



Real Estate Law: Ontario Best Practices

Real Estate Law: Ontario Best Practices

- What's new and best practices - David Korman
- What's covered by title insurance and beyond – John Tracy
- Live Q&A

Questions?

Please use the
interactive Zoom

Q&A

Any views or opinion expressed by guest presenters are solely those of the speaker and do not necessary represent those of the organization.

Content Overview

- **City of Toronto's Vacant Home Tax**
 - Overview and definitions
 - Type of occupancy status
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About me

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City of Toronto's Vacant Home Tax

- The City of Toronto enacted By-law 97-2022 (the “**By-law**”), which amends The City of Toronto Municipal Code by adding Chapter 778, Taxation, Vacant Home Tax.
- The By-law is deemed to have come into force on **January 1, 2022**, and the Tax is payable starting 2023.
- According to the City of Toronto, their goal is to increase the supply of housing by discouraging owners from leaving their residential properties unoccupied, and the Revenues collected will be allocated towards affordable housing initiative.



What is the Vacant Home Tax?

- Every owner of a residential property located in the City of Toronto will be required to file an annual declaration with regards to the occupancy status of their property for each taxation year.
- As the By-law is deemed to come into effect on January 1, 2022, a declaration is required to be filed for the taxation year 2022.
- An annual tax will be payable for properties that are vacant or deemed vacant under the By-law, which will be due the year following the year for which the declaration is made.
- A property is considered vacant under the By-law if it was not occupied by the owner(s) or any permitted occupant(s) as their principal residence, or was unoccupied for a total of more than 6 months during the previous year.



Amount of Tax

1% of the **Current Value Assessment**
of the property.

Definition of Important Terms

The Owner



The registered **legal owner** of a Residential Unit.

Residential Property



A parcel of property, or a portion thereof, that is classified in the **residential property class** on the most recently returned assessment roll as of the Payment Date.

Residential Unit



Residential Property, comprised of **one or more Self-Contained Units**.

Self Contained Unit



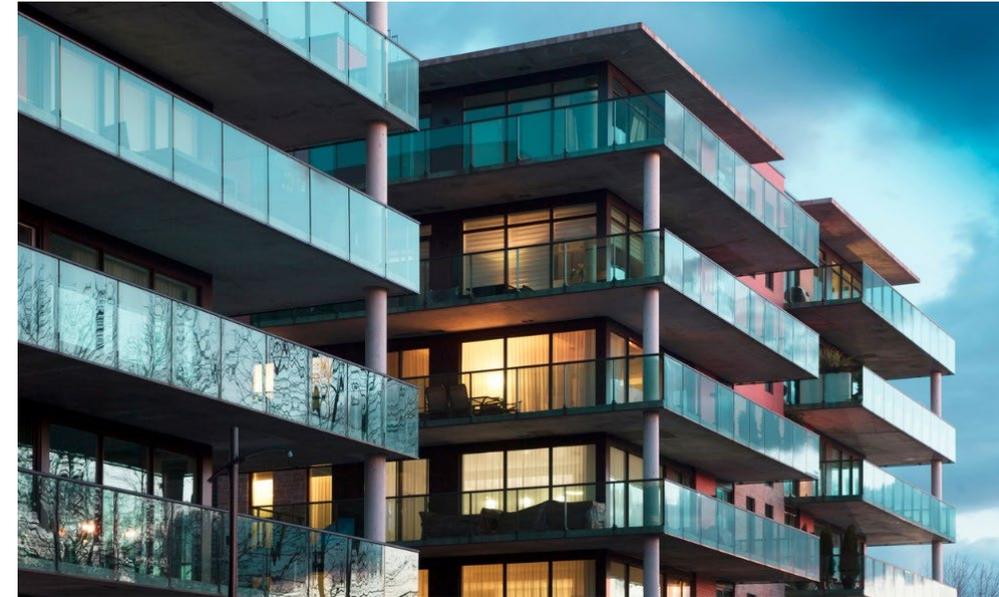
A dwelling unit which includes a dedicated **washroom** and **kitchen**.

What is the Vacant Unit?

