

New Housing Rebate - Issues with Mortgage Guarantors

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Al-Hossain v The Queen, [2014 TCC 379](#)

Often purchasers of new homes are not able to obtain financing for the purchase, and the bank requires a co-signer. This may cause the seller of the property to also require the co-signer to be on title as purchaser. However, depending on how this is arranged, the purchase may or may not be eligible for the New Housing Rebate under the [Excise Tax Act](#). This could cost the purchaser tens of thousands of dollars.

FACTS

The Appellant entered into an agreement of purchase and sale but realized that he would have difficulty obtaining financing. A friend agreed to assist and was added as a co-owner of the property to satisfy the lender, and was added as a co-owner on title and as co-purchase (through amendment) to the purchase agreement.

After the amendments above, an application for the new housing rebate was prepared along with a statutory declaration that the Appellant was the 100% beneficial owner and that the friend held 0.01% in trust for the Appellant to satisfy the lender.

ANALYSIS

Paragraphs 254(2)(b) and (g) of the [Excise Tax Act](#) identifies the conditions that have to be met before the Minister is required to pay a rebate. One of the requirements is that the person applying be "the particular individual [who] becomes liable or assumed liability under the agreement of purchase and sale in acquiring the unit as a primary place of residence" (para 15).

By operation of subsection 262(3), where a group is the purchaser, then each individual in the group must meet the rebate criteria.

The court held that based on the documents both individuals has assumed liability and therefore were particular individuals that must meet the requirements.

In *Rochefort v Canada*, [2014 TCC 34](#), it was held that a mere co-signatory, as opposed to a co-owner and co-purchaser, was not a particular individual to whom liability attaches. But where the person becomes a joint tenant that person is also a particular individual, *Davidson v Canada*, [2002] GSTC 25.

The court referred to the statutory declaration assessing full beneficial ownership and stated that this was executed after the agreement of purchase and sale and the amendment to it. The court went on to say that "The creation of a trust must be properly documented containing the

requisite elements of a trust, dated, signed and in existence prior to or contemporaneous with the matter that is the subject of the trust arrangement" (para 27).

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