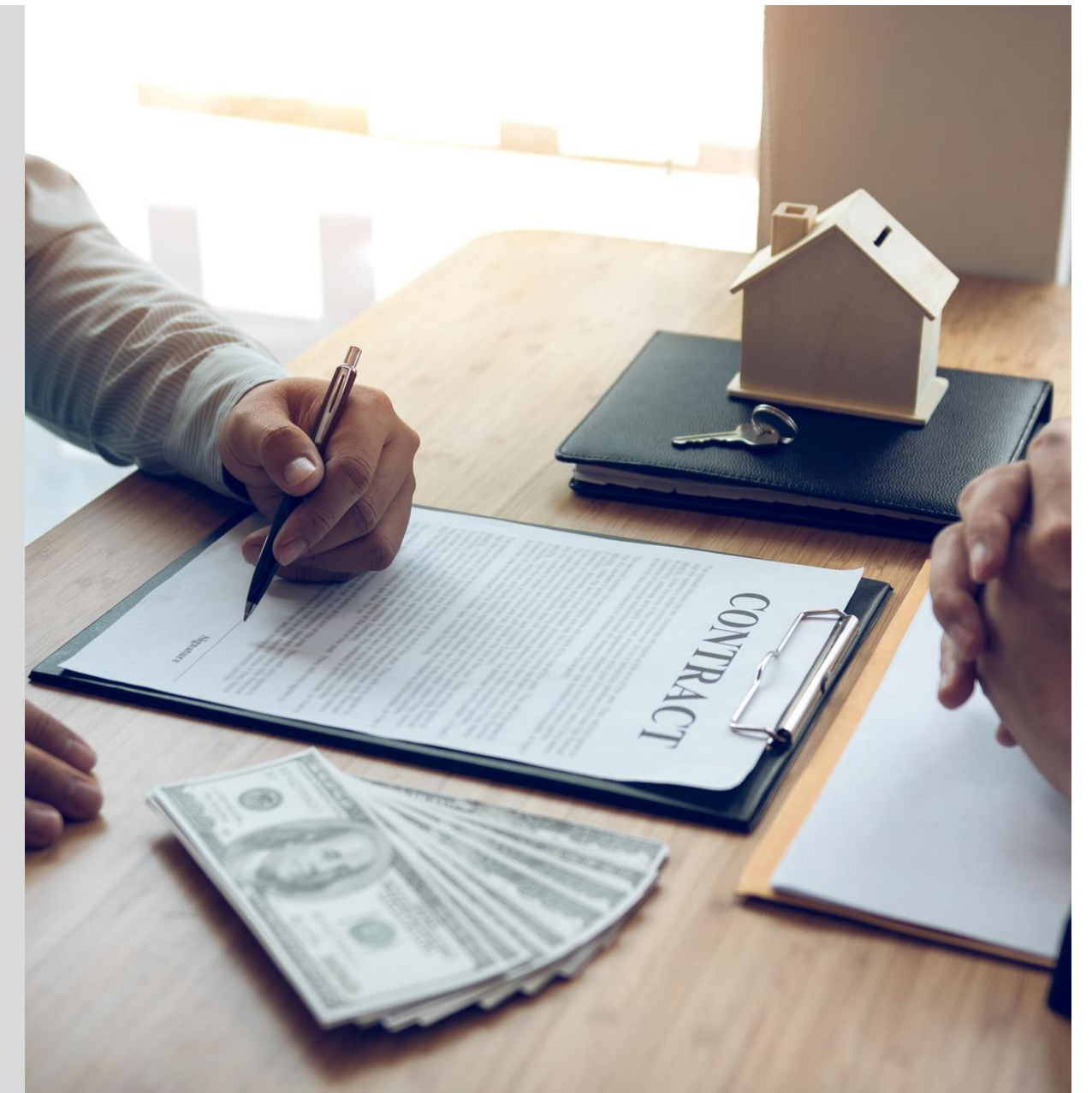
HST ON COMMERCIAL PROPERTY

- Always payable
- It is enough if the buyer is registered for HST
- Then no HST payable on closing, and the buyer gives HST number and indemnity
- Multi-unit residential is not considered commercial for HST
- HST not payable on multi-unit residential
- If the building is combined commercial and residential
- Then HST payable on commercial portion only
- Parties must agree on the allocation



HST ON COMMERCIAL PROPERTY

- Example
- \$1,000,000 property – 50% commercial, 50% residential
- Should be \$500,000 plus HST of \$65,000 for commercial part
- Should be \$500,000 with no HST for residential part
- Let's say offer accepted for \$1,000,000 "HST included"
- If CRA reassesses the seller
- Price will be close to \$942,500 plus HST
- Seller will need to pay the HST of \$57,500, not the buyer
- This is why you either allocate in advance or
- Just tell the seller to sell for \$1,057,500 (HST included)
- Then seller nets \$1,000,000 after paying HST
- Same exercise for all other allocations