A Residential Unit is a Vacant Unit **if for more than six months** during the Taxation Year, no Self-Contained units comprising the Residential Unit are either:

- a) The Principal Residence of the Owner or another Occupant; or
- b) Occupied for residential purposes by one or more Tenants in aggregate for at least six months of the year.

A property will be deemed as vacant if the **owner fails to complete and file the declaration of occupancy status** OR if the **owner fails to provide any information or evidence demanded by the City** to determine the occupancy status.



Due Dates

Declaration submission



February 2024

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

Tax payment



May 2024

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Type of Occupancy Status

1. Occupied as principal residence of homeowner:

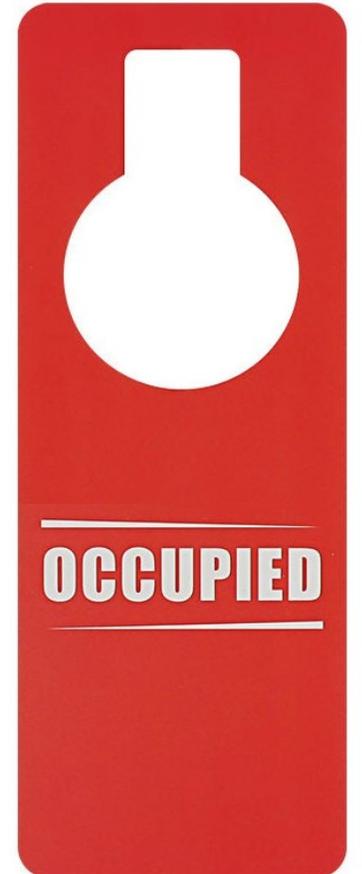
- Property is where the owner resides and conducts daily affairs, receives mail, pays bills, etc.
- An owner can have only 1 principal residence
- This applies even if the owner leaves for extended periods of time due to travel or work

2. Occupied as principal residence of a permitted occupant:

- Property is occupied by a someone authorized by the owner to use it as their principal residence
- Permitted Occupant can include, but is not limited to, a family member or a friend
- This type of occupancy status does not include tenants

3. Occupied as a tenanted property:

- Property is occupied by someone that has a written tenancy agreement for a term of at least 30 days
- Must be occupied for residential purposes
- Must be occupied by one or more tenants for a total of 6 months or more throughout the year



Type of Occupancy Status, continued

4. Vacant with an eligible exemption:

- The owner can declare the property vacant with one of the exemptions mentioned in the By-law
- Exemptions include death of a registered owner, repairs/renovations, principal resident in care, transfer of legal ownership, occupancy for full-time employment, and court order

5. Vacant or deemed/determined as vacant:

- Property can be declared as vacant by the owner
- Property deemed to be vacant if the owner fails to make a declaration
- Property determined to be vacant after selected for an audit, or on review for a Notice of Complaint or on Appeal
- Vacant Home Tax will be payable for this type of Occupancy Status



Exemptions

Exemption	Description	Supporting documents
Death of a registered owner	The property was vacant for six months or more in the previous year due to the death of an owner.	Copy of death certificate.
Repairs or renovations	<p>The vacant property is undergoing repairs or renovations, and all the following conditions have been met:</p> <ul style="list-style-type: none"> a) Occupation and normal use of the vacant property is prevented by the repairs and renovations b) All necessary permits have been issued for the repairs and renovation c) The City's Chief Building Official is of the opinion that the repairs or renovations are being actively carried out without unnecessary delay. 	<p>Description of the type of project preventing occupancy.</p> <p>Copy of building permits issued related to the repairs and renovations</p>
Principal resident is in care	The principal resident of the vacant property is in a hospital, long term or supportive care facility for at least six months during the taxation year. This exemption may be claimed for up to two consecutive taxation years.	Signed letter from health care facility on letterhead.

Source: <https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>

Exemptions, continued

Exemption	Description	Supporting documents
Transfer of legal ownership	You purchased your property in the previous year, and the sale involved a 100 percent transfer of an interest in the property to an unrelated individual or corporation. This excludes name changes, adding a second owner and removing a second owner.	Copy of land transfer deed.
Occupancy for full-time employment	The vacant property is required for occupation for employment purposes for a total of at least six months in the taxation year, by its owner who has a principal residence outside of the Greater Toronto Area.	Proof of residency outside of Greater Toronto Area. Signed letter from employer on company letterhead or employment contract.
Court order	There is a court order in force which prohibits occupancy of the vacant property for at least six months of the taxation year.	Copy of court order.

