

Table of Contents

Recommended Practices for Licensees Selling a Park Model Home with an Interest in Land.....	1
Fixtures vs. Chattels	3
Tax Considerations	4
PST.....	4
GST	5
Purchase of PMHs with Fee Simple Land Interest	7
Municipal Zoning Considerations.....	7
Tenanted Properties.....	7

Recommended Practices for Licensees Selling a Park Model Home with an Interest in Land

Michael Drouillard and Brett Love¹

Park model homes (PMHs) are a type of home built according to the recreational vehicle (RV) sector standards (CSA Z241²). However, PMHs are significantly less portable than a typical RV and can only be moved with specialized towing equipment and permits for transportation.

PMHs are typically designed to be towed and occupied seasonally, but not as permanent residential dwellings. This distinguishes PMHs from manufactured homes. Manufactured homes are designed to be permanent residential accommodation and are built to a higher sector standard in terms of safety, quality, and durability (CSA Z240).

PMHs are also distinguishable from manufactured homes as a result of the following:

- the ownership of manufactured homes is recorded at the Manufactured Home Registry. There is no registry for PMHs. However, like any personal property, it can be subject to a lien under the *Personal Property Security Act*; and
- if a tenant owns and occupies the PHM, and leases the site the PHM occupies, that tenancy is not necessarily governed by the *Manufactured Home Park Tenancy Act* (MHPTA). It could be, however, if the surrounding circumstances indicated that the parties intended a tenancy and a permanent place of residence that is not recreational in nature.

¹ Michael Drouillard and Brett Love are the founders of Drouillard Lawyers. This paper is provided for legal information only and is not to be relied upon as legal advice.

² A reference to a “CSA” standard in this paper is a reference to the Canadian Standard Association, a non-profit body whose standards for the construction of modular, manufactured, and RV homes have been adopted by provincial and local legislation.

A PMH can be purchased separately from land, such as from a manufacturer. It is sometimes offered for sale with an interest in land because it is being used as a permanent residence at the property. This use of a PMH requires the licensee to investigate further to determine the relevant facts about whether the use might be a material latent defect the licensee is required to disclose: a lack of appropriate municipal building and other permits respecting the real estate.³

Licensees dealing with PMHs should consider making the following inquiries when providing real estate services to clients:

1. The property owner is frequently the best source of information about how the PMH came to be used as housing at the property. Ask the property owner if they obtained any permits or approvals to have the PMH relocated onto the property.
2. Determine if the seller wants to include the sale of the PMH with the sale of a land interest. If the seller doesn't want the home included, then it is important that licensees ensure that the contract of purchase and sale clearly excludes the PMH. If there is doubt about whether the seller appreciates that the purchaser wants the PMH included with the sale, then the licensee should expressly include the structure as an included item in the contract of purchase and sale. If the PMH is to be removed, then the licensee should include a provision that the seller must remove the PMH from the lands. Legal advice should be obtained about the drafting of such clauses.
3. If the PMH is being sold with an interest in land, then:
 - a. Determine on physical inspection if the PMH identifies its CSA standard. Sometimes, but not always, this information is found near the electrical panel, stamped into the front cross member of the PMH's steel frame, or within a kitchen cupboard.⁴
 - b. Consider if the zoning or other land use bylaw permits the PMH to exist at the property, and whether a building permit was required to relocate the home onto the property on a permanent basis. Consider whether you will have to disclose non-compliance on the basis that it is a material latent defect as defined by the Real Estate Rules, which requires a licensee to disclose a lack of appropriate building and other permits respecting the real estate.⁵ Recommend your client seek legal advice about the interpretation of any zoning bylaws.
 - c. Review the title of the property to consider if any restrictive covenants or other charges restrict or regulate the placement of PMHs on the property, but recommend your client seek legal advice about the interpretation of any charge on title to the property.
 - d. Conduct a search of the Personal Property Registry to identify any registrations (i.e., liens) identifying the PMH.

³ Rule 30(h) and Rule 59

⁴ <https://www2.gov.bc.ca/gov/content/housing-tenancy/owning-a-home/manufactured-home-registry>

⁵ See in particular Rule 59(1)(d).