HST ON RESIDENTIAL RESALE PROPERTY

- HST is not payable on residential resale unless:
- If it is a substantially renovated home (over 90% square footage) – HST is payable
- Or if business is operated out of it – daycare
- Does not include a home office
- Issue when builder sells without TARION warranty
- Clause to include that Seller will provide on closing a declaration that HST is not payable as the property is a personal use property or a home occupied by the seller or a used residential complex and that the home is not a new or substantially renovated residential complex as defined under the Excise Tax Act of Canada



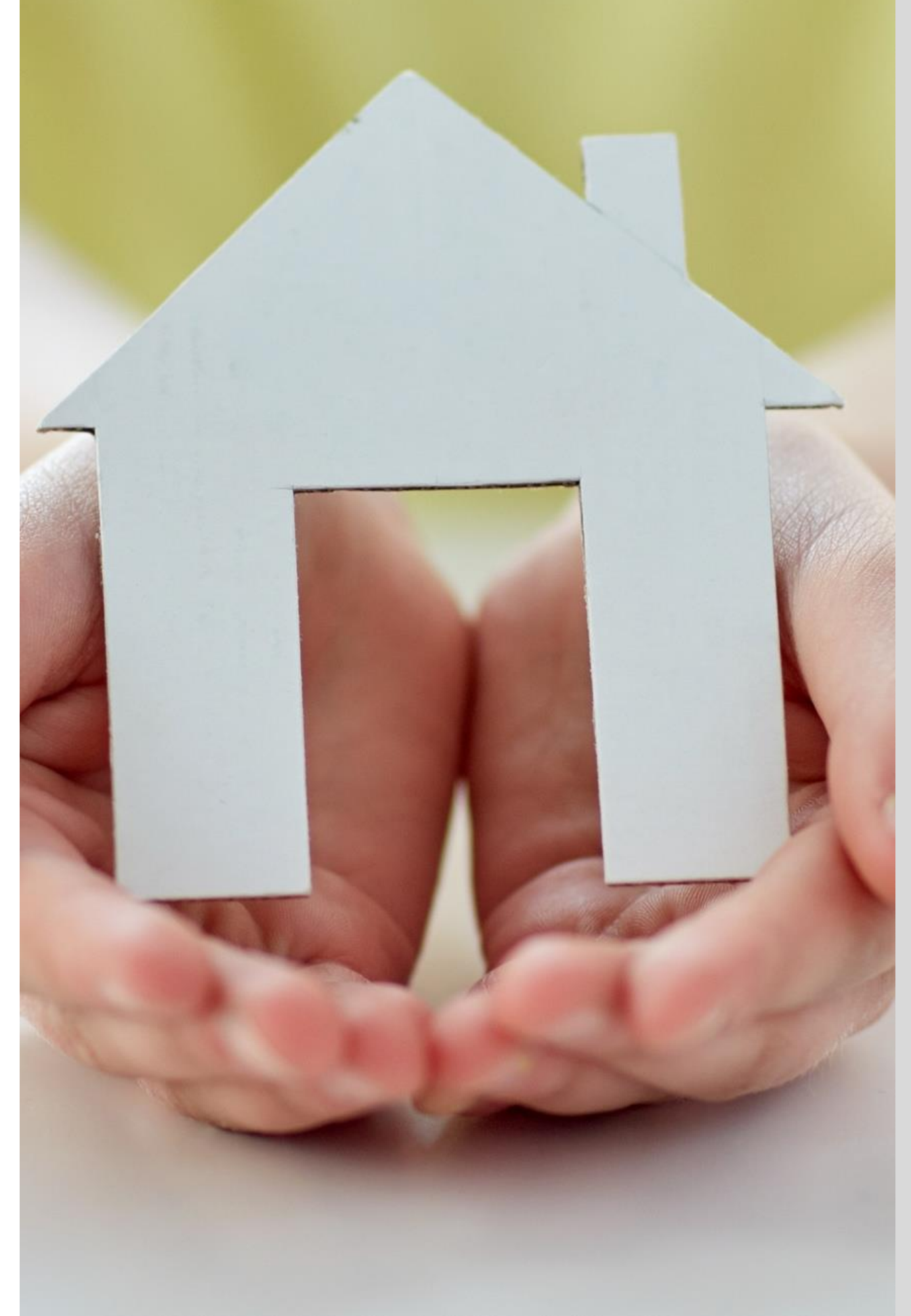
HST ON RESIDENTIAL RESALE PROPERTY

- HST is payable if it is vacant land unless personal use property
- Need similar declaration in agreement
- Seller will provide on closing a declaration that HST is not payable as the property is personal use property
- If selling a home on 100-acre property
- Only 1.24 acres go with the home
- HST will be payable on the extra acres, and parties must agree on how the purchase price is going to be allocated
- Or just build the HST into the price you want