Source: <https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/>

Implications on Real Estate Transactions

Implications

- Non-payment of the Tax can result in **arrears being added to the property's Tax Roll** and can be collected in the same manner as Property Taxes, and therefore, can even form **a lien on the property**.
- It is of utmost importance that Buyers ensure that **correct status declarations** have been filed by the Seller for the property they are purchasing and there are no arrears.
- Title insurance providers will also be looking for **evidence of completed status declarations** before issuing policies.
- If a transaction closes between January 1 and the declaration due date, February 2, the Seller must complete the declaration **prior to closing**.

Implications, continued

- If a transaction closes between February 3 and December 31, the **Seller is still responsible for the previous year**. The Buyer will have to complete and submit the declaration for the year in which the closing occurs, and will be eligible for “**Transfer of Legal Ownership**” exemption.
- The Seller should provide a copy of the **completed and filed status declaration** along with a **statutory declaration** that it is true and correct on or before closing.
- **The lawyer acting for the Buyer** will play a vital role to ensure that the Buyer does not incur unnecessary liabilities due to the Vacant Home Tax.

Protecting Buyer Clients

How Can We Protect Buyer Clients?

Sample clause one:

The Seller represents and warrants that the property is not a Vacant Unit or a Deemed Vacant Unit as defined under Chapter 778 (Taxation, Vacant Home Tax) of the City of Toronto's Municipal Code, which was added pursuant to By-law number 97-2022 enacted by the City of Toronto, and the Seller has fulfilled all their obligations under the said legislation. The Seller further represents and warrants that the Declaration required under the said legislation has been filed and there are no pending arrears (including penalties and fines) with regards to the Vacant Home Tax.

How Can We Protect Buyer Clients?

Sample clause two:

The Seller agrees to provide the following to the Buyer as proof that the Seller has fulfilled all their obligations under Chapter 778 (Taxation, Vacant Home Tax) of the City of Toronto's Municipal Code, which was added pursuant to By-law number 97-2022 enacted by the City of Toronto:

- A copy of the completed and filed property status declaration for the previous taxation year, as required under the said legislation
- A sworn declaration executed by the Seller confirming that the latest declaration filed is true and correct and that there are no arrears with regards to the Vacant Home Tax OR if there are arrears to be paid, they will be paid, and proof will be provided to the Buyer on or before closing

How Can We Protect Buyer Clients?

Sample clause three:

The Seller agrees to indemnify and save harmless the Buyer from any and all liabilities, claims, expenses or losses suffered or incurred by the Buyer as a result of the Seller's failure to fulfill their obligations under Chapter 778 (Taxation, Vacant Home Tax) of the City of Toronto's Municipal Code, which was added pursuant to By-law 97-2022 enacted by the City of Toronto.

City of Ottawa's Vacant Unit Tax

City of Ottawa's Vacant Unit Tax

- The Vacant Unit Tax was introduced pursuant to **By-law 2022-135** approved by the City of Ottawa on March 23, 2022.
- The City of Ottawa's Vacant Unit Tax has near identical provisions to the City of Toronto's Vacant Home Tax, except for an additional exemption for **short term rentals**.



Underused Housing Tax

- Federal Government's **Underused Housing Tax (UHT)** is deemed to come into force on **January 1, 2022**.
- Therefore, the UHT filing requirements are applicable for all calendar **years following and including** the year 2022.
- UHT is an annual tax to be paid on **vacant or underused housing** in Canada.
- Generally payable by **non-resident non-Canadian owners** of vacant or underused housing.
- Majority of Canadian **owners of residential property are excluded** and therefore do not have any obligations under the UHT Act. However, in some situations, UHT is payable by certain Canadian owners.
- The UHT Act requires an owner of one or more residential properties in Canada (except "**Excluded Owners**") as on December 31 of a calendar year to file, for each such property, an annual return (the "**UHT Return**").