- e. Request your client provide evidence of compliance with electrical and other codes – frequently, an approval (silver) label issued by Technical Safety BC.⁶

If the PMH is being sold with a land interest, there can sometimes be unusual tax implications. For example, PST or GST might apply to the sale of the PMH. Although PST and GST are discussed in this article in general terms, licensees should recommend their clients seek professional advice about real estate taxes.

Fixtures vs. Chattels

Whether a PMH is considered a fixture or a chattel will have implications with respect to how various taxes are assessed and whether the PMH is permitted to be used at the property according to municipal zoning bylaws, as discussed more fully in the next section.

With manufactured homes registered in the Manufactured Home Registry, there is a statutory presumption that such a home is a fixture when it is placed in an existing manufactured home park containing three or more manufactured homes (see section 23 of the *Manufactured Home Act*). This simplifies the issue – if section 23 applies, then it is a chattel and not a fixture.

That is not the case for PMHs. The BC Court of Appeal recently considered the test for whether a PMH is a fixture or a chattel in the *Chemainus Gardens* decision.⁷ This question was important in this case because it would determine whether PST applied to the sale of PMHs.

As the BC Court of Appeal explained, if a structure is only attached to the land by its own weight it is presumed to be a chattel. If, however, the structure is affixed to the land, even slightly, it is presumed to be a fixture. Both presumptions are rebuttable however, if the degree and object of the annexation to the land demonstrate an intention that the structure be considered either a fixture or a chattel. This is a very fact-specific inquiry.⁸

In applying this test, the BC Court of Appeal identified that the PMHs were affixed to the land through water and sewer connections and by skirting, decking, and stairs which further affixed the PMHs to the land. However, the court determined that whether the PMH was being sold with a permanent interest in land was relevant to whether the PMHs were fixtures or chattels.

⁶ See <https://www.technicalsaftybc.ca/regulatory-resources/regulatory-notices/directive-recreational-vehicles> for a directive about the sale of used manufactured and recreational homes.

⁷ *Chemainus Gardens RV Resort Ltd. v British Columbia (Attorney General)*, 2021 BCCA 402 (“**Chemainus Gardens**”)

⁸ *Chemainus Gardens* at para 28, citing para 36 of the lower court’s decision in *Chemainus Gardens RV Resort Ltd. v British Columbia (Attorney General)*, 2020 BCSC 478 (“**Chemainus Gardens BCSC Decision**”) and at para 30.

Ultimately, the court came to the conclusion they were chattels because the PMHs were sold to buyers at a significant price, yet they were sitting on land to which the buyer had no more than a temporary license to occupy.⁹

Had the *Chemainus Gardens* decision involved PMHs which were sold along with a more significant land interest, like a fee simple interest, it is possible that the court's analysis would have considered the PMHs to be fixtures rather than chattels. This decision highlights the importance of considering not only the degree of annexation to the land but also the surrounding circumstances.

A licensee should not give an opinion to a client about whether or not the PMH is a fixture or chattel. Instead, a licensee should recommend their client obtain professional tax and legal advice.

Tax Considerations

PST

The Province of British Columbia (the Province) issued a PST Bulletin with respect to how PST applies to sales and leases of manufactured buildings (PST 133).¹⁰ Whether PST applies to the sale of PMHs depends on whether the PMH is a chattel or a fixture, and whether the PMH is a new or used manufactured building. Generally, if a structure is new and is considered a chattel or tangible personal property (TPP), the buyer of the chattel will be required to pay PST.

If the PMH was previously sold at a retail sale¹¹ and used as a building, PST will not be charged if one of the following conditions are met:

- the PMH was designed and is obtained for residential use;
- the previous retail sale occurred before July 1, 2010; or
- PST (or the BC portion of HST), was paid on the PMH by the person who purchased it at the previous retail sale, and that person has not obtained and is not entitled to obtain a refund, credit, or rebate for that tax.

⁹ *Chemainus Gardens* at para 28, citing para 37 of *Chemainus Gardens* BCSC Decision: "It is difficult to accept that the 39 owners of these Park Model trailers agreed to pay significant sums for their trailers expecting that their investments would become fixed to and part of the land on which they sit, because of servicing connections that are relatively easily undone".

¹⁰ Government of British Columbia, Bulletin PST 133, Manufactured Buildings, *Provincial Sales Tax Act*, effective date: March 2013, accessible online at <https://www2.gov.bc.ca/assets/gov/taxes/sales-taxes/publications/pst-133-manufactured-buildings.pdf>. Accessed November 2, 2023.