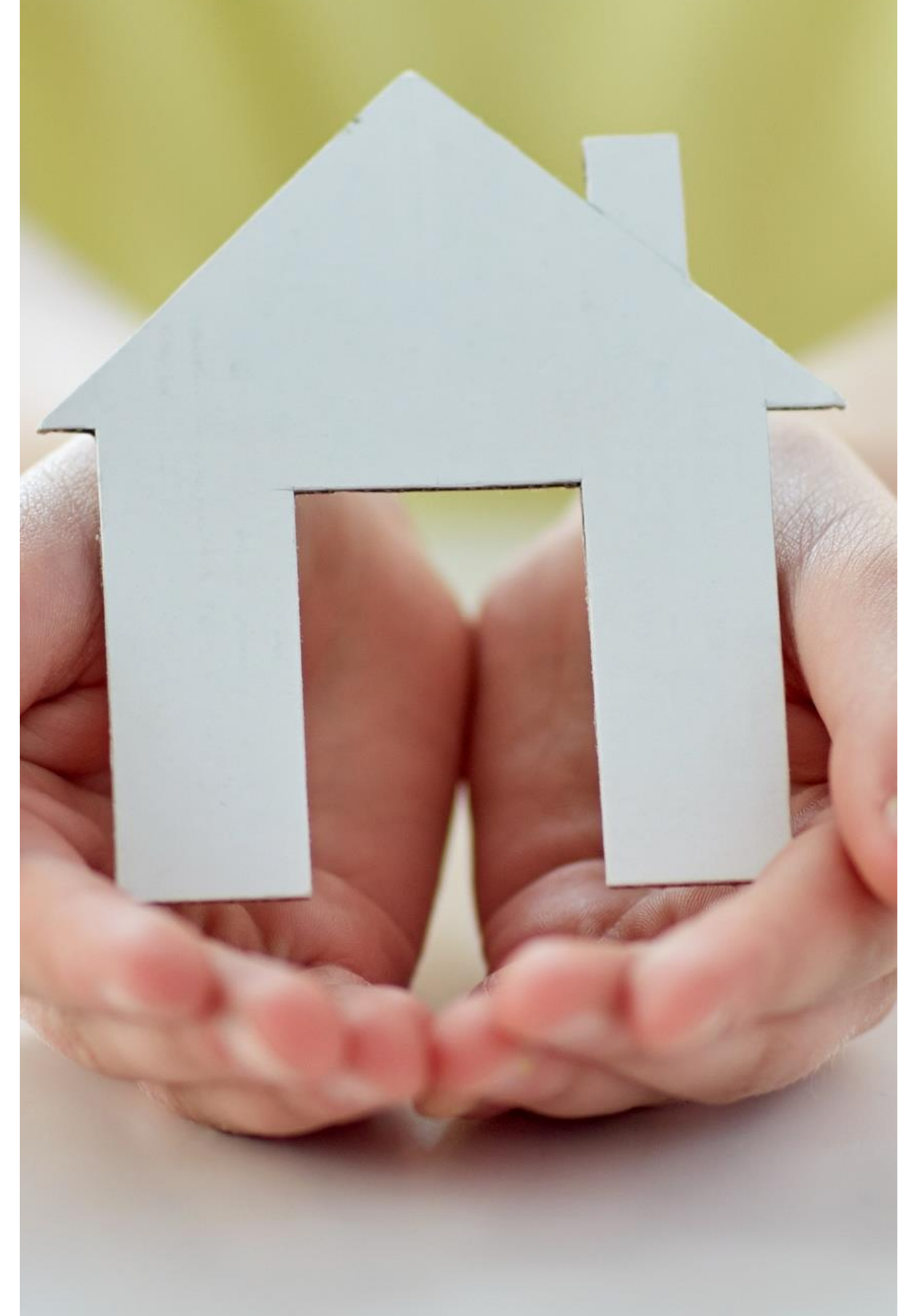
HST ON RESIDENTIAL RESALE PROPERTY

- Example – house on 100 acres - total price 1.2 million
- House worth 1 million with 1.24 acres
- Vacant land worth \$200,000 – 98.76 acres
- HST payable \$26,000.00
- Just sell for \$1,226,000.00 HST included



HST ON RESIDENTIAL RESALE PROPERTY

- The sale of a farm is treated similarly
- If there is a house on the farm, no HST on the house value and 1.24 acres around the house
- If the rest of the land is part of a farming business, then the commercial HST rule applies, and if the buyer is registered for HST, it is not payable on the farmland
- If farmland not part of a business, then regular HST applies to the farmland