Definition of Important Terms



The Owner

According to the UHT Act, owner of a residential property includes:

- Registered owner of the property in the land registration system where the property is located
- Person who can reasonably be considered to be an owner of the property based on such land registration system
- Life tenant under a life estate in the property
- Life lease holder of the property
- Lessee that has continuous possession of the land on which the property is situated under a long-term lease

Definition of Important Terms



The Excluded Owner

Definition of Excluded Owner includes, but is not limited to:

- An individual who is a Canadian citizen or permanent resident, unless included in the list of affected owners
- Any person, including an individual who is a Canadian citizen or permanent resident, that owns a residential property as a trustee of a mutual fund trust, real estate investment trust, or specified investment flow-through trust (SIFT) for Canadian income tax purposes
- A Canadian corporation whose shares are listed on a Canadian stock exchange designated for Canadian income tax purposes
- A registered charity for Canadian income tax purposes
- A cooperative housing corporation for Canadian GST/HST purposes
- An Indigenous governing body or a corporation wholly owned by an Indigenous governing body

Definition of Important Terms



The Affected Owner

Owners that do not fall under the definition of Excluded Owners, are referred to as “Affected Owners”, which include but are not limited to:

- An individual who is not a Canadian citizen or permanent resident
- An individual who is a Canadian citizen or permanent resident and who owns a residential property as a trustee of a trust (other than as a personal representative of a deceased individual)
- Any person, including an individual who is a Canadian citizen or permanent resident, that owns a residential property as a partner of a partnership
- A corporation that is incorporated outside Canada
- A Canadian corporation whose shares are not listed on a Canadian stock exchange designated for Canadian income tax purposes
- A Canadian corporation without share capital

What is a Residential Property?

A detached house or similar building that contains not more than three dwelling units, along with any appurtenances and the related land

A semi-detached house, rowhouse unit, residential condominium unit or other similar premises, along with any common areas, appurtenances and the related land

Dwelling unit is defined as a residential unit that contains private kitchen facilities, a private bath and a private living area



Filing and Payment Requirements

- Excluded Owners have no obligations towards the UHT
- Affected Owners must file? the UHT Return
- The UHT is payable for each of the properties for which all of the following conditions are met on **December 31** of a calendar year:
 - The property is a Residential Property
 - Owner of the Residential Property is not an Excluded Owner
 - Ownership of the property does not fall under one or more of the exemption mentioned in the UHT Act
- The UHT Return for a calendar year must be filed by **April 30** of the following calendar year
- The UHT for a calendar year, if payable, should be paid by **April 30** of the following calendar year

Exemption – Type of Owner

- Ownership of a Residential Property may be exempt for a calendar year if the owner is:
 - **New Owner:** becomes owner of the Residential Property in the calendar year and was never an owner of the Residential Property in the prior nine calendar years
 - **Deceased owner:**
 - Owner died during the calendar year or the prior calendar year; or
 - Co-owner or personal representative of the deceased owner
 - **A Specified Canadian corporation** (Canadian corporations where less than 10% of the voting shares and equity value are owned by non-Canadian individuals or corporations) in the calendar year
 - **Partner of a specified Canadian partnership** (a partnership each member of which is an excluded owner or a specified Canadian corporation) or a trustee of a specified Canadian trust (a trust under which each beneficiary having a beneficial interest in the residential property is an excluded owner or a specified Canadian corporation)

Exemption – Availability of the Property

- Ownership of a Residential Property may be exempt for a calendar year if the property is:
 - **Seasonally inhabitable:** not suitable for year-round use as a place of residence
 - **Seasonally inaccessible:** because public access is not maintained year-round
 - **Under renovation or construction:**
 - Property for which construction is not substantially completed before April of the calendar year
 - Property constructed in the first quarter of the year, and it is offered for sale to the public during the year
 - Property under renovations for a period of at least 120 consecutive days in the calendar year
 - **Disaster or hazardous condition:** property is uninhabitable for a period of at least 60 consecutive days in the calendar year due to natural disaster or hazardous condition

