

Business / Personal Finance

## Some Toronto condo sales face CRA scrutiny

The Canada Revenue Agency is taking hard look at people selling condos for big profit after long boom.



DAVID COOPER / TORONTO STAR

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**By: James Daw** Published on Sat Apr 13 2013

Some sellers of new Toronto condos are seeing years of price gains in a booming market taxed away. Canada Revenue Agency auditors have added penalties to taxes for those who claimed their condo as a home, but soon changed their minds and sold.

The CRA has yet to disclose how many sellers have been affected. But Toronto tax lawyer and text author David Sherman and other tax experts, accuse auditors of unfairly ignoring some legitimate explanations for sales. Meanwhile, Finance Minister Jim Flaherty wants the CRA to collect more than \$500 million extra from suspected tax cheats this year.

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“The auditors have applied a rare 50 per cent penalty for ‘gross negligence,’ even on those who had never owned a condo previously,” says Sherman.

Sam Papadopoulos, a CRA spokesman, said the agency chooses areas to audit based on “current and emerging risks to the tax base.” The CRA is looking at real estate because of the recent condo boom “for which we have discovered non-reporting of taxable income – builder GST/HST housing rebates and capital gains/income in sales of real property.”

He added that auditors look at such things as the seller’s intention, the type of property they sold, the frequency of purchase and sales, why they sold and how the purchase and sales fit with the person’s ordinary business. He said auditors do not receive bonuses to encourage them to perform more audits.

Canada has three tiers of tax treatment for real estate sales — no tax on a principal residence, tax on half a gain from selling a recreational, rental or other investment property, and full taxation for making a business of buying and selling — known colloquially as flipping.

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Lawyer James Rhodes of TaxationLawyers in Kitchener says some auditors are alleging sellers are making quick flips if the time between the registration of a condo and its sale is short. This is even though they may have bought the condo years previously, before construction started.

“If someone signed a purchase agreement 10 years ago to buy a condo, but then sold it the day after the condo was finally registered, the CRA would say that person sold the condo as a quick flip because they only owned it one day,” he says.

“The CRA doesn’t seem to care that a person’s circumstances might have changed over the ten years, such that they don’t want to live in the condo anymore.”

One of Rhodes’ clients was single when he bought a condo in downtown Toronto in 2005. By 2009 he was engaged, and his fiancée wanted to be closer to her work in Guelph. So, he sold it, soon after it was registered.

An auditor decided that the sale so soon after registration was suspicious, and so was the original choice of a two-bedroom apartment: “There is no reason to purchase a two bedroom condominium for one person,” he claimed.

Rhodes says his client was assessed with over \$100,000 of business income, resulting in a tax bill of roughly \$50,000. He also faced a \$25,000 penalty.

“I estimate the cost to take this to the Tax Court (of Canada) will be around \$10,000 to \$15,000.”

A married chartered accountant waited five years for a new 935-square-foot condo unit to be built at Bloor and Jarvis Streets. But she decided after living there 15 days in 2011 it was simply too cramped.

“We would have had to turn the entire second bedroom into a closet,” she explained. “My husband would have had to watch television in the living room.”

They changed their plans, kept their old family home, but claimed the condo as a principal residence for the time they owned it. (It is permissible to claim different homes as one's principal residence, just not two at the same time.)

A CRA auditor has ordered her to pay \$72,000 of tax, and a \$36,000 penalty, on a \$150,000 price gain. She had already looked into CRA practices and wrote March 18 to ask Minister of National Revenue, Gail Shea, to order an investigation.

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