HST ON RESIDENTIAL RESALE PROPERTY

- Be careful when buying from the bank under the power of sale
- Make sure in advance HST is not payable
- May be payable if:
 - Substantially renovated home
 - Business in the home such as a daycare



INCOME TAX ACT

- Do not give any income tax advice
- You must be familiar with income tax principles
- So that you know when to refer your client to their accountant BEFORE they sign any agreement



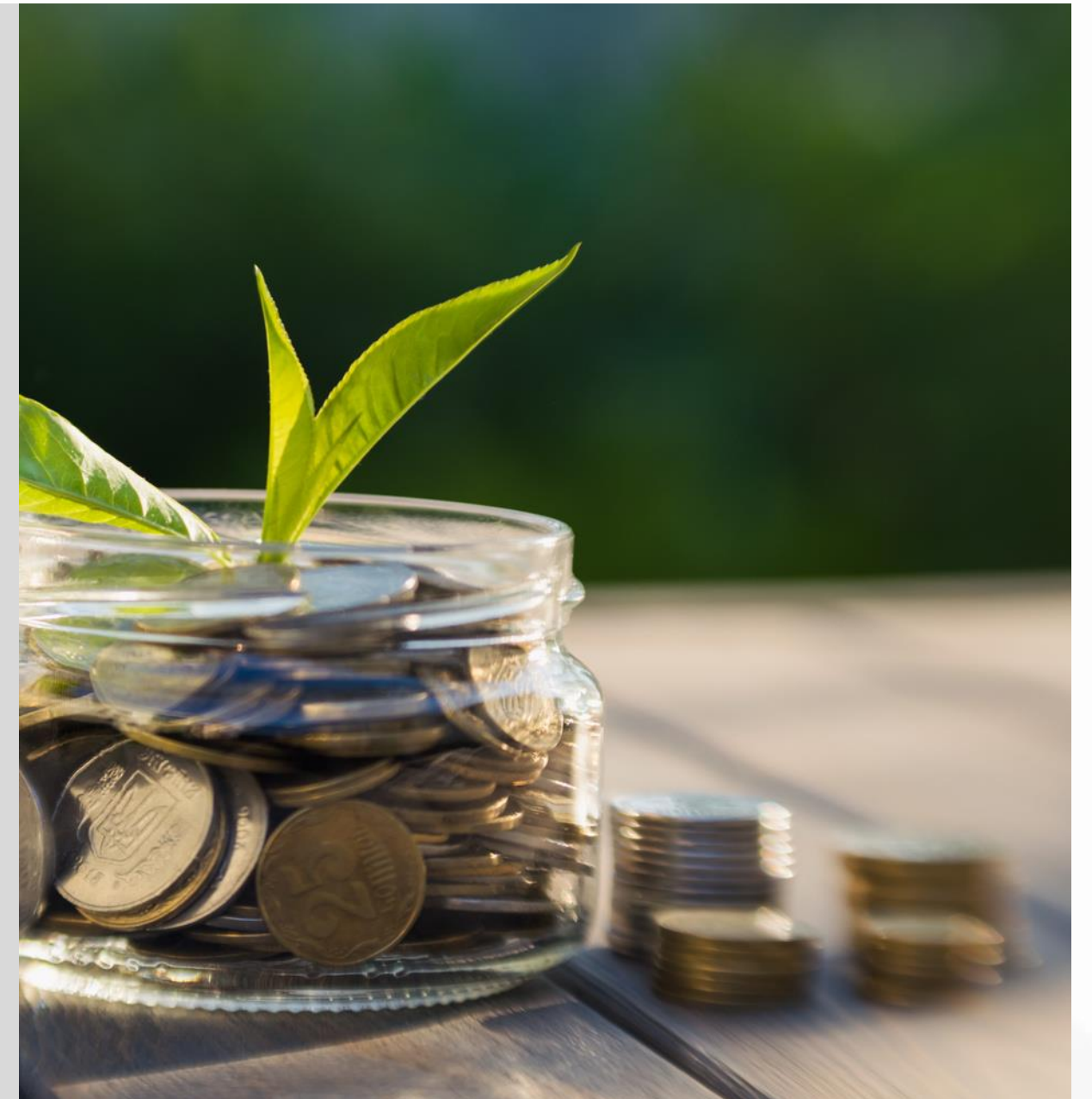
INCOME TAX ACT

- Income v. Capital Gain
- What is the difference?
- Income includes commissions
- Capital gain is when Sale Price exceeds Cost Price
- Capital Loss is when Sale Price is less than the Cost Price
- Only half of the capital gain is taxable. Why?
- To encourage investment