Exemption – Location and Use of the Property

- Ownership of a Residential Property may be exempt for a calendar year if the property is a **vacation property**: located in an eligible area of Canada and used by the owner and/or the owner's spouse or common-law partner for at least 28 days in the calendar year

Exemption – Occupant of the Property

- Ownership of a Residential Property may be exempt for a calendar year if property is:
 - **Primary place of residence:** of the individual owner, their spouse or common-law partner, or their child while the child is a student
 - **Property is occupied:** for a period of at least 180 days in the calendar year by:
 - An arm's length individual under a lease; or
 - A non-arm's length individual under a lease who pays fair rent; or
 - An individual who is the owner or the owner's spouse or common-law partner who has a Canadian work permit; or
 - Canadian citizen or permanent resident who is the spouse, common-law partner, parent or child of the owner

Non-Canadian Owners of Multiple Residential Properties

**Special
Rule!**

Amount of Tax

1% of the **Taxable Value** of the property.

Penalties and Provisions

Minimum

\$5,000 in case of an individual

\$10,000 in all other cases

Maximum

5% of the UHT payable; and

3% of the UHT payable for each complete month that the UHT return is not filed

Anti-avoidance provision...

**PENALTY
NOTICE**

Policy Coverage Vacant Home/Underused Housing Tax

- Understand the Endorsement
- Tax Must form a Lien
- Differences between Commercial and Residential

Foreign Buyer Prohibition

Definitions

The Act prohibits direct and indirect purchases of residential real estate by deemed “**Non-Canadians**”, which include:

- **Non-Canadian Individuals:** Individual who is not a Canadian Citizen, a Permanent Resident of Canada or a registered Indian under the Indian Act
- **Foreign Corporations:** Corporations that are not formed under the laws of Canada or a province
- **Corporations based in Canada that are:**
 - Privately held
 - Not listed on a Canadian stock exchange
 - Controlled by a non-Canadian
- **Other Foreign Entities** or Entities controlled by a non-Canadian

Definitions

“Control” is defined as:

- **Equity Ownership:** Direct or indirect ownership of equity share of 3% or more
- **Voting Rights:** Carrying 3% or more of its voting rights
- **Control in fact:** Direct or indirect control in fact through ownership, agreement or otherwise

Types of “Residential Real Estate”



Census Metropolitan Area and Census Agglomeration

- A CMA or a CA is formed by one or more adjacent municipalities centred on a population
- A CMA must have a total population of at least **100,000** of which **50,000** or more must live in the core.
- A CA must have a core population of at least **10,000**.

Impact of reference to CMAs and CAs in the definition:

- Include major centres such as Toronto, Vancouver, Ottawa along with smaller centres such as Kawartha Lakes, Cornwall, Owen Sound.
- Excludes recreational properties from the prohibition

Exemptions

- Individuals who purchase residential property with their spouse or common-law partner if the spouse or common-law partner is not prohibited under the Act
- Temporary residents in Canada who satisfy prescribed conditions:
 - **Students**
 - **Workers**
- Persons prescribed by the Regulations:
 - Refugees
 - Refugee claimants and individuals fleeing international crisis
 - Accredited members of foreign missions in Canada

Temporary Residents

Prescribed Conditions Under the Regulation

■ **For students:**

- Enrolled in a program of authorized study at a designated learning institution
- Filed income tax returns for each of the 5 taxation years preceding the year of purchase
- Physically present in Canada for at least 244 days in each of the 5 years preceding the year of purchase
- Purchase price does not exceed \$500,000
- Have not previously purchased a residential property while the prohibition is in effect

■ **For workers:**

- Hold a work permit or are authorized to work in Canada
- Have 183 days or more of validity remaining on their work permit or work authorization on the date of purchase
- Have not previously purchased a residential property while the prohibition is in effect

Definition of Purchase

According to **Section 4(1)** of the Regulations:

- “For the purposes of the Act, the acquisition, with or without conditions, of a legal or equitable interest or a real right in a residential property constitutes a purchase”
- **Pre-Existing Contracts:**
Contractual obligations that arise or are assumed by a non-Canadian prior to January 1, 2023, are not subject to the Act



Exceptions

Not Considered a Purchase when:

- interest is acquired as a result of death, divorce, separation or a gift
- rental of a dwelling unit to a tenant for the purpose of its occupation by the tenant
- transfer is done under the terms of a trust created prior to January 1, 2023
- transfer is resulting from the exercise of a security interest or secured right by a secured creditor



Enforcement and Penalties

**A fine of up to
\$10,000.00**

**PENALTY
NOTICE**

Potential Liability and Conflict



Watch for...



