WINTER/SPRING

REAL ESTATE AND CONSTRUCTION **NEWSLETTER 2016**

FULLER LANDAU LLP

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REAL ESTATE AND CONSTRUCTION **NEWSLETTER**

IN THIS EDITION

With the traditional Canadian real estate investment landscape yielding lower returns, investors are forced to be creative with harnessing new cash flow alternatives.

For Canadians investing in real estate abroad, Andy Yap indicates in his article "What Canadian Taxpayers Owning Foreign Real Estate Should Keep in Mind" specific tax compliance requirements with owning and disposing of property in other countries that can impact an investor's bottom line. These include Canadian income tax and foreign tax issues that arise when acquiring real estate outside Canada, regardless of if it was purchased as a vacation home/secondary residence or as an income-producing property. Investors should seek advice from professionals who understand the rules and laws of that jurisdiction before making the purchase to ensure all requirements are followed, as there are penalties for non-compliance.

Whether you are looking abroad or prefer investing closer to home, knowing your market is the key to designing a highly specialized real estate strategy. In this edition, our Road to Success feature interview with Retirement Life Communities CEO, Joe Ger, illustrates how changes to people's retirement lifestyles are driving improvements in the retirement community model, as well as creating turn-key products for long-term investors.

Regardless of the strategy you pursue, be sure to choose your partners wisely and have the proper legal agreements in place. As Howard Joffe explains in his article "Agreements Relating to Real Estate Investments", whether it's a joint venture, a partnership or a corporation, the parties involved must have an agreement reflecting their understanding of the relationship. Without a detailed plan the parties leave themselves open to disputes and potential litigation, costing time and money.

Mike Stoyan
Practice Group Leader
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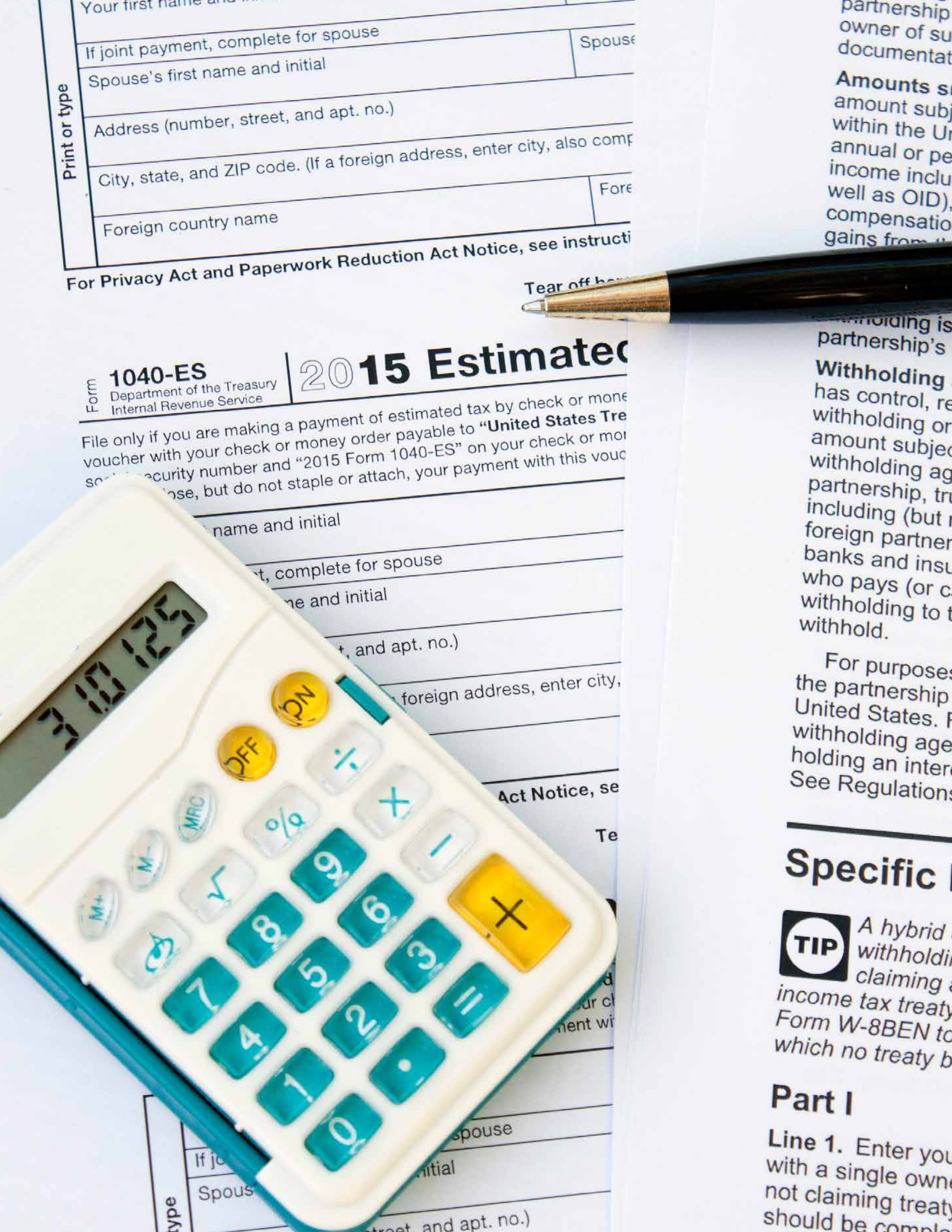
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ROAD TO **SUCCESS**

