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INPUT

LAND AND REAL ESTATE ISSUES IN BRITISH COLUMBIA

Non-resident Property Ownership Around the World

The Real Estate Institute of British Columbia

INPUT

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The Real Estate Institute of British Columbia

PRESIDENT'S MESSAGE

TROY ABROMAITIS, RI
REIBC PRESIDENT

It is a pleasure to welcome you to the Spring version of *Input*.

This year there has been a dramatic increase in the attached market: both townhomes and condos have risen. At the same time, the single-family market has slowed as a result of previous major price appreciation coupled with the implementation of the initial foreign buyer tax of 15%.

With the recent 30-point plan released by the NDP, the upcoming months will definitely be interesting times. The plan's measures—to name a few—include an increase to the foreign buyer's tax (to 20%), a step up in the property transfer tax threshold on properties worth $3 million or more, and additional measures on property flips which have yet to be finalized. The intent of the plan is to continue to cool the housing market and curb foreign demand. In addition, new mortgage rules have come into effect, which have created pressure on the purchasing power of first-time home buyers. These measures, at provincial and federal levels, are designed to impact and stabilize the market.

The Board of Governors met last year to review the high standards associated with our professional designation. We continue to advance the RI designation and our value proposition to prospective members, clients, and the public at large. In order to maintain these standards, the Board is considering a pilot project for training and education. You will notice this year upon your renewal that we are asking for information related to your professional education.

We look forward to hearing from you and to continuing to advance the Real Estate Institute of British Columbia.

INPUT | NON-RESIDENT PROPERTY OWNERSHIP AROUND THE WORLD

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COVER: Singapore housing

Credit: flickrcc/Jiew Peng Lim; cropped

NOTES

COLUMNS

ARTICLES

DIRECTORY

FROM THE EO'S DESK

BRENDA SOUTHAM
EXECUTIVE OFFICER
AND EDITOR-IN-CHIEF

We are very pleased to present this edition of *Input*, as we have two pieces of research to share with you that discuss non-resident ownership.

REIBC contracted CDI at UNBC to take a look at what is happening with foreign ownership regulations in countries around the world.

The first piece of research was released in early 2017. Berrick Wilson, of KordaMentha Real Estate in Australia, saw the study, and when he travelled to Canada last June he stopped in to meet us and was able to join us at the Annual Charity Golf Tournament dinner. Berrick writes for us in this edition about what is happening in Australia with foreign ownership regulation and presents a great overview. It seems as though there are many similarities with what is happening right here.

Cameron Muir writes about trends and history of real estate in Vancouver, giving us pause for thought. Are things really any different than they were 30 years ago?

Ask a Lawyer columnist John McLachlan writes on the newest affordability legislation and how it may—or may not—address the affordability issue in Vancouver and the rest of the province. We know as we move forward through some of these ideas that the cities and towns are pushing back on this, fearing their communities will be caught in an unintended consequence of some of the new regulations.

As this edition comes out, we will be into spring and happy that the winter is behind us. Please enjoy this edition of *Input*, and we would be pleased to hear your thoughts on the new legislation in BC or the approaches used in other countries.

CONTRIBUTORS

1

2

3

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GUEST AUTHORS

1 Berrick Wilson, a partner in KordaMentha Real Estate, is regarded as a one of Australia's property experts, with over 25 years' experience in valuations, development management, asset management, and investment advisory. He leads a team of 35 property professionals at KordaMentha Real Estate to help clients grow, protect, and recover value in their real estate portfolios. KordaMentha has advised on or transacted over AUD 14 billion of real estate in the past ten years across Australia. Berrick has extensive experience working with Chinese inbound investors and a strong understanding of the motivations driving Chinese outbound investment, having travelled regularly to China for first-hand negotiations and relationship establishment. Beyond property, Berrick is the chairman of the Chain Reaction Challenge Foundation, a not-for-profit cycling charity he established in 2007, which has since raised over AUD 22 million for children in need.
kordamentha.com

2 Cameron Muir has spent the last 20 years researching, analyzing, forecasting, and writing about the interaction between the economy, population, government policy, and British Columbia's real estate markets. As the chief economist at BCREA, representing BC's 11 real estate boards and more than 23,000 Realtors, Cameron regularly delivers keynote presentations to industry, stakeholders, financial institutions, and the public. He has contributed to numerous research evaluation committees, government expert consultations, and the IMF, and has been quoted over a thousand times in local, national, and international media. Cameron is a member of the Canadian Association for Business Economics, the Association of Professional Economists of British Columbia, and is an appointee to the BC Government's Economic Forecast Council.
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COLUMNISTS