¹⁰ "Residential trailer park" is defined in section 123(1) of the ETA. A full discussion of the meaning of residential trailer park is beyond the scope of this paper.

¹¹ "Retail sale" does not include a sale to a person for the purpose of reselling the building.

GST

In summary, there is no GST when a PMH is sold with a land interest when it is being used as a permanent residence. There may be GST when the PMH is used as part of the sale of a business. Additionally, there is no GST on the sale of used manufactured homes in residential trailer parks. However, as the following discussion will demonstrate, GST can be a complicated matter requiring professional advice, and it is not always that simple.

Purchase of PMH with a Lease, License, or Similar Arrangement

The Government of Canada (Canada) has provided a policy statement with respect to GST for the supply of land for recreational units, including PMHs (PMH Policy Statement).¹² In this context, a supply of land means a lease, license, or similar arrangement for continuous possession or use of the land for at least one month by an owner or lessee of a PMH. If the land at issue is a residential trailer park¹³ it is not included in the definition of a supply of land.

A supply of land with a PMH will be considered a single-unit residential complex, and may be exempt from GST if the following three conditions are met:

1. the PMH is a residential unit for GST/HST purposes;
2. the PMH is affixed to the land; and,
3. the PMH is affixed to the land for the purpose of its use and enjoyment as a place of residence.

The PMH Policy Statement confirms that whether a particular PMH is sufficiently modified and affixed to the land such that it qualifies as a single-unit residential complex is a question of fact, and the determination is made on a case-by-case basis. Factors that indicate that a PMH qualifies as a residential complex include the following non-exhaustive list. All the surrounding circumstances and relevant factors must be considered, and no one factor is more important than another or determinative of the issue of whether the PMH is a residential complex:

- the PMH is designed, or has undergone the necessary alterations, for year-round connection in a permanent way to service facilities such as water, sewer, septic tank, electricity, telephone and cable;
- the PMH is installed or affixed in a permanent manner, for example on sonotubes or a cement pad;
- the PMH is used as an individual's primary place of residence; and

¹² Government of Canada, Canada Revenue Agency, GST/HST Policy Statement P-104 Supply of Land for Recreational Units such as Mini Homes, Park Model Trailers, and Travel Trailers, date modified: 2011-02-23, accessible online at <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/p-104/supply-land-recreational-units-such-mini-homes-park-model-trailers-travel-trailers.html>. Accessed November 2, 2023.

¹³ "Residential trailer park" is defined in section 123(1) of the ETA. A full discussion of the meaning of residential trailer park is beyond the scope of this paper.

- the PMH has been modified to add a room, screened porch, deck, carport, skirting, etc.;
- a lease agreement of at least one year, with renewal options, has been entered into which permits year-round use;
- the PMH unit's undercarriage, including wheels and hauling tongue, has been removed;
- the PMH is assessed for municipal property tax purposes as a residential dwelling unit and is subject to property taxation; and
- the PMH is intended to remain affixed to the land for the foreseeable future.

If the PMH does not meet the definition of a residential unit, it will not be exempt from GST. If the PMH does meet the definition of a residential unit, the additional two factors must be considered.

A PMH will be affixed to the land if it is installed or affixed in a permanent manner that is conducive to long-term residential use. An example of this type of installation would be where the PMH is bolted to a cement pad and connected, in a permanent way, to service facilities (i.e., municipal water and sewer systems, well, septic system, or an electrical power distribution system). Consideration is given to the method and degree of physical attachment of the PMH to the land, as well as the purpose for which the unit has been attached to the land. The ultimate question is whether the PMH has been affixed to the land to affect a permanent improvement to the real property, for use and enjoyment of the unit as a place of residence for individuals. To meet this criteria, the PMH must be affixed to the land in a manner that is sufficient to support long-term use of the PMH as a place of residence. This is a question of fact, all relevant factors must be considered, and a determination is made on a case-by-case basis. Generally, if a PMH meets the criteria for a residential unit, it will be sufficiently affixed to the land to support long-term use of the PMH as a place of residence.