- Representations and warranties from purchasers regarding whether they are Non-Canadians under the Act
- Restrictions on assignments to Non-Canadians
- Indemnities or termination rights that apply if a purchaser is a Non-Canadian
- Undertake reasonable inquiries as to whether purchasers are Non-Canadians
- Sale of Property on Conviction
- Ontario NRST

Policy Coverage Related to Foreign Buyer Prohibition

Title Insurance Coverage v. FCT's E&O Coverage.



Types of Properties

Property Types in Ontario



Detached



Semi-Detached



Townhouse (Freehold/Condo)



Multi-Unit (residential)



Cottage



Vacant Land



Commercial

When to Determine the Property Type

- At the offset of the transaction
- Get input from real estate agents, mortgage brokers, and accountants on historical use and potential use
- When narrowing down your search
- Property type impacts multiple considerations.
- Examples - suitable closing date, financing options, appropriate clauses to be included in the APS, etc.
- Buyer should attempt to obtain a representation and warranty from Seller with regards to the type of property

Multi-Unit Residential



Multi-Unit (residential)

Residential property with 2 to 6 units

- Duplex
- Triplex
- Live/work units
- Rooming houses
- Properties with basement as a second dwelling

Multi-Unit Residential – Quick Closings Best Practice



- ✓ Schedule the closing date well after the acceptance date
- ✓ Ensure the number of units with Seller
- ✓ Check if there are self-contained units as opposed to additional dwellings
- ✓ Conduct preliminary search on Municipal websites for open permits, zoning violation, etc. before the APS is binding
- ✓ Confirm with Seller if any of the units are tenanted
- ✓ Include clauses to obtain copies of permits, consents, etc., if there was a construction or renovation to change the number of units
- ✓ Include representations and warranties from Seller with regards to permits, consents, no zoning violations, etc.
- ✓ Determine any additional search requirements
- ✓ Building and zoning, fire department, health, work order searches should be ordered right away
- ✓ Title insurer will usually only cover the property as a single-family dwelling in case the required searches are not available

