

REACQUIRING REAL ESTATE LOST TO THE CROWN ON A CORPORATE DISSOLUTION

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Under Nova Scotia law if a corporation is dissolved while it still owns real estate in Nova Scotia, that real estate will automatically transfer to the Crown. Typically, a corporation that owns real estate or other assets will already have a plan in place to avoid this outcome: the corporation might sell its assets to a third party or transfer them to its shareholders before dissolution. Sometimes, however, a corporation is dissolved without having transferred its real estate, resulting in that real estate falling into Crown ownership.

Fortunately, there are a couple of options to fix this problem.

Option 1: Restore the company

This option may be best if there was no intention to dissolve the company in the first place. A Nova Scotia company that has been dissolved can be restored and upon restoration the real estate automatically reverts to the company, subject to any transfers or encumbrances the Crown may have made in the interim. This process requires an application to the Registrar of Joint Stock Companies, notice to the Department of Justice, other supporting documents, and payment of registration fees from the date the registration was first revoked.

Option 2: Apply to the Department of Justice to have the real estate transferred from the Crown to the applicant

This option may be best if the corporation was dissolved intentionally but it did not transfer all of its real estate. The process requires an application to the Department of Justice, supporting documents (including certificates and abstracts of title), and application fees. Note that since the transfer from the Crown will be for consideration of at least \$1.00, this will trigger a migration of title for the real estate if migration has not been completed yet.

The best option in a particular situation depends on all the circumstances and you should obtain legal and accounting advice before choosing. Bear in mind that for either option the decision to permit the restoration or the transfer is entirely at the discretion of the governmental authorities.

If you have lost real estate to the Crown when a corporation was dissolved and you would like to explore your options for reacquiring that real estate, our corporate and property teams would be happy to discuss these issues with you as we have been successful in assisting clients with both options.