

IS A PERSONAL REAL ESTATE CORPORATION RIGHT FOR YOU?



On October 1st, 2020, the Ontario government announced the first phase of the regulatory changes to the Trust and Real Estate Services Act, 2020, S.O. 2020, c. 1 - Bill 145 ("TRESA"). The first phase includes regulations that more closely align real estate brokerages and professionals with modern business practices. Most notably, these new measures will allow real estate professionals to incorporate and be paid through Personal Real Estate Corporations (PRECs).

What is a Personal Real Estate Corporation (PREC)?

PREC is a form of business incorporation that allows real estate professionals and brokers to benefit from the same tax and income advantages that other entrepreneurs enjoy.

Advantages of Incorporating a PREC

The PREC model is a flexible tool that has many advantages, allowing real estate professionals to:

- Access a lower corporate tax rate;
- Achieve tax deferrals;
- Benefit from income-splitting opportunities;
- Take advantage of the Lifetime Capital Gains Exemption for qualified small business corporations;
- Use holding corporations to own and manage their other investment and business activities along with their core real estate trading activities; and
- Retain real estate related income in the PREC to generate investment income.

While there are many benefits to incorporation, it is important to remember that incorporation also comes with up-front expenses and continuing financial and reporting obligations, such as annual filings and the obligation to maintain certain legal documents.

For individuals considering a PREC, it is essential to ensure that your business plan is strategically structured to be able to take advantage of the benefits listed above. An experienced business lawyer will be able to guide you through the process, maximizing the benefits of incorporation and minimizing your tax burden.

Liability Considerations

The new regulations allowing for the incorporation of PRECs does not affect consumer protection. Real estate agents and brokers must continue to meet their professional and ethical obligations regardless of whether real estate services are provided through a PREC or by an individual. PRECs do not allow for limited personal liability.

Brokerages

The PREC also creates a number of new challenges for brokerages, including new agent agreements, HST implications, changes to corporate insurance requirements. Let us help you navigate the changes in addition to your agents.

Specific Criteria to incorporate a PREC:

1. The corporation is incorporated or continued under the Business Corporations Act,
2. All equity shares of the corporation are legally and beneficially owned, directly or indirectly, by the controlling shareholder.
3. The sole director of the corporation is the controlling shareholder.
4. The president, being the sole officer of the corporation is the controlling shareholder.
5. Each non-equity share of the corporation is.
 - a. legally and beneficially owned, directly or indirectly, by the controlling shareholder,
 - b. legally and beneficially owned, directly or indirectly, by a family member of the controlling shareholder, or
 - c. owned legally by one or more individuals, as trustees, in trust for one or more children of the controlling shareholder who are minors, as beneficiaries.
6. 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.

RJS LAW Is Here to Help!

RJS LAW is a business and real estate focused law firm. We provide Downtown expertise without the extensive cost. Our Owner, Ron Smith, is not only a senior corporate lawyer, but a Real Estate Agent himself, so he understands first-hand what a PREC could do for your practice.

Contact RJS LAW to learn whether a PREC is the right tool for your real estate business.

We can help guide you through the regulatory requirements, explore personalized tax planning opportunities, and ensure that your PREC business model matches your unique business objectives to maximize your real estate business growth into the future. Discounts available for agents or brokerages that wish to refer multiple agents.

