ANGUILLA

# REVISED STATUTES OF ANGUILLA

## CHAPTER R52

# RESORT RESIDENCE ANNUAL LEVY ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 12/2021, in force 27 April 2021

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# RESORT RESIDENCE ANNUAL LEVY ACT

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# RESORT RESIDENCE ANNUAL LEVY ACT

## Interpretation

**1.** In this Act, unless the context otherwise requires—

"alien" includes—

(a) a person not regarded as being Anguillian within the provisions of the Constitution of Anguilla;

(b) a company incorporated in Anguilla or in any other part of the British Commonwealth if it is under alien control; and

(c) a corporation incorporated in a foreign country;

"alien land holder" means an alien who holds land in freehold or under a lease pursuant to an alien land holding licence granted under the Aliens Land Holding Regulation Act;

"assess" includes reassess;

"Chief Valuation Officer" means the person appointed to this post at the Department responsible for Lands and Surveys and references to other valuation officers will be similarly construed;

"Developer" means a person with whom the Government of Anguilla has entered into an agreement for the development of a hotel or residences, the latter of which are for resale;

"levy" means the resort residence annual levy payable under this Act and also includes the resort residence asset levy or annual levy as referred to in Memoranda of Agreement;

"luxury real estate product" means the following enclosed area—

(a) the room inventory, which includes an individual sleeping room, the primary purpose of which shall be to house overnight occupants;

(b) common areas of the facility; and

(c) any other premises where lodging is provided that can be used as a residence;

"Memorandum of Agreement" means a memorandum of agreement or memorandum of understanding entered into between the Developer and the Government of Anguilla;

"operator" means a person who oversees, directs and manages the daily operations of the hotel or residential project including the Room Rental Programme;

"owner", in relation to any luxury real estate product, means any person who has purchased the product and who has legal interest in the luxury real estate product or is receiving or entitled to receive rents or profits from any guest or occupier thereof, whether on his own account or as an agent or trustee for any other person, or who would receive the same if the luxury real estate product were let;

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"Registrar" means the Registrar of Lands and includes any person acting as, or, to the extent of his or her authority, performing the functions of, the Registrar;

"residence" includes villas and condominiums;

"Room Rental Programme" means the programme whereby an owner of a luxury real estate product allows the Developer or Operator to rent the luxury real estate product for reward to others while it is not in use by the owner, his immediate family or other non-paying guests;

"sleeping room" means a room that must include four walls on all sides, with a window or patio door to the exterior.

**Application**

**2.** (1) This Act applies to luxury real estate products—

(a) that have been purchased from a developer by an owner; or

(b) that have been subsequently resold by an owner.

(2) Where before 27 April 2021, a luxury real estate product was purchased or resold in accordance with subsection (1), and there is in existence in relation to such product, a Memorandum of Agreement requiring the payment of the levy, the owner shall be required to pay the levy specified in the Agreement.

**Imposition of the levy**

**3.** (1) There shall be levied and paid into the Consolidated Fund of Anguilla a resort residence annual levy, hereinafter referred to as the levy on luxury real estate products.

(2) An owner is required to pay the levy on luxury real estate products in accordance with—

(a) the Memorandum of Agreement entered into between the Government of Anguilla and the Developer of the luxury real estate product; and

(b) this Act.

(3) The calculation of the levy in relation to a luxury real estate product shall be the assessed square footage of the enclosed luxury real estate product multiplied by the rate prescribed by this Act.

(4) The levy in a financial year is deemed to have been imposed on 1 January of that financial year.

(5) Where a luxury real estate product is sold or transferred whether by instrument, operation of law or otherwise, within a financial year, the Comptroller of Inland Revenue may prorate the levy payable by the period of ownership and, for such purpose, a part of a month is considered as a whole month.

(6) An operator of the luxury real estate product, acting as an agent of the Comptroller of Inland Revenue for the collection of resort residence annual levies, shall—

(a) collect from the owner; and

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(b) remit to Government;

the resort residence annual levy payable under subsection (2).

