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EVERYTHING REAL ESTATE BLOG

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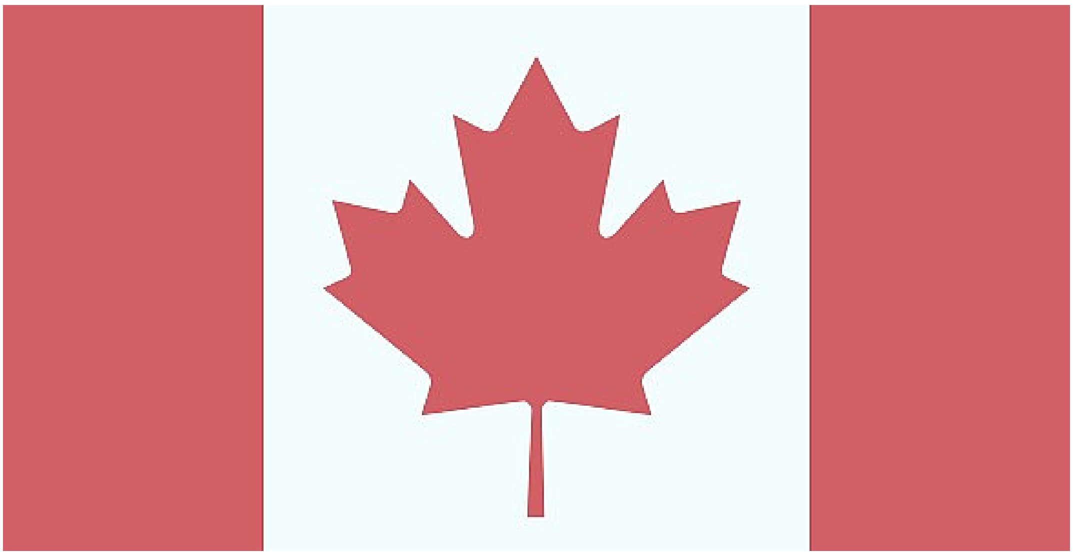
STRESS FREE PROPERTY INVESTING IN CANADA FOR NON-RESIDENTS



I'm currently doing a tour of Europe and just finished my visit to Paris and heading off to Madrid. Due to the weakening of the Canadian dollar I'm getting a lot of interest from non-residents planning to invest in Real Estate in Montreal. Personally, I think this is an excellent time to invest. The dollar can't stay at this level indefinitely. However, before you jump in and buy, we better examine the tax consequences of become a Canadian property owner!

ACQUISITION

As anything in life buying is super easy and there is no difference between a resident and non-resident of Canada. The differences occur when you sell. Will get to that a bit later.

Residency for tax purposes has nothing to do with Citizenship. You can still be a Canadian Citizen and be a non-resident or a foreigner and still be a resident. Normally anybody who lives in Canada for 6-months plus 1 day is deemed a resident of Canada regardless of citizenship. There is more to this, so if you need more details please contact a Chartered Accountant or Tax Lawyer for further explanation.

Ok, so we established that you are a non-resident and have bought a property in Canada, now what?? Well it depends on the use of the property. Whether you are using it personally or renting it out.

PERSONAL USE

If you acquired the property and use it personally then you have no annual tax consequences until you sell the property. Simple! No filing, no withholding. Nothing!!

RENTAL OF PROPERTY

If you acquire the property and start renting it out this is were it becomes more complicated and requires the help of an accountant or property manager who knows how to deal with the obligations of a non-resident. A lot of people are not aware of these obligations and face major problems when they try to sell the property years down the road and are stuck with a huge tax bill with accumulated interest and penalties.

GENERAL RULE - FORM NR4

So the general rule is that the renter or property manager has the obligation to withhold 25% of the gross rent each month and to remit it to Canada Revenue Agency. Yes that was not a typo, it’s the tenant’s obligation to only pay 75% of the rent and remit the balance of 25% to the tax agency each month. If this is done then the non-resident has no other tax obligation.

ELECTION UNDER SECTION 216

However, since rental income can be offset by legitimate expenses like, municipal taxes, school taxes, condo fees, management fees, interest on mortgage, utility fees, insurance, repairs and maintenance to name a few then you are definitely overplaying going with the general rule. The law allows you to elect under section 216 of the Income Tax Act. By electing under this section you must fill an annual return and include the gross rent less the eligible expenses to arrive at the net taxable income, which is taxed on the following rates.

Tax rate on the net taxable income:

1st $44,701 @ 15%

from $44,701 to $89,401 @ 22%

from 88,9401 to 138,586 @ 26%

anything over 138,586 @29%

Important to remember you have 2 years to elect under this section or otherwise you lose this privilege and must pay at the general rule. By electing to use this section you are paying subsequently much lower taxes, if any.

WITHHOLDING NET RENTAL INCOME - NR6 FORM

Normally, if you elect under section 216 most people also file NR6 form, which asks for permission from Canada Revenue Agency to withhold 25% of the rental income on the net amount instead of the gross amount. In this form you must assign a Canadian Agent who will guarantee you. If you don’t file or remit the amount withheld then the agent will be responsible to pay the taxes owed personally.

DISPOSITION

So we have explained the ins and outs of holding real estate property as a non-resident, now we will discuss what happens when you sell your property. It does not matter whether it’s a revenue property or just a personal use property the procedure is the same. Once you have an offer you can start this process but the latest you can file the T2062A form is 10 days after you notarize. The general principle is the non-resident must pay the capital gain (or appreciation) on the property since acquired.

T2062A FORM

Ok, that being said how does this work. You will be required to pay Canada Revenue Agency 25% of the net capital gains. At this point you are not entitled to claim any expenses relate to the sale of the property like, agency commission, notary fees and welcome taxes on acquisitions.

It normally takes anywhere from one month to three months to process your application and to issue a document called Certificate of Compliance. It does not end here. Since the obligation to ensure the seller pays his fair share of taxes falls on the buyer, yes buyer, therefore to ensure the seller pays the tax liability owed and to protect the buyer, the notary will withhold an addition amount. The amount withheld by the notary is normally 25% of the gross proceeds. This amount will be placed in trust until the notary receives a copy of the Certificate of Compliance from Canada Revenue Agency. However, from experience I've noticed that the amount withheld by the notary varies from one notary to another so shop around. Some are much more strict then others and hold the entire amount and some hold much less.

Once you receive the Certificate of Compliance then the notary must release all funds withheld in trust.

TP-1097-V FORM - QUEBEC PROPERTIES ONLY

If the property is located in the province of Quebec then luck for you, you will have to fill the same type of documents to the Quebec Revenue Agency and remit 12% of the net capital gains until you receive Certificate of Compliance from Quebec.

INCOME TAX RETURN - FINAL STEP

Ok, so you have gotten an offer on you property, notarized the sale, the notary withheld a percentage of the proceeds, you paid the taxes owing on the capital gains, you got you Compliance Certificate and the notary released the funds. Now what?? Well in most cases you would have overpaid since in calculating the taxes owing you were not allowed to include the selling expenses in the calculation.

In-order to be able to claim these expenses you will need to file an Income Tax Return were you claim all your expenses and receive a refund. There!!! You're done! Simple!!

CONCLUSION

If you are confused by all this and feel a bit discouraged please don't be. If you are dealing with an experienced real estate broker, he/she will be able to guide you and refer you to the proper people to ensure you are in compliance with all your obligations and insure a smooth acquisition and disposition.

For all my non-resident clients, unless they have an accountant that they deal with, I personally prepare all the necessary paper work. They usually don't even realize the process.

You are on you way to becoming a successful property owner. Happy buying!!

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