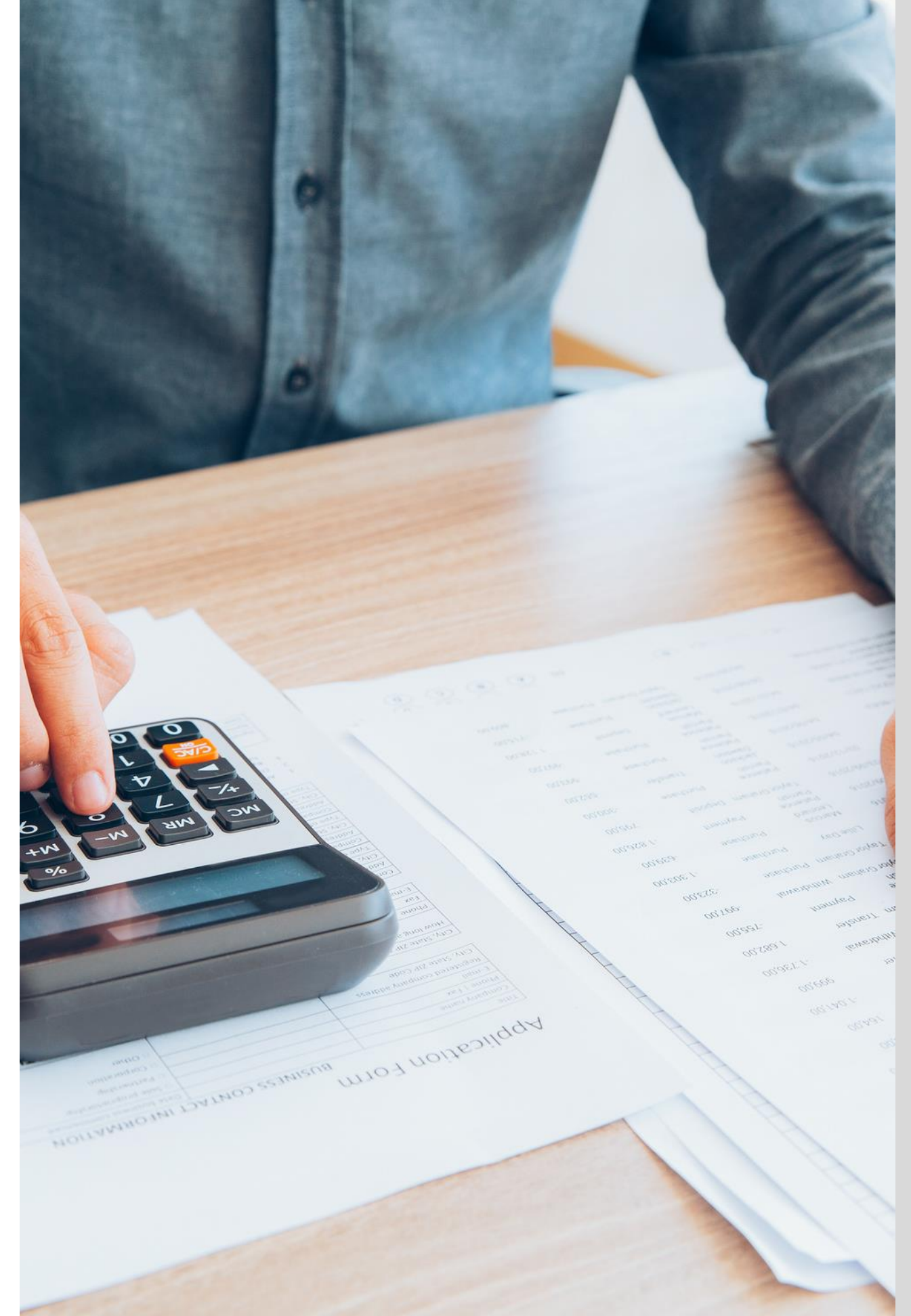
INCOME TAX ACT

- Example
- Purchase price \$200,000
- Sale price \$500,000
- Capital Gain = \$300,000
- Taxable Capital Gain = \$150,000.00



INCOME TAX ACT

- What if you are in the business of investing?
- Then any profit or capital gain may be considered income
- What is the list of factors that the government will look at to determine whether it is a capital gain or income?