RETIREMENT LIFE COMMUNITIES: **THE NEW FACE OF RETIREMENT**

Over the last thirty years, the way people live out their retirement has changed. Just ask Joe Ger, Founder and CEO of Toronto-based Retirement Life Communities (retirementlifecommunities.com): "The language has changed. The perception has changed and the environment changed."

Where once builders produced retirement residences that were sterile and devoid of personality, Ger has responded to these changes by building retirement properties that are communities where people want to spend their time and enjoy days filled with interactions and activities.

Ger explains, "Like a good tailor making clothing to fit you exactly… that's where we're going with our communities. I build them from scratch. We buy land, we build them, we get them up and running, we stabilize them and we sell them to long-term investors."

Ger sees Retirement Life Communities, or RLC for short, as a wholesaler servicing two markets. "We build these communities for the residents and we create the financial environment that they operate in, and then someone else who wants to own it forever agrees it's a model that works. It's a stamp of approval for our interpretation of what the market wants… both our markets."

He adds that RLC is a producer of retirement communities, not a long-term operator. He explains that they have their own brand and philosophy, and embed their operating standards so when the next owner takes over, it's turn-key.

Because the face of retirement is changing, retirees are looking to move into a community with various amenities and options. Ger understands this.

He says the emphasis is on providing options: "What we strive to deliver is a continuum of care within the retirement community. At one end, there's fully independent housing. You can own a unit or you can rent it; a unit with a kitchen, living room, etc. It's either a condo or apartment, a home within a community; that's the only difference at the independent end. At the other end is assisted living where you've reached a point you're trading space for care. Now the care component comes into play and it is a much more significant piece of the lifestyle for these individuals, because they require support in order to carry on. The philosophy that we operate in is that we provide just the right amount of support the individual requires. The rest is up to them and we encourage their independence to the degree that they can live safely and enjoy their lives."

Over the last twenty-seven years, RLC has produced and sold approximately twenty-three facilities Current RLC communities are in Cobourg, Goderich, and soon to be in Orillia.

WHAT IS NEXT FOR RLC?

Recently, RLC began work on a memory care model in response to the growing issue of memory loss. "We're calling it our harmony wings or our harmony components within the retirement communities." While many harmony wings residents tend to be physically healthy, their memory loss makes it difficult for them to function independently.

Harmony wings fill the gap by dealing with their loss of memory and independence in a way that keeps them safe, preserving their quality of life and dignity. While it is an institutional environment, RLC has chosen to outfit them in an elegant and comforting home like environment. And, if only one member of a retired couple suffers from memory loss, having them in a harmony wing takes the pressure off the other spouse to provide specialized support around the clock.

In 2016, RLC will open its first facility exclusively for memory-challenged individuals in Orillia, with 54 units.