If the first two criteria for GST exemption are met, then the final criteria must be considered. That is, whether the PMH is for use and enjoyment as a place of residence. To be considered a place of residence, the PMH should be used for the purposes of habitation and dwelling rather than for temporary or short-term stays. This is a question of fact, all relevant factors must be considered, and a determination is made on a case-by-case basis. Relevant factors include, but are not limited to:

- long-term, year-round leasing commitments (as opposed to seasonal);
- the PMH is connected to heating, electrical, water, and sewer facilities available year-round;
- the PMH is designed or has undergone alterations for year-round habitation;
- the PMH is furnished by the occupant;
- the address of the PMH is used for postal, municipal/school tax and other purposes (i.e., driver's license, medical insurance, voter's registry, etc.); and
- the PMH is connected to cable and telephone services.

Purchase of PMHs with Fee Simple Land Interest

If the PMH meets the criteria for a residential complex noted above, the sale of land with a PMH affixed to it may be exempt from GST in some cases. Sections 2 and 3 of Schedule V of the Excise Tax Act (ETA) sets out when a transfer of real property is exempt from GST in this context.

Generally, a sale of a residential complex by a person who is not a builder of the complex will be exempt from GST if the PMH was occupied by an individual as a place of residence after construction, with some exceptions (see part 2, Schedule V, ETA). In addition, a sale of land with a PMH affixed to it by the builder may also be exempt in certain circumstances (see part 3, Schedule V, ETA).

This means that if the PMH meets the criteria for a single-unit residential complex, described above, the PMH has previously been used as a personal residence, and both the land and the PMH are purchased together, the purchase may be exempt from GST.

Municipal Zoning Considerations

Sometimes, zoning doesn't permit a PMH to be used at a property. For example, if a parcel of land is zoned for temporary accommodation for recreational vehicles, such as a campground or RV park, the zoning may not permit long-term accommodation. Zoning may also expressly prohibit PMHs.

Sometimes, the PMH's use will predate the zoning bylaw, and the use of the PMH may be a legally non-conforming use. A licensee should recommend a client seek legal advice about legal non-conforming uses.

A licensee should review the zoning for the property in question and consider whether the existing zoning permits the existing use of a PMH.

Tenanted Properties

Another consideration for licensees selling a property with a PMH is whether the PMH is tenanted by a tenant who owns the structure. If that is the case, it is important to determine whether the MHPTA applies. Although the MHPTA typically does not apply to seasonal campground use, it could apply to an occupant of a PMH, even if the PMH wasn't designed to be used on a permanent basis, and even though the PMH doesn't have a manufactured home number.

The MHPTA can apply to recreational vehicles parked on land if the occupation of the RV is pursuant to a tenancy rather than a license to occupy. A very recent decision from the BC

Supreme Court suggests that PMHs will be treated in the same manner as other RVs in making this determination.¹⁴

In the *Ball* decision, the court held that it was the permanent nature of the structure that was important in determining whether occupation was pursuant to tenancy or a license to occupy, and not the exact classification as to whether the structure was a 5th wheel or a PMH.¹⁵ The court upheld the Residential Tenancy Branch's decision that it did not have jurisdiction over Ms. Ball's occupation of the land because it was a result of a license to occupy. In coming to this conclusion, the court considered the following factors:¹⁶

- the park rules provided the *Residential Tenancy Act*, SBC 2002, c 78, and by extension the MHPTA, did not apply to persons occupying the campground;
- the park rules provided that campsites were not to be used as primary residences and were not to be occupied year-round;
- Ms. Ball moved from campsite to campsite at various times;
- rent was assessed on a daily basis;
- the campsite paid utilities and had access to the campground and specific sites without notice;
- Ms. Ball had the right to stop renting her site without notice; and
- the park rules limited visitor hours.

Selling property that has a PMH or manufactured home owned by a tenant upon it, even if there is only one tenant, can be a complicated matter. It may be practically impossible to end the tenancy if the MHPTA is found to apply, because the reasons a landlord may end a tenancy under the MHPTA without cause are extremely limited, and do not include the reason that the landlord or a close family member wishes to move in, unlike the *Residential Tenancy Act*.

¹⁴ *Ball v Bedwell Bay Construction Ltd (cob Hazelmere RV Park and Campground)*, 2023 BCSC 1470 ("**Ball**").

¹⁵ *Ball* at para 52.

¹⁶ *Johns* at para 46