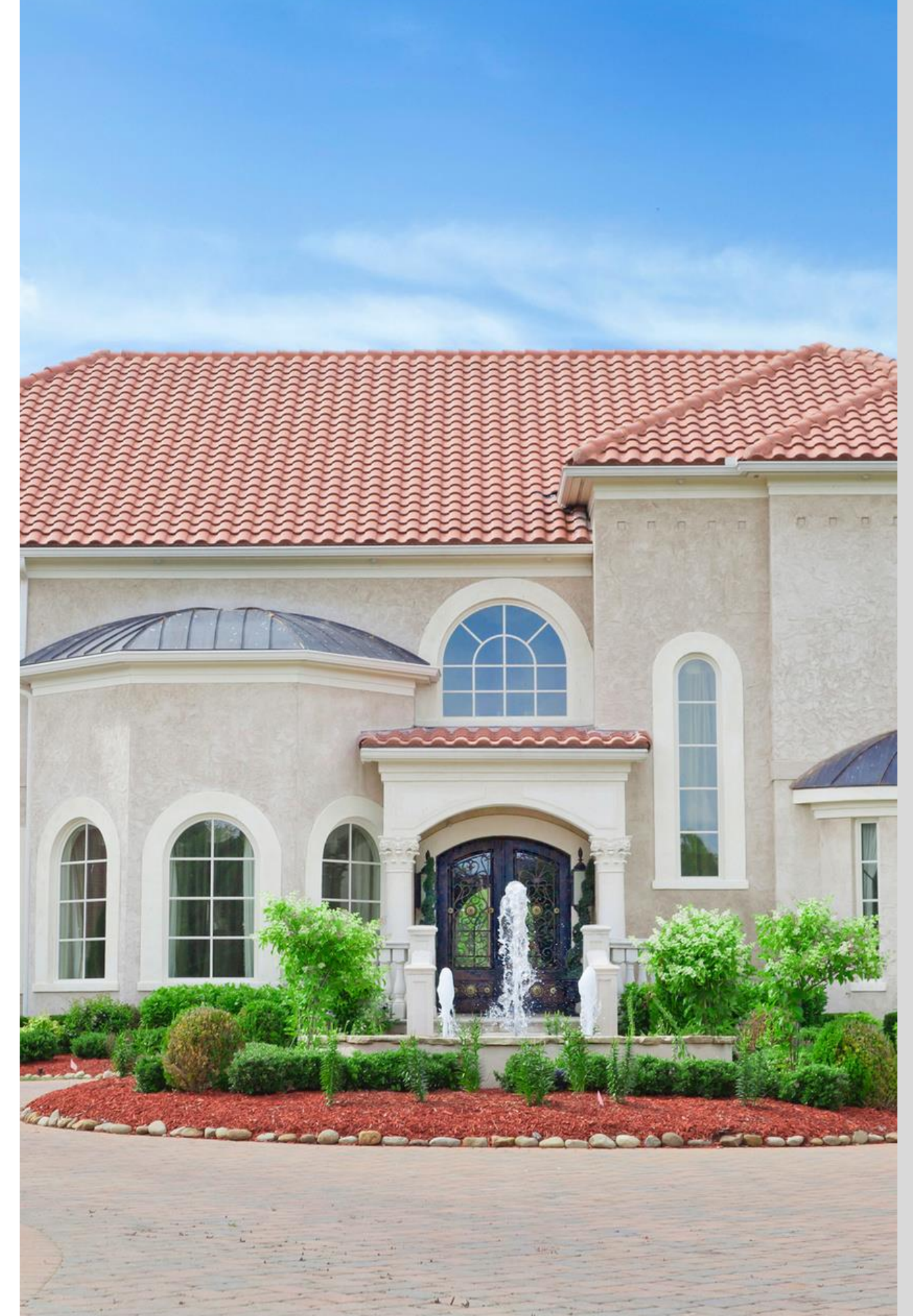
INCOME TAX ACT

- Income v Capital Gain factors CRA looks at
- Frequency of Transactions
- Relationship to your business – hurts REALTORS
- Was it long term or short term investment?
- If long term looks like capital gain
- Was it a complicated transaction?
- The more complicated, the more it looks like income



INCOME TAX ACT

- Principal Residence Exemption - factors for CRA
- The family unit can only have one principal residence
- Must be ordinarily used during the year
- Must be designated as your principal residence
- Must be owned by the taxpayer
- Acreage around the home cannot be more than 1.24 acres
- Unless needed to enjoy home– Large estate Home
- If you buy many homes during the year, you may not be able to claim this – it could be income



INCOME TAX ACT

- Let's say we sold an investment property on March 22, 2022
- When will the tax be payable?
- For most, it is April 30, 2023
- Why does the Canadian Government trust you to pay your taxes next year?
- Why don't they collect it on closing?
- They trust you do not want to pay significant penalties
- Would they trust you if you lived in Australia?
- In fact, they don't trust you if you do not live here