Ger is also looking at other housing options for his communities. He explains, "Our model encompasses the full range of housing. We have not yet engaged in the development of an actual low rise community like attached homes or single-floor townhouses, so that may be a possibility. It's certainly one that intrigues me." Ger says for now though, his focus is on the memory care solutions.

Eight years ago his son Daniel joined RLC. Ger says, "It's about an evolution of a company. It's about transitioning to the next generation. So the view is that while I'm the founder, the company has legs because Daniel is the legacy."

Ger is excited for what is next and has no plans to spend his days golfing anytime soon.

ADVISORS POINT OF VIEW

AGREEMENTS RELATING TO **REAL ESTATE INVESTMENTS**

Most investors in real estate intend to retain ownership for a period of time. These investments, by their nature, do not provide liquidity for people who wish to sell in order to access funds on short notice. In all cases where there are numerous persons involved in a single acquisition, it is necessary to record the agreement between them that relates to the day-to-day management of the real estate, major decision-making procedures, and the eventual sale of the property.

Whether the vehicle for the investment is a joint venture, a partnership or a corporation, the parties should always be advised to have an agreement reflecting their understanding of the relationship.

The most important issues that need to be considered relate to the following:

- The appointment of a property manager and the scope of the management activities (i.e. the day-to-day management) that would include the collection of the rents, the paying of the normal operating expenses, and the distribution of funds to the owners.

- Arrangements with a property manager would not normally give the manager the authority to make decisions relating to major issues such as negotiating mortgages, authorizing major capital expenditures, and entering into major leasing arrangements.

- Within the framework of the agreement with management, it is necessary to record the basis on which they are to be remunerated.

The period that it is intended to hold the investment should be recorded as should the methodology for making the decision to sell (i.e. is this a decision that can be made at any time by a majority of participants?). It should be noted that each participant should not necessarily have one vote, but that the voting should be weighted according to the amount invested by each participant.

It is also common to make provision for the option that a participant may wish, for various reasons, to realize his or her investment. Consideration needs to be given to the extent to which this is possible. Normally, provision would be made for any participant to be free to transfer his or her investment to any other person who was a participant in the particular real estate, or to an outside party approved of by the other participants. It may also be that if the participant is in a position to sell to a third party that the right of first refusal should be given to the existing participants.

One of the more difficult problems to deal with may arise where financing is needed such as when a mortgage term ends and is required to be repaid and because of the state of the market at that point in time, it is not possible to raise sufficient new funds to affect such payment. Participants would then need to provide funds and in such event, it is necessary to legislate how a participant who fails to produce his pro-rata share of the funds is to be dealt with. There are various issues that need to be considered. Some agreements provide for the interest to be valued and taken over by the remaining participants. Others provide for the remaining participants to provide funds in excess of their pro-rata amount and to receive a handsome rate of interest on such advances. There may also be agreements that provide, in these circumstances, that the interest of a participant who fails to provide his share of the funds will have his participation reduced.

It is also necessary to provide the basis for determining from time to time the amounts that are available for distribution to the participants. It is often left to the property manager to deal with this on a month-to-month basis.

Such agreements also normally provide for the appointment of the lawyers and the accountants to the particular venture.

Unfortunately, failure to agree to these matters in advance can create major problems in the future.

BY HOWARD JOFFE, CPA, CA

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ADVISORS
POINT OF VIEW

WHAT CANADIAN TAXPAYERS OWNING FOREIGN REAL ESTATE **SHOULD KEEP IN MIND**

Many Canadians have taken the opportunity over the years to acquire real estate outside of Canada. Some purchased for reasons of owning a vacation home or a second residence. Some purchased for personal investments such as owning an income producing property to earn rental income. There may be other reasons, and this article is meant to help Canadian taxpayers identify tax-related and certain non-tax issues that may arise in owning foreign real estate for personal use or personal investment purposes. This article does not address owning foreign real estate for business or commercial purposes.

CANADIAN INCOME TAX ISSUES

Personal-use real estate is perhaps the most common form of foreign real estate ownership. Since personal-use real estate does not generate income, there is no income to report on the individual's personal income tax return.

Disclosure of one's ownership of personal-use foreign real estate on Canada Revenue Agency (the "CRA") Form T1135 - Foreign Income Verification Statement is not required if the property is primarily for personal use.