3 John McLachlan, RI, BA, LLB, is a lawyer at Lex Pacifica Law Corporation in Vancouver. His practice is focused on civil litigation with an emphasis on real property matters. John has appeared as counsel before the British Columbia Court of Appeal, the Supreme Court of British Columbia, the Provincial Court of British Columbia, the Federal Court, and various Administrative Tribunals.
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AUSTRALIA:

REGULATION AND FOREIGN INVESTORS IN REAL ESTATE

Berrick Wilson

Australia weathered the Global Financial Crisis (GFC) reasonably well thanks largely to international demand for natural resources, especially from China. While some industries felt the impact of the GFC, the mining boom shielded the Australian economy from widespread recession and drove interstate migration and economic growth to the mining-centric states of Western Australia and Queensland.

At the same time, China's economy was growing at over 10.0% per year, overtaking Japan in 2010 to be the second-largest economy in the world behind the US.[1] This rapid economic growth drove urbanization at an unprecedented pace. In 1978, there were no Chinese cities with more than 10 million people and only two with 5 to 10 million. By 2010, there were six cities with populations of more than 10 million and a further 10 cities with 5 to 10 million people. China's urbanization rate increased from 17.4% to 56.1% between 1978 and 2015,[2] resulting in the Chinese economy being the largest contributor to global growth since 2008.[3]

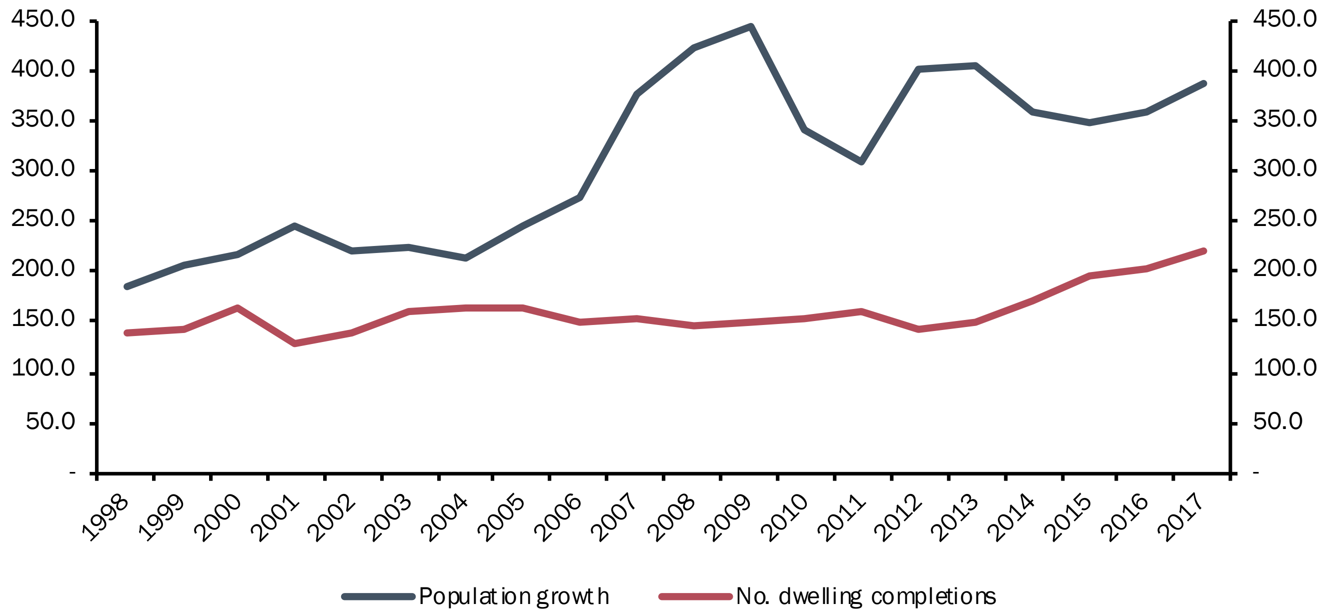
1 World Bank, "China 2030: Building a Modern, Harmonious and Creative Society," 3 (2013).

2 Govt report: "China's urbanization level reached 56.1%," The State Council – The People's Republic of China, accessed February 23, 2018, http://english.gov.cn/news/video/2016/04/20/content_281475331447793.htm.

3 "The World Bank in China" last modified March 28, 2017, http://www.worldbank.org/en/country/china/overview.

“Houses,” Bundaberg, Queensland coast, Australia (flickrcc/srv007; cropped).

Population Growth Exceeding Housing Supply



Source: Australian Bureau of Statistics. "Number of Dwelling Unit Completions by Sector," 5752.0 Building Activity Australia, 2017. Education has been another key driver of demand, with the Australian tertiary education system highly regarded, attracting many international students.