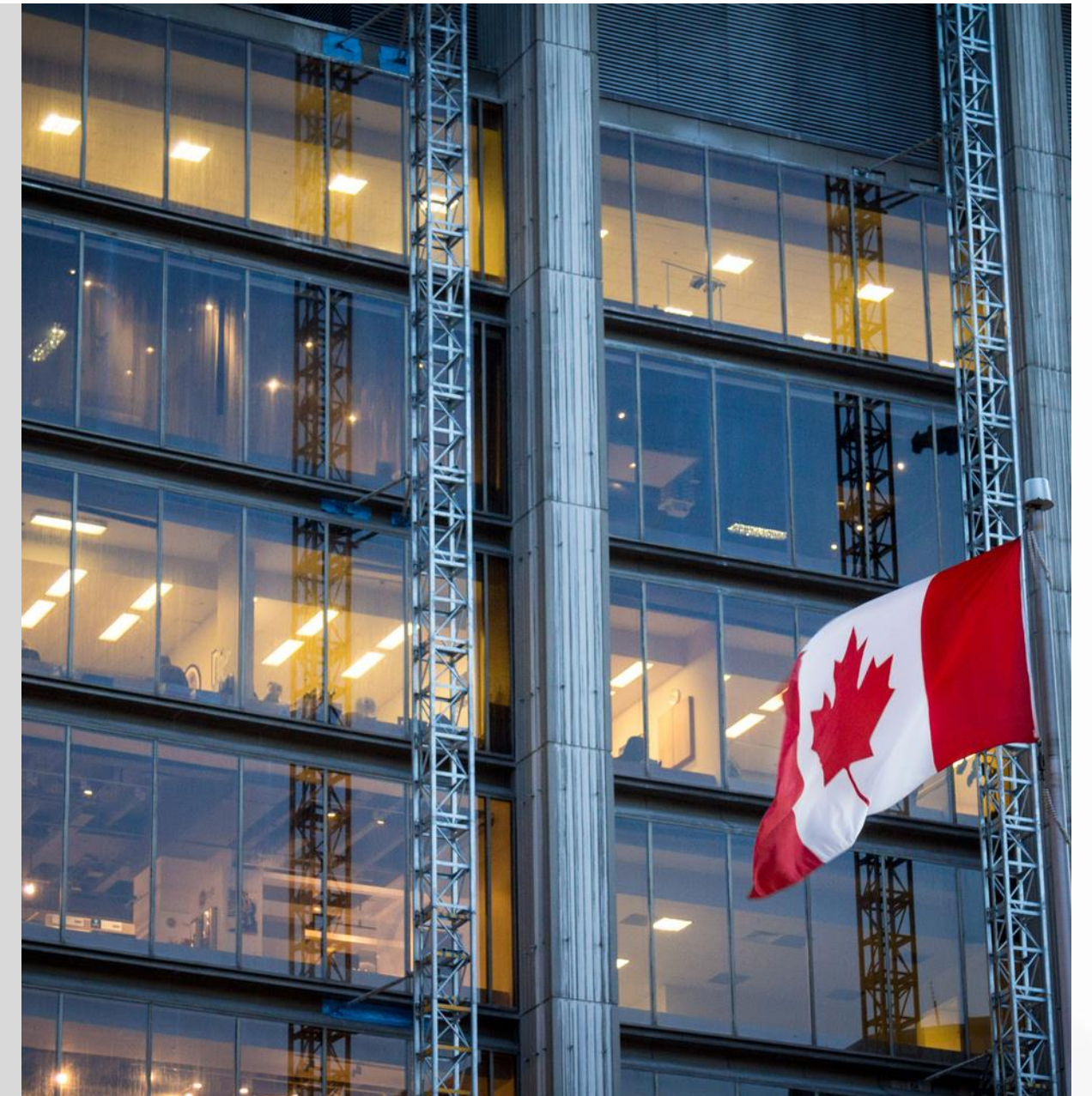
INCOME TAX ACT

- What is the definition of a resident of Canada?
- You are a Non-Resident if you have not been physically in
- Canada at least 183 total days in the last year
- It does not have to be continuous
- It does not matter if you are a Canadian Citizen; it is just based on residency
- Can include someone leaving Canada permanently



INCOME TAX ACT

- What factors determine whether someone is leaving Canada permanently?
- Do they still own property in Canada?
- Do they have a spouse who lives here?
- Do they still pay taxes here?
- Do they have a current occupation here?
- Do they have a current Provincial driver's license



INCOME TAX ACT

- This is what the Income Tax Act says to any buyer of real estate, anywhere in Canada:
- Buyers must make reasonable inquiries to make sure that the seller is not a non-resident
- If the seller is a non-resident, then the buyer must make sure that the seller has either:
 - Paid their taxes; or
 - That the buyer holds back the required amount (25% or 50% of the entire purchase price)
 - 50% if rental property
 - 25% if not
- Or else the buyer pays this same amount as a penalty



INCOME TAX ACT

- As such, on every real estate deal, the seller swears a statutory declaration saying:
On closing, I will not be a non-resident of Canada
- If the seller cannot sign this, they must provide a CERTIFICATE from the Canada Revenue Agency that they have paid their taxes
- Or else the Buyer holds back 25% - 50% of Purchase Price
- This is all stated in clause 17 of the Agreement under Residency