Residential vs. Commercial

Residential



Commercial



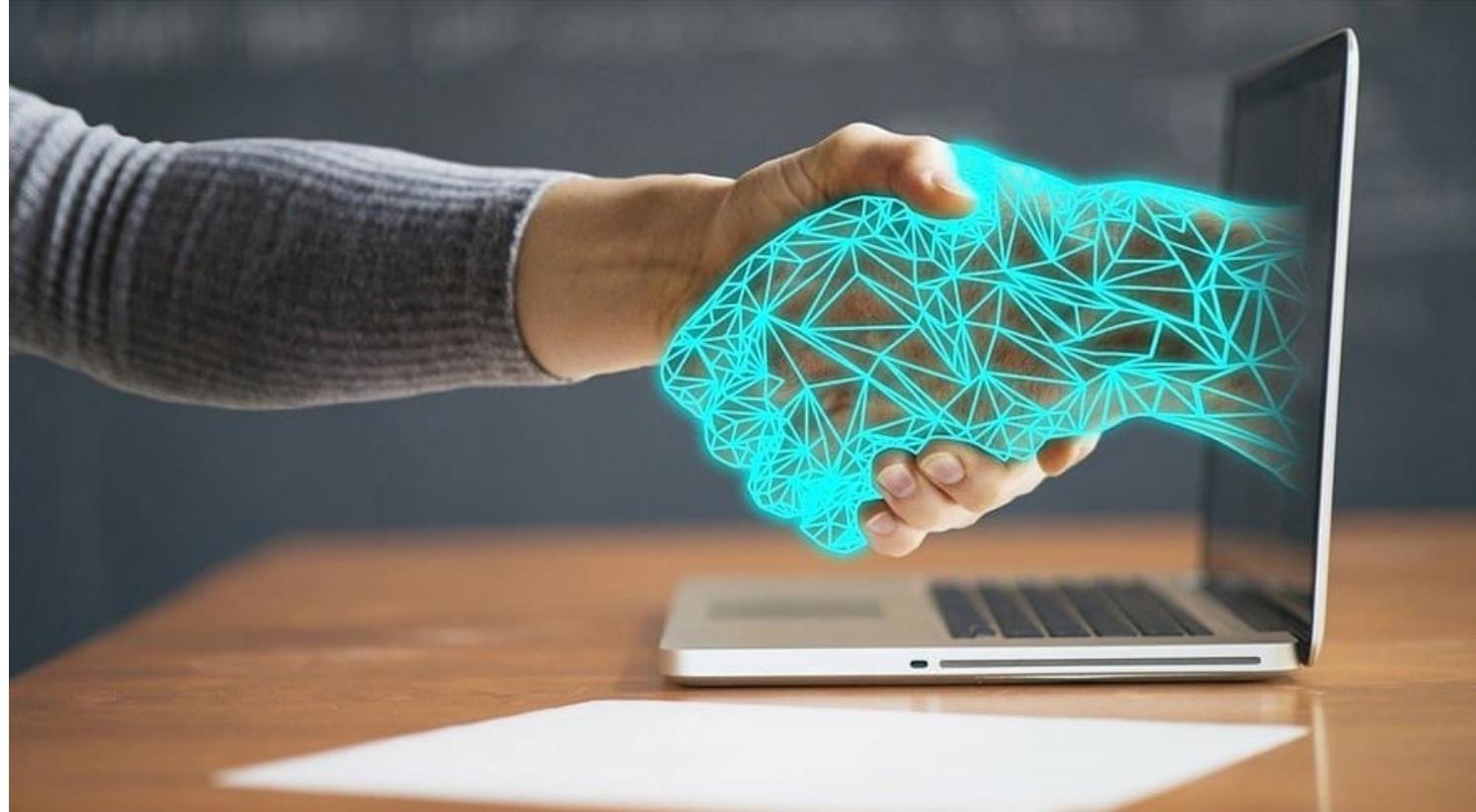
Title Insurance Issues related Property Type

- Understand what you need to do to get **multi-family coverage**.
- Understand the difference between a **Commercial Policy** and a **Residential Policy**.

Latest Technologies

Latest Technology

- File management software
- Law firm accounting software
- Mortgage instructions portals
- Title insurance integrations
- Title searching integrations
- Virtual signing platforms
- Identity verification platforms



Overview of the 2024 ID Impending Changes

- As a temporary measure during the pandemic, the Law Society of Ontario (LSO) allowed virtual ID verification without authentication
- Starting **January 1, 2024**, lawyers are required by LSO to authenticate client ID
- Authentication refers to using a process or method to determine whether the individual's government-issued photo identification document is true and genuine
- Law firms will have an obligation to ensure they have authentic IDs from their clients

Identity Verification Issues for Virtual Closings



Pros and Cons

In-Person Signings	Pros	Cons
	Low risk of identity theft and fraud	Time consuming
	No technical glitches	Travelling to and from the law office
	Client not required to have any knowledge of technology	Consumes resources such as paper, stationery, etc. that can be saved
	Lawyer and client have an opportunity to make a connection	Both parties have to be at the same place at the same time