In 1999, the Chinese government introduced the Go-Out Policy: a program designed to leverage its massive foreign exchange reserves to support and accelerate overseas expansion and acquisitions by Chinese companies.[4] However, the policy did not really gain momentum until the GFC when, in November 2008, the Chinese government provided a RMB 4 trillion[5] stimulus package.

Urbanization and a reformed economic system in China created a strong middle class and a substantial high-net-worth (HNW) population. Many had been in wealth creation mode for the past two decades. However, after the GFC, signs emerged of a growing preference of Chinese investors to pursue wealth preservation strategies.

Like the UK, US, and Canada, Australia has been a popular destination for Chinese investment. Underpinning demand is a safe, stable economy with strong rule of law, a high-quality education system, a freehold real estate title system, and added lifestyle benefits such as food safety, a clean and safe living environment, and similar time zones.

4 "Chinas 'going out' strategy," The Economist, accessed February 23, 2018, https://www.economist.com/blogs/freeexchange/2009/07/chinas_going_out_strategy

5 Adam McKissack and Jessica Xu, "Chinese macroeconomic management through the crisis and beyond," *2011-01: Chinese macroeconomic management through the crisis and beyond* (2011), accessed February 23, 2018.

STRONG POPULATION GROWTH

Population growth has been fundamental to demand for Australian residential property relative to supply, particularly in the largest states of New South Wales and Victoria. Due mostly to an increase in net immigration in line with the Australian Government's federal immigration policy, annual population growth since mid-last decade has averaged over 370,000 people compared to 218,000 over the decade to 2005.[6]

The actual supply of dwellings, however, has not increased commensurately with population growth, resulting in a material shortfall, which contributed to an increase in house prices.[7] Positively, the higher house prices have prompted a substantial residential construction response, which has helped to rebalance Australia's economy following the record mining investment boom of the decade to 2013.

Recently the US, with a population of 325 million people, achieved one million international student enrolments across its higher education institutions. Australia, with a population of only 24 million, is predicted to surpass its one million enrolment goal by 2025. Australia's 554,000 overseas-student cohort is anchored by Chinese students at 28% of the cohort, and Indians at 11%. However,

6 S. Oliver, "Will Australian House Prices Crash? Five reasons why it's more complicated than you think!" AMP Capital (2017), accessed February 23, 2018.

in recent years there has been substantial growth from Colombia, Brazil, Nepal, and Malaysia.[8] Having diversity across student source countries will be crucial to the success of this dynamic sector going forward. At a state level, international education has been Victoria's largest service export industry for over a decade. In 2016–17, education and related travel generated AUD 9.1 billion in export revenue.[9]

The quality and prestige surrounding Australia's education institutions is a key reason for growth in international student enrolments. However, there are many other factors, including:

- safe and secure communities
- welcoming, culturally diverse localities
- ready access to their country of origin's cuisine
- good prospects to achieve permanent residency and to migrate to Australia after graduation

Increasingly, course-related employment opportunities are also a primary enrolment motivator. Australia provides international students with the opportunity to undertake 20 hours per week of paid employment while they are studying. If the students graduate with an undergraduate degree, they can remain in Australia and work full-time in the local economy for two years under a Temporary Graduate Visa – subclass 485 before returning home.[10]

CATEGORY OF PURCHASERS

The increased foreign demand for Australian property has been most pronounced in Sydney and Melbourne. Foreign residential buyers in Australia can be categorized into three groups (summarized in the table below).

Under Australia's foreign investment framework, foreigners generally need to apply for foreign investment approval before purchasing residential real estate in Australia.

The Australian Government's policy is to channel foreign investment into new dwellings as this creates additional

FOREIGN RESIDENTIAL BUYERS IN AUSTRALIA

	HOLDING TERM	DESCRIPTION
SPECULATORS	Nil	Motivated by the potential for short-term profit. Purchasers who buy pre-construction or off-the-plan (OTP) property to on-sell for a profit prior to settlement (flip). These purchasers seem to have a high level of sensitivity to policy changes and short-term market conditions.
INVESTORS	>3 years	Motivated by wealth preservation and asset diversification. Purchasers who buy OTP property to settle. Their goal is to generate a rental return (positive cash flow) and capital growth. Often these purchasers have family ties in Australia; for example, children studying or relatives migrating. These purchasers seem to have mid- to high-level sensitivity to policy changes and short-term market conditions, and access to debt, all of which negatively impacts purchaser confidence.
OWNER OCCUPIERS	>5 years	Motivated by wealth preservation, asset diversification and provision of a better future for their families. Migrant purchasers who buy