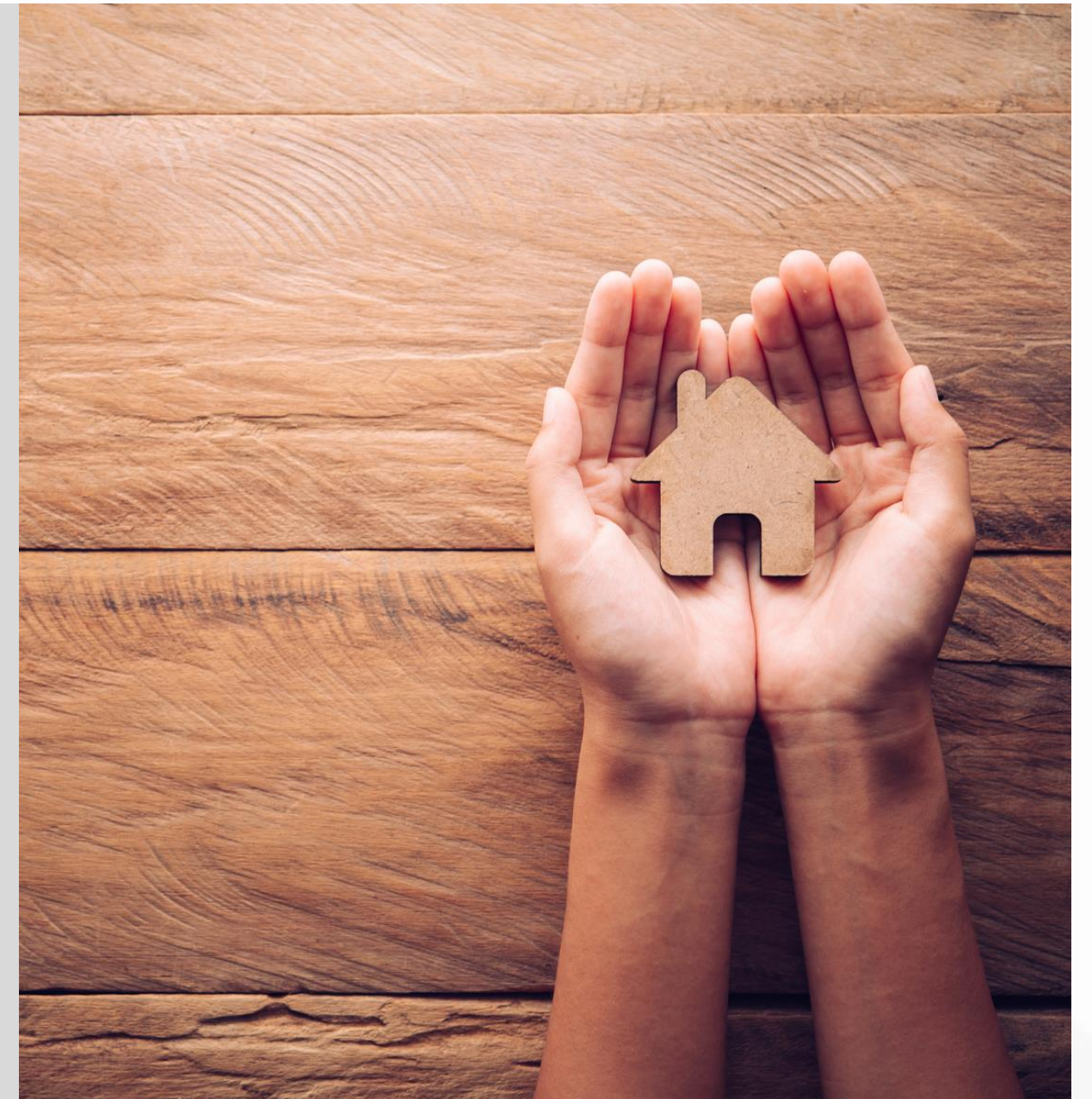
INCOME TAX ACT

- Make sure you check if there is enough to pay the mortgage and commission on closing after the amount withheld is taken off the top
- It can take months to complete this with CRA



INCOME TAX ACT

- What if the property is given as a gift?
- It will be treated as though it was sold at fair market value
- This means that taxes may be payable, even though the seller received no money



INCOME TAX ACT

- A parent adding a child as a joint tenant to parent family home
- The child does not live there
- No money paid
- When a parent dies, the child inherits
- No estate taxes
- However, may now be a large capital gain for the child when the child sells
- No longer the child's principal residence
- Be very careful with any estate planning



INCOME TAX ACT

- What happens when a person dies?
- It is as though they sold all of their property on the date of death
- Any taxes that may be owing are payable by the trustee in the final tax bill
- This is part of the probate process on death



THANK YOU



32+ ADDRESSES
We Close Deals in All of
Ontario!



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