Foreign rental real estate is treated in the same manner as domestic rental real estate for Canadian income tax reporting purposes because a Canadian taxpayer is required to report his or her worldwide income. The individual has to complete Form T776 – Statement of Real Estate Rentals to report income and expenses for the foreign rental property on his or her Canadian income tax return. The reporting should be in Canadian dollars. To avoid double taxation, income taxes paid to the foreign jurisdiction on the rental income can be applied as a foreign tax credit to reduce the Canadian tax liability on the taxpayer's Canadian income tax return.

Disclosure of one's ownership of foreign rental real estate on CRA Form T1135 - Foreign Income Verification Statement is required because the property is used to earn income.

FOREIGN INCOME TAX ISSUES

Every jurisdiction has its own system and methods of taxing income earned by a foreigner from rental activities. You should seek advice from a professional who knows the rules of that jurisdiction. Find out whether there is a withholding tax imposed on the gross rental income or net rental income and whether there is a tax reporting requirement with respect to the rental activities.

DISPOSING OF FOREIGN REAL ESTATE

A Canadian taxpayer is required to report the disposition of foreign real estate on his or her Canadian income tax return. If the property is a personal-use residence (i.e. a vacation home or a second home situated in a foreign country), it may, depending on the facts and circumstances, qualify to be designated as the Canadian taxpayer's principal residence for a particular year. You can find guidance on the subject of principal residence in Income Tax Folio S1-F3-C2 (Principal Residence) on the CRA website. If an individual wishes to make a designation of the foreign home as a principal residence, CRA Form T2091 (IND) – Designation of a Property as a Principal Residence by an Individual should be completed and included in the tax return of the year that the disposition occurred.

As for the disposition of foreign rental real estate, a Canadian taxpayer must report the gain or loss on the disposition on his or her income tax return. Recapture of capital cost allowance previously claimed will apply in the year of disposition.

The disposition must be reported in Canadian dollars on the Canadian income tax return. Foreign exchange gains and losses on the currency conversion will be included in the calculation.

Every jurisdiction has its own system and methods of taxing the disposition of real estate of a foreign owner. Real estate falls under the category often referred to as an immovable property in tax terminology. This is also the terminology used in most income tax treaties that Canada has with its tax treaty partners. The domestic taxation and reporting requirements of that jurisdiction must be respected in conjunction with the relevant income tax treaty that Canada has with that jurisdiction. It is highly recommended to seek advice from a professional who knows the rules of that jurisdiction and the tax treaty with Canada.

To avoid double taxation, income taxes paid to the foreign jurisdiction on the gain from the sale can be applied as a foreign tax credit to reduce the Canadian tax liability on the taxpayer's Canadian income tax return.

WHAT ELSE TO KEEP IN MIND

No matter how attractive a foreign real property may appeal to the buyer, it is highly recommended to consult with reputable and knowledgeable professionals who understand the rules and practices of that jurisdiction before making the purchase. Aside from costs of maintaining the property, the following are some of the issues that should be considered:

- The legal system, land ownership rights and title may differ from country to country. It is best to have a complete understanding of it so there are no unpleasant surprises after making the purchase.

- Political and economic stability of the jurisdiction cannot be overlooked. The currency exchange/control imposed by the jurisdiction and inflation have to be considered.

- Some sense of the geography and climate would help towards the purchase property insurance coverage. Some places may be susceptible to natural disasters such as earthquakes, floods, hurricanes, etc.

- Be aware of all the taxes associated with the ownership of the real property, such as property taxes, in the particular foreign country. Some countries may have a different treatment for foreign property owners than for their own citizens/residents.

- Some jurisdictions impose a transfer tax/stamp tax when ownership or title changes. It is best to get an understanding on how much and when it is imposed and whether there is a two-tier system such as one for foreigners and one for local citizens/residents.

- Some countries such as the United States have an estate/inheritance/gift tax system that must be taken into account especially in planning the ownership structure. Be mindful of the planning that could minimize the impact of this tax. Certain structures may work for a local owner but not for a Canadian owner.

A Canadian taxpayer investing in real estate outside of Canada should always seek professional advice to understand the rules and requirements.

