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**March 5, 2011**

# Maple Leaf Square - Estimating unassessed taxes a tricky business

Maple Leaf Square is a new condominium development on Bremner Blvd. built by a subsidiary of Lanterra Developments. The mixed-use project includes 872 residential suites.

Closings of the units have been taking place in the last month, and purchasers have been concerned with calculation of some of the charges imposed by the builder.

The controversial charges arise from a municipal tax clause in the Maple Leaf Square purchase agreements. The clause is typical of many, but not all, builder purchase contracts. In it, the purchasers are required on closing to reimburse the builder for realty taxes "as if they had been paid in full ..."

Even if the taxes are neither assessed nor paid, they will be estimated by the builder for the calendar year in which the closing falls "as if the unit had been fully completed and separately assessed." Any overpayment or underpayment is "subject to readjustment when the actual assessment for the unit is available."

Of course, the amount of municipal taxes for newly-built homes or condominiums is never available on closing. It can sometimes take a year or even two for the Municipal Property Assessment Corporation (MPAC) to create an assessment roll number for the new residence, and assign a fair market value to it.

Typically MPAC bases its assessment of the fair market value of a new condominium on the purchase price after deducting the GST or HST paid by the purchaser. That assessed value is then forwarded to the City of Toronto, which takes that number and multiplies it by the "mill rate" to arrive at the final taxes owing.

Since the builder has the right to collect realty taxes for the year of occupancy and the year of closing (if they fall in separate years), the issue is then how the builder estimates those taxes, and what mechanism is in place to ensure that appropriate refunds are issued if the amount collected on closing exceeds the taxes eventually charged by the city.

In the case of two of my clients buying a condominium in Maple Leaf Square for $238,491 including GST, I believe the MPAC-assessed value would be close to the price of the unit without GST, or $228,264.74.

In other words, when determining the market value of a newly-built residence, MPAC ignores the GST component of the purchase price, so that owners will not have to pay tax on tax.

For property tax purposes, the City of Toronto would take the $228,264.74 tax-out value, and multiply it by the current mill rate of 0.8305702 per cent to arrive at an annual realty tax bill of about $1,895.89.

But that's not how the developers of Maple Leaf Square estimate the taxes they charge to purchasers on final closing.

On my client's closing, they were charged estimated 2010 and 2011 taxes based on an annual estimate of $2981.14, or about $1,000 more than a realistic calculation of the city's final tax bill.

How do builders arrive at this higher number? I believe the charge to my clients was incorrectly based on the price *including* GST, times a multiple of 1.25 percent, which was the Toronto mill rate many years ago.

When the final tax bills for 2010 and 2011 arrive in a year or two, the builder is responsible for paying them and for refunding the overcharge to the purchasers - if requested, and if the purchaser remembers having been overcharged. If purchasers do not remember to request the refund, or if ownership has changed hands in the interval, the builder may never be asked to refund the overcharge.

Based on 872 units and an overcharge of about $1,500 per unit, the developer has collected an extra $1.25 million, some of which may never be refunded. And that's just this one project.

Mark Mandelbaum and Barry Fenton are the principals of Lanterra Developments, the parent company of Maple Leaf Square. Last month I emailed them and their lawyer asking whether the closing tax estimates should be more realistic. I have not received a reply.

Purchasers closing on new condominiums should be alert to the way in which their municipal taxes are calculated, and purchasers who are signing offers to buy new condominiums should make sure that the wording ensures that taxes will be calculated realistically on final closing.

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