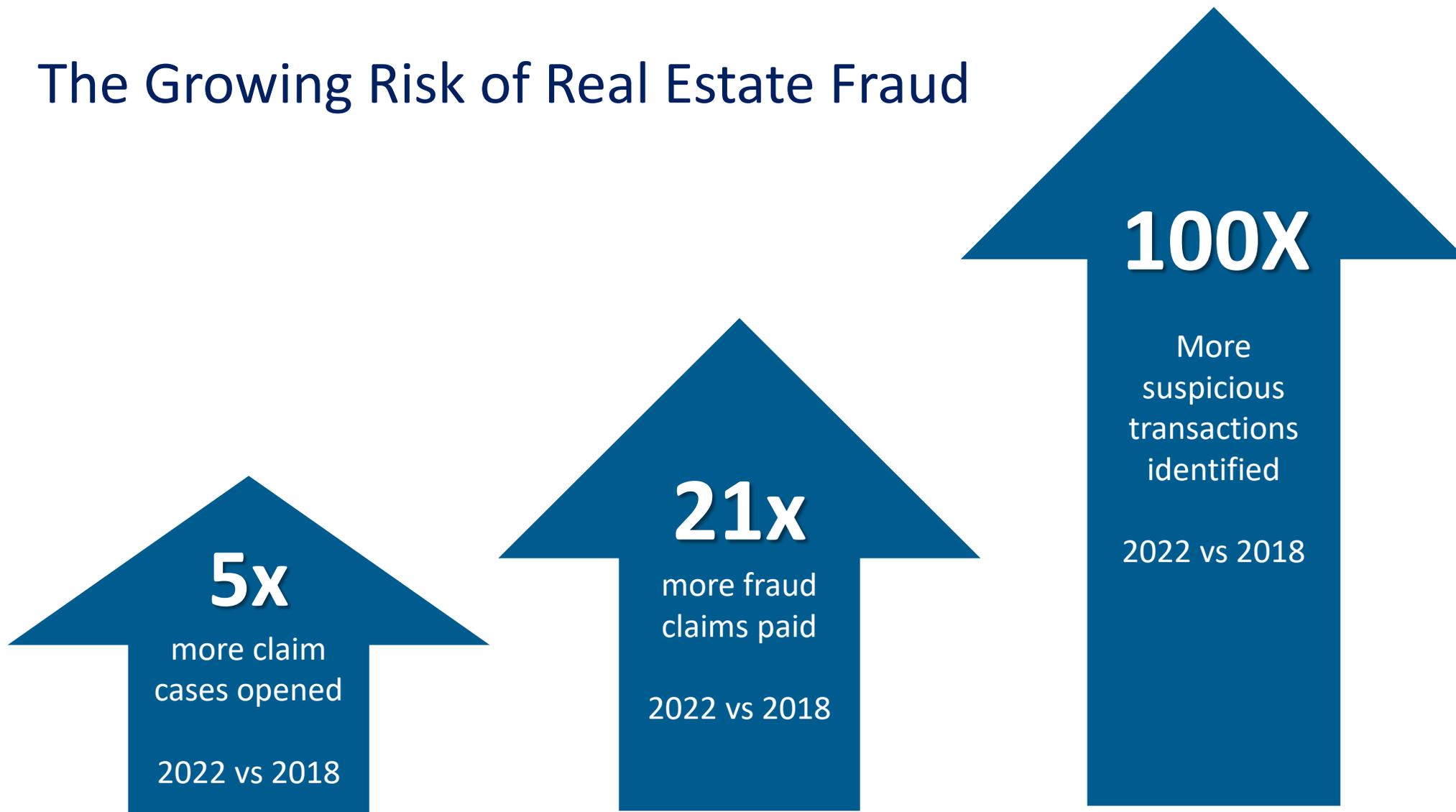
Remote Signings	Pros	Cons
	Can be done from anywhere in the world	Can be very difficult if client does not possess basic knowledge of technology
	Saves time and resources	High risk of identity theft and fraud
	Convenient and attractive to clients	Technical glitches can create problems
	No need to attend law firm's office	Additional software fee

Title Insurance Coverage for Fraud

What kind of fraud is covered in a title insurance policy?

- Lender Coverage (Residential/Commercial)
- Owner Coverage (Residential/Commercial)

The Growing Risk of Real Estate Fraud



FCT Statistics

\$539,000,000

Suspicious transactions identified

Key Benefits of FCT's Client ID Verification

1. Verify your clients earlier within minutes

- Streamline your processes and save time by getting your client's ID verified during the intake process
- Can be used on all files regardless of areas of law (not just on real estate files!)

2. Secure digital wallet vs single use

- Verified ID retained in client's digital wallet on their mobile device for future verification for up to 5 years

3. Data Retention

- Data is stored on client's mobile device



How does it work?
[View video here](#)

Polling Question

Thank you

What questions do you have?