(7) For the purposes of subsection (6), if an operator does not collect the resort residence annual levy under this section, the operator is nevertheless deemed to have collected the resort residence annual levy and shall be required to pay the levy and any applicable penalties due under this Act.

(8) The Governor in Council may, by regulation, reduce or increase the base rate of the levy but no order for the increase of the rate shall come into effect unless approved by resolution of the House of Assembly.

(9) An increase referred to in subsection (8) shall be no more than 15% in each 5-year period beginning January 2021.

(10) Subsection (7) does not apply in relation to luxury real estate products which were purchased or resold prior to 27 April 2021, where the levy due under a Memorandum of Agreement was not collected after such purchase or resale.

**Waiver or reduction of levy**

**4.** (1) Where prescribed fees under the Stamp Duty Act and Aliens Land Holding Regulation Act have been paid in full in relation to a luxury real estate product, no rate shall be levied under this Act.

(2) Where the levy payable by a particular Developer has been waived, reduced or increased under a Memorandum of Agreement signed between the Government and the Developer prior to 27 April 2021, the rate specified in such agreement shall continue to apply for such period as was agreed to between the parties and on the expiry of such period, the base rate of the levy specified in this Act shall apply thereafter.

**Calculation of the levy**

**5.** (1) Where the luxury real estate product is included in the Room Rental Programme, the annual levy payable by the owner of the luxury real estate product shall be assessed at USD$5.00 per square foot per annum on the enclosed area of the luxury real estate product.

(2) Where the luxury real estate product is not included in the Room Rental Programme, the annual levy payable by the owner of the luxury Real Estate Product shall be assessed at USD$6.50 per square foot per annum on the enclosed area of the luxury real estate product.

(3) The levies specified in subsections (1) and (2) apply—

(a) where the owner purchases the product from the Developer; and

(b) where the owner subsequently sells the luxury real estate product to another person;

and the levies apply to all subsequent resales.

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(4) A developer or operator of a Room Rental Programme shall submit to the Comptroller of Inland Revenue, Registrar and Chief Valuation Officer a list of luxury real estate properties that participate in the programme and such list shall be updated and submitted on an annual basis.

(5) Liability to pay or remit the levy imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(6) The Chief Valuation Officer is not bound by information furnished by or on behalf of any person under this Act in relation to a resort residence annual levy and may, notwithstanding the information so furnished, or that no information has been furnished, assess the levy payable under this Act.

(7) Notwithstanding subsections (1) and (2), in relation to luxury real estate products purchased or resold before 27 April 2021, the owner or operator of the product shall pay the levy specified in the Memorandum of Agreement.

**Effect of assessment**

**6.** (1) Unless it is varied or vacated on an objection or appeal—

(a) an assessment under section 5 is deemed to be valid and binding, notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it; and

(b) the amount assessed in an assessment under section 5 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

(2) Every person assessed under section 5 shall, within 15 days after service of the notice of assessment, pay the amount assessed whether or not an objection to or appeal from the assessment is pending.

**Penalty in addition to amount owing**

**7.** (1) When the owner or operator of a luxury real estate product fails to pay the levy owed as calculated in accordance with section 3(3), the Comptroller of Inland Revenue, after determining the amount owing by the owner or operator, may assess against the owner or operator a penalty in the amount of 1% of the amount owing for each month of default.

(2) On assessing a penalty under subsection (1), the Comptroller of Inland Revenue shall demand payment from the owner or operator of the luxury real estate product of the amount owing and the amount of the penalty.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the owner or operator to whom the demand is directed, in the amounts stated in the demand.

(4) The penalty specified in subsection (1) does not apply in relation to luxury real estate products which were purchased or resold prior to 27 April 2021, where the levy due under a Memorandum of Agreement was not collected after such purchase or resale.

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**Sale of luxury real estate product**

**8.** Where the luxury real estate product has been sold by the developer or subsequently resold by an owner, the Registrar and Comptroller of Inland Revenue shall require the Developer, operator or owner to make available for inspection—

(a) purchase and sales agreements in relation to the luxury real estate product; and

(b) management agreements and any other agreements between—

(i) owners and developers, or

(ii) owners and operators;

necessary for enforcement of Act.

**Chief Valuation Officer to administer Act**

**9.** (1) The Chief Valuation Officer shall be responsible for the administration of this Act.

(2) The Chief Valuation Officer may delegate any of the powers or duties assigned to him or her under this Act to the Senior Valuation Officer, Senior Registration Officer or any other public officer who reports to him or her, and may make the delegation subject to conditions or limitations.

(3) The Chief Valuation Officer may exercise a power or perform a duty even if he or she has delegated it to another person.

(4) The Chief Valuation Officer, Senior Valuation Officer and Senior Registration Officer are *ex officio* valuation officers.

**Identification cards**

**10.** (1) The Chief Valuation Officer shall furnish the Senior Valuation Officer, and each valuation officer who makes inspections under this Act, with an identification card.

(2) An identification card furnished under this Act remains the property of the Government.

(3) A person to whom an identification card is furnished shall return it to the Chief Valuation Officer without delay upon request.

**Powers and duties of Senior Valuation Officer**

**11.** (1) Under the supervision and direction of the Chief Valuation Officer, the Senior Valuation Officer shall exercise the powers and perform the duties that are conferred on him or her under this Act.

(2) A Senior Valuation Officer shall be responsible for determining or verifying the enclosed square footage area of the Luxury real estate product for the purpose of calculating the levy due under this Act.

(3) The Senior Valuation Officer may delegate his or her powers or duties to a valuation officer, who shall report to him or her, and may make the delegation subject to conditions or limitations.

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(4) The Senior Valuation Officer may exercise a power or perform a duty even if he or she has delegated it to another person.

**Right of valuation officer to enter on property and inspect enclosed properties**

**12.** (1) For any of the purposes of this Act, including determining or verifying the enclosed square footage area of the luxury real estate product for the purpose of calculating the levy due under this Act, a valuation officer may, at any reasonable time—

(a) enter onto a parcel of land to take measurements and photographs of a luxury real estate product;

(b) enter onto a parcel of land and enter the luxury real estate product and inspect any changes to it that would affect the square footage of the property;

(c) request the production of plans, strata lot declarations, information, documents or other things to assist the valuation officer in preparing the calculation of the levy; and

(d) make copies of documents relevant to the valuation officer's duties.

(2) When exercising his or her powers or performing his or her duties under subsection (1), a valuation officer shall on request produce the identification card referred to in section 10 and inform the owner, operator or occupier of the luxury real estate product of the purpose of the entry and inspection.

(3) For the purpose of making copies, a valuation officer may take any documents away, after giving a written receipt for them, and shall return the documents without delay.

(4) If a valuation officer—

(a) is refused entry onto a property to access the luxury real estate product;

(b) has reasonable grounds to believe that he will be refused entry onto the luxury real estate product; or

(c) is impeded, or has reasonable grounds to believe that he will be impeded, in the carrying out of an inspection or exercising the powers or performing the duties referred to in subsection (1);

the Senior Valuation Officer may make an *ex parte* application to the Magistrate's Court for an order authorising the valuation officer to enter onto the property of the luxury real estate product and carry out an inspection and to exercise the powers or perform the duties referred to in subsection (1).

(5) On hearing an application under subsection (4), the Court may do one or more of the following—

(a) authorise the valuation officer to enter onto the property of the luxury real estate product to exercise his or her powers and perform his or her duties;

(b) restrain any person from impeding the valuation officer from entering the luxury real estate product or from exercising his or her powers or performing his or her duties;

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(c) require the owner, operator or occupier of the luxury real estate product to disclose information or produce any document to assist the valuation officer —

(i) in calculating the square footage of the enclosed property, or

(ii) in determining if the new construction will affect the levy due in relation to the enclosed property;

(d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) award costs in relation to the matter.

