

LEGAL CONSIDERATIONS FOR SETTING UP A PERSONAL REAL ESTATE CORPORATION (PREC)

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Disclaimer

This presentation is intended for general informational purposes only, is provided solely for educational purposes and may not be applicable to a specific case, set of circumstances or facts. This material is based on laws and practices that are subject to change and is current as of the date hereof. This presentation is not legal advice. Do not rely on this presentation as legal advice or an opinion on any issue. Discuss all tax matters with a qualified tax professional.

Overview

- A. What is a Personal Real Estate Corporation (PREC)?**
- B. Attributes of a PREC**
- C. Business and Investment Restrictions**
- D. PREC Legal Structure**
- E. Steps to Set Up a PREC**

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**WHAT IS A PERSONAL REAL
ESTATE CORPORATION (PREC)?**

What is a PREC?

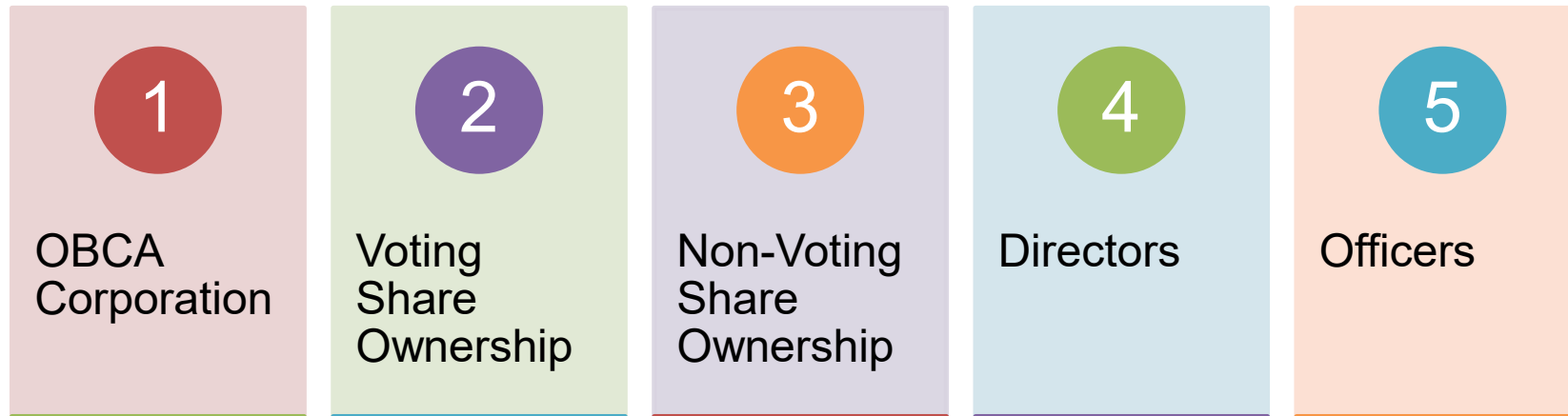
- A broker or salesperson in Ontario who is registered with RECO may incorporate a Personal Real Estate Corporation (PREC) and earn income through a PREC
- A PREC may offer various tax advantages
- Generally speaking, PRECs are more suitable for high income earning realtors



ATTRIBUTES OF A PREC

Attributes of a PREC

- Regulated under *Real Estate and Business Brokers Act, 2002*
- Must meet certain criteria:



OBCA Corporation

- Must be formed under Ontario's *Business Corporations Act* (OBCA)
- You may use an existing corporation
 - Depending on the structure of existing corporation, may require reorganization
- No naming restrictions

Voting Share Ownership

- Controlling shareholder must be broker or salesperson registered with RECO
- Controlling shareholder must own all voting shares
- Directly or indirectly

Non-Voting Share Ownership

- Controlling shareholder
- Family members
- Directly or indirectly

Director

- Controlling shareholder must be the only director

Officer

- Controlling shareholder must be the only officer (President)



BUSINESS AND INVESTMENT RESTRICTIONS

Employed by a Brokerage

- Controlling shareholder must be employed by a brokerage to trade in real estate
- “Employed” includes independent contractor to brokerage

Other Restrictions

- PREC may not carry on business as a brokerage
- PREC may not hold trust monies on behalf of client

Representing to the Public

- May not include the PREC's name on:
 - Advertisements
 - Business cards

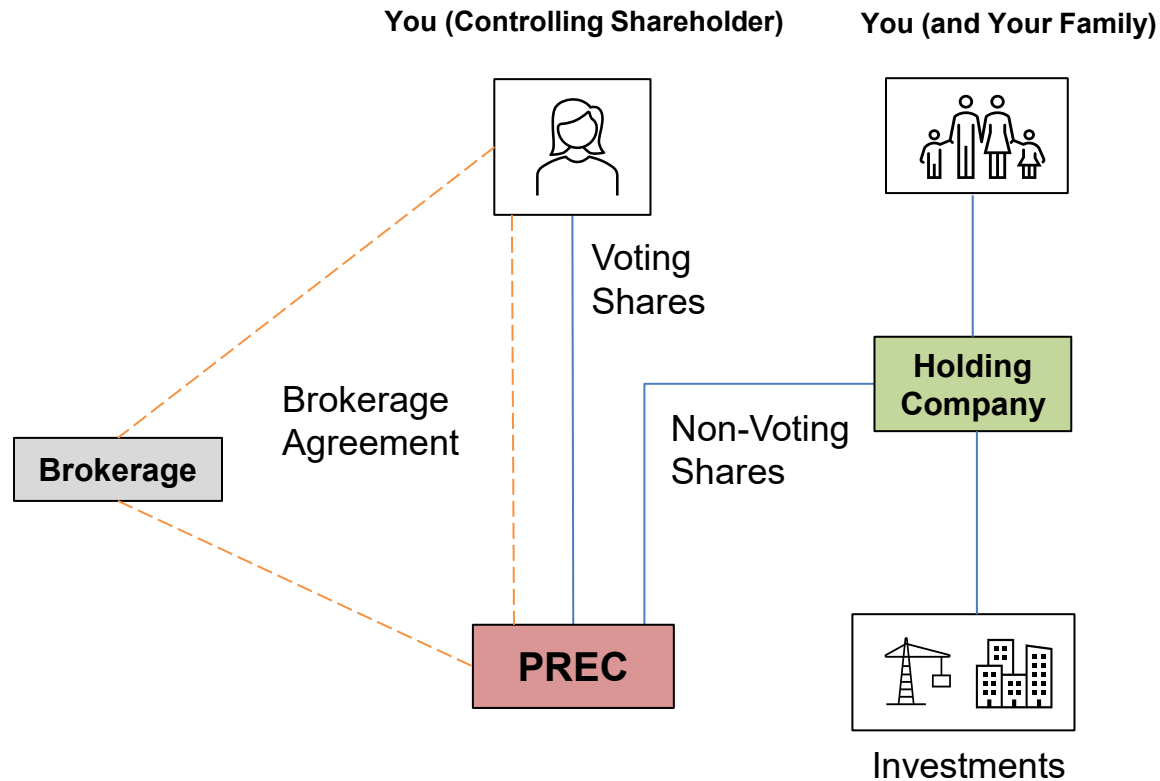
What Can a PREC Invest In?

- Can make non-real estate investments, such as:
 - Stocks
 - Bonds
 - GICs
- What about real estate investments? Maybe!
- Investments should be made outside of the PREC



PREC LEGAL STRUCTURE

Sample PREC Legal Structure



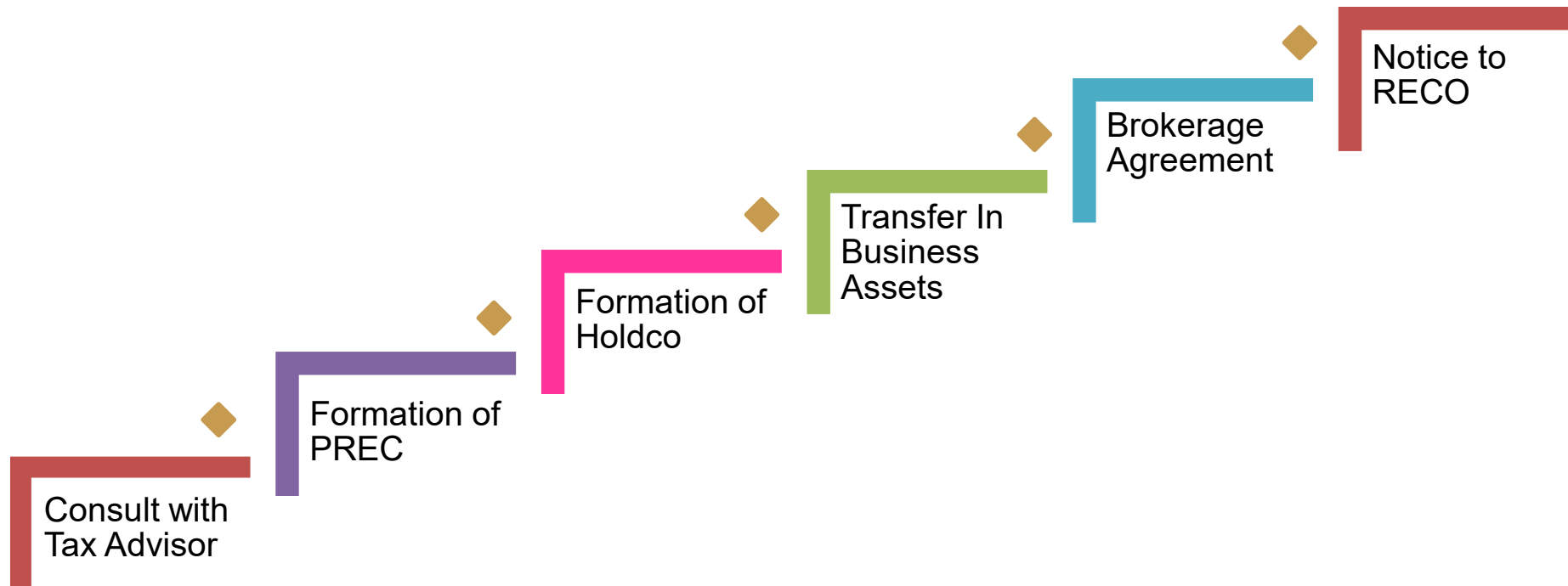
Holding Company

- A holding company (HoldCo) may own shares of the PREC
- Move PREC retained earnings to the HoldCo
- Make investments through a HoldCo
 - Avoid being offside the regulations
 - General liability protection



STEPS TO SET UP A PREC

Steps to Set Up A PREC



Consult with Tax Advisor

- Whether PREC is beneficial for you
- Appropriate share structure for you and your family
- Transfer in of business assets

Formation of PREC

- File Articles of Incorporation for PREC under Ontario's *Business Corporations Act* (OBCA)
- Potentially use existing corporation:
 - Determine if existing corporation is suitable
 - Articles of Amendment may need to be filed
 - Reorganization may be necessary

Formation of Holding Company

- Determine if you are going to use a HoldCo
- File Articles of Incorporation for new HoldCo
- Potentially use existing corporation
 - Determine if existing corporation is suitable
 - Articles of Amendment may need to be filed
 - Reorganization may be necessary

Transfer In of Business Assets

- Risk of existing business being taxed at personal tax rate
- Section 85 rollover of business assets

Brokerage Agreement

- The brokerage agreement must be between:
 - Controlling shareholder
 - PREC
 - Brokerage
- Mainly allows a Brokerage to satisfy its RECO obligations

Typical Provisions

- PREC agrees to provide the Brokerage with access to PREC's corporate records
- PREC agrees to assist Brokerage to ensure compliance with regulations
- Brokerage will request representation and warranties from PREC and Controlling Shareholder that the PREC is in compliance with the regulations
- Standard indemnity in favour of Brokerage

RECO Notice

- Must notify RECO that you have set up a PREC
- Must be done before the PREC receives any remuneration from Brokerage

Consult a Professional

- The regulations contain detailed requirements
- Do not just rely on template corporations or re-use existing corporations without careful consideration
- Do not just sign any brokerage agreement without careful consideration

For More Information

- Real Estate Council of Ontario (RECO)'s PREC website
<https://www.reco.on.ca/precs-ads/>
- Ontario Real Estate Association (OREA)'s Guide to PRECs
<https://www.orea.com/~media/Files/Downloads/A-Guide-to-Personal-Real-Estate-Corporations-for-Ontario-Realtors>
- OREA's PREC FAQ
<https://www.orea.com/~media/Files/Downloads/FAQ-PRECS>