BY ANDY YAP, CPA, CA

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FAST FACTS, TRENDS AND **RECENT NEWS**

How will falling oil prices, a falling Canadian dollar, and discussion about even possible lower interest rates impact the Real Estate and Construction sector? Fuller Landau is here to help you weather what may be a stormy 2016.

RESIDENTIAL

After the Bank of Canada cut in its key overnight lending rate by a quarter of a percentage point in January 2015, interest rates continue to remain low as we enter 2016. Lower interest rates may even lead to higher housing prices, which is hard to imagine given the increases the residential market has experienced over the past several years. The Toronto Real Estate Board ("TREB") reported very strong year-over-year increases in sales units and average sale prices in November 2015. Detached homes experienced an increase in average sale price between November 2014 and November 2015 of 8.9% in the City of Toronto and 13.3% for all regions reporting to the Toronto Real Estate Board.

RESIDENTIAL HOME SALES TRENDS[1]
YEAR-OVER YEAR SUMMARY FOR THE MONTH OF NOVEMBER

	AVERAGE PRICE		
	2015	**2014**	**% CHANGE**
DETACHED			
City of Toronto	$1,018,621	$935,122	8.9%
All TREB Regions[2]	$762,326	$672,825	13.3%
CONDOS			
City of Toronto	$415,316	$394,225	5.3%
All TREB Regions[2]	$315,223	$310,220	1.6%
ALL HOME TYPES[3]			
City of Toronto	$654,221	$616,130	6.2%
All TREB Regions[2]	$632,685	$577,936	9.5%

The Toronto Real Estate Boards reports data on the number of sales by housing type and price range. Of noteworthy mention is the sharpest increases in detached properties selling in the $1,250,000 to $1,499,999 and $1,750,000 to $1,999,999 price ranges, as well as the $800,000 to $899,999 price range for condos.

[1] *Source: Toronto Real Estate Board Market Watch November 2014 and November 2015.*
[2] *All TREB regions include Halton, Peel, York, Durham, Dufferin, Simcoe and Toronto.*
[3] *Includes row homes, co-operatives, co-ownerships, detached condominiums and link properties.*

SALES BY PRICE RANGE AND HOUSE TYPE[1]
ALL TREB REGIONS[2] - NOVEMBER 30TH YEAR-TO-DATE

	DETACHED			CONDO		
PRICE RANGE	**2015**	**2014**	**% CHANGE**	**2015**	**2014**	**% CHANGE**
$0 to $99,999	15	18	-16.7%	90	101	-10.9%
$100,000 to $199,999	204	328	-37.8%	1,403	1,938	-27.6%
$200,000 to $299,999	1,007	1,648	-38.9%	7,327	6,639	10.4%
$300,000 to $399,999	3,398	4,441	-23.5%	7,401	6,364	16.3%
$400,000 to $499,999	5,762	6,895	-16.4%	3,599	2,875	25.2%
$500,000 to $599,999	7,230	7,402	-2.3%	1,606	1,250	28.5%
$600,000 to $699,999	7,126	6,234	14.3%	751	657	14.3%
$700,000 to $799,999	5,431	4,440	22.3%	404	285	41.8%
$800,000 to $899,999	4,231	3,252	30.1%	199	118	68.6%
$900,000 to $999,999	2,813	2,078	35.4%	99	97	2.1%
$1,000,000 to $1,249,999	3,763	2,610	44.2%	156	127	22.8%
$1,250,000 to $1,499,999	2,250	1,432	57.1%	88	72	22.2%
$1,500,000 to $1,749,999	1,121	802	39.8%	48	36	33.3%
$1,750,000 to $1,999,999	733	459	59.7%	27	20	35.0%
$2,000,000+	1,459	1,023	42.6%	79	54	46.3%

ECONOMIC INDICATORS

	2015	**2014**
Q3 Real GDP Growth	2.3%	2.8%
Toronto Employment Growth		
As at October 31	-4.5%	-1.2%
Toronto Unemployment Rate		
As at October 31	7.1%	7.9%
Inflation (Yr/Yr CPI Growth)		
As at October 31	-1.0%	2.4%
Bank of Canada Overnight Rate		
As at October 31	0.5%	1.0%
Prime Rate		
As at October 31	2.70%	3.0%
Chartered Bank Fixed Mortgage Rates		
1 Year	3.14%	3.14%
3 Year	3.39%	3.44%
5 Year	4.64%	4.79%

Source: Toronto Real Estate Board Market Watch November 2014 and November 2015.