**Duty to furnish information and documents**

**13.** (1) This section applies to a person other than a public officer acting in his or her capacity as a public officer.

(2) A person, including a government agency, not later than the day specified in a written notice given by the Senior Valuation Officer, shall without charge—

(a) furnish any information or documents or copies of documents in the person's possession or control, specified in the notice, that are necessary for the valuation officer to carry out his or her duties under this Act, including a complete set of drawings and plans as specified in section 10 of the Condominium Act, where the luxury real estate product is a Condominium;

(b) when the notice so specifies, furnish the information or documents or copies of documents in relation to specified periods until further notice.

(3) A notice shall not require that information and documents or copies of documents be furnished sooner than—

(a) 7 days after the notice is given to the person, in the case of paragraph (2)(a); or

(b) 7 days after the end of each period, in the case of paragraph (2)(b).

(4) A person who fails or refuses to comply with notice under subsection (2) is guilty of an offence and liable on summary conviction to a fine of $2,000, and $100 for each day thereafter that the person refuses or fails to comply with the notice.

(5) A valuation officer may apply to the Magistrate's Court for an order under subsection (6) if any person to whom a notice has been given under subsection (2) fails or refuses to comply with the notice.

(6) The Court may make an order requiring a person to comply with a notice given under this section, and may make any other order, including an order as to costs that the Court considers appropriate.

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**Information from public officers**

**14.** (1) For the purposes of this Act, the Senior Valuation Officer may request information or copies of documents from—

(a) the Registrar of the Supreme Court;

(b) the Principal Planning Officer;

(c) the Registrar of Lands;

(d) the Registrar of Companies; or

(e) any head of a department in possession of information or having the custody or control of a document.

(2) A public officer named in subsection (1) shall, without delay and free of charge, furnish, or cause to be furnished, to the Senior Valuation Officer such information or copies of documents as the Senior Valuation Officer requests.

**Copy of the Assessment to be given to the owner or operator**

**15.** (1) Where the valuation officer has completed an assessment under this Act, the Chief Valuation Officer shall issue to the owner or operator of the luxury real estate product an assessment stating—

(a) the square footage of the luxury real estate product; and

(b) the levy due in relation to the luxury real estate product.

(2) Where a person objects to the assessment referred to in subsection (1) that person may do so in accordance with Part 5 of the Property Tax Act.

**Bills, invoices and notices to be issued**

**16.** (1) The Comptroller of Inland Revenue shall serve, or cause to be served, on the owner or operator of a luxury real estate product, bills, invoices and notices of assessment as required under this Act.

(2) A bill, invoice or notice may be served by—

(a) electronic mail;

(b) hand delivery or registered post to an address provided by the owner or operator for the purpose of service of documents in Anguilla; or

(c) courier or registered post to the owner's address overseas.

(3) The following shall amount to sufficient proof of service of documents referred to in subsection (1)—

(a) an affidavit by the person delivering the documents stating that he or she has served the bill, invoice or notice;

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(b) a receipt confirming delivery of bill, invoice or notice by courier;

(c) a read receipt email confirming that electronic mail has been received.

**Issue of demand notices**

**17.** The Comptroller of Inland Revenue shall for each financial year, as soon as reasonably possible after the beginning of the financial year, send the demand notices to owner or operator of luxury real estate products.

**Contents of demand notice**

**18.** A demand notice shall include the following—

(a) the square footage of the luxury real estate product;

(b) the relevant base rate applicable to the luxury real estate product as specified in sections 6(1) and (2);

(c) the levy due based on applicable calculation; and

(d) any other information considered appropriate by the Comptroller of Inland Revenue.

**Application of Part 6 of the Inland Revenue Department Act**

**19.** Part 6 of the Inland Revenue Department Act shall apply to this Act with appropriate modifications in relation to the recovery of any levy due under this Act.

**Citation**

**20.** This Act may be cited as the Resort Residence Annual Levy Act, Revised Statutes of Anguilla, Chapter R52.

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