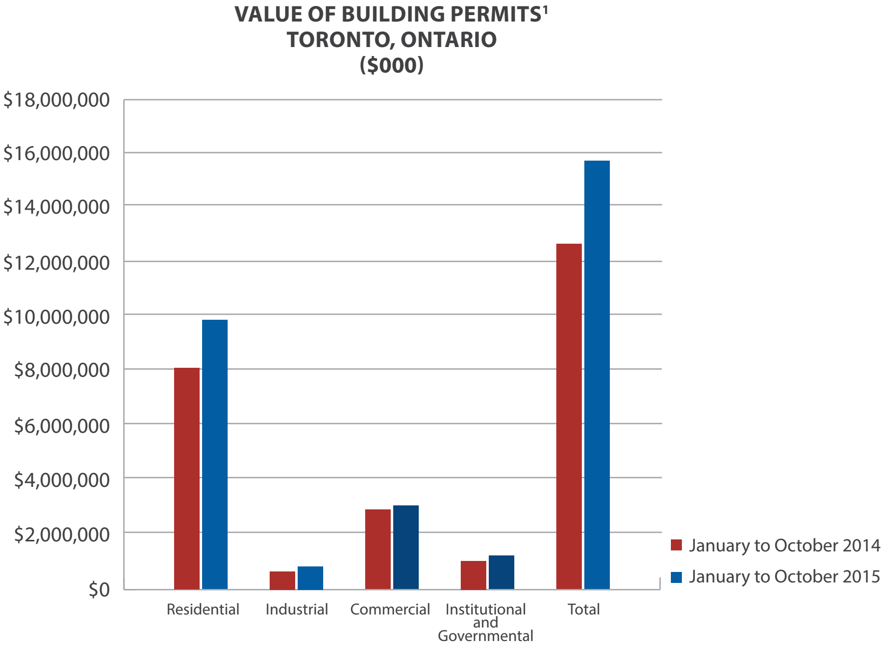
BUILDING PERMITS

According to Statistics Canada, the overall dollar value of building permits for the City of Toronto increased by approximately 21.05% during the period January to October 2015 compared to the same 10-month period in 2014. The most significant increase came from the dollar value of industrial building permits issued. During the period January to October 2015, approximately $958 million dollars of industrial building permits were issued in the City of Toronto, compared to approximately $692 million during the period January to October 2014. This is an increase of approximately 38.45%.

Disclaimer: The information in this section has been provided by external sources and is subject to change. Fuller Landau LLP is not responsible for the accuracy, reliability or timeliness of the information supplied by external sources. Readers wishing to rely upon this information should consult directly with the source of the information.

BUILDING PERMITS - NOVEMBER VALUE OF CONSTRUCTION (THOUSANDS OF DOLLARS)

	RESIDENTIAL	INDUSTRIAL	COMMERCIAL	INSTITUTIONAL AND GOVERNMENTAL	TOTAL
January to October 2014	$7,912,242	$692,168	$3,114,566	$1,056,819	$12,775,795
January to October 2015	$9,777,809	$958,322	$3,165,052	$1,564,534	$15,465,717
% Change	23.58%	38.45%	1.62%	48.04%	21.05%



[1] *Source: Statistics Canada "Building Permits" October 2014 and October 2015 (Catalogue no. 64-001-X).*

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ABOUT FULLER LANDAU

Fuller Landau LLP is a leading mid-sized accounting, tax and advisory firm. We are committed to helping owner-managers and entrepreneurs build value and grow their business. We are uniquely positioned to do just that because, as business advisors and entrepreneurs ourselves, we know first-hand what it takes to meet those challenges and succeed in any business environment.

OUR REAL ESTATE AND CONSTRUCTION PRACTICE GROUP

We know that companies within the construction and real estate sector are subject to many challenges ranging from rising material costs to cyclical demand. We have hands-on experience helping construction and real estate-related companies like yours make sense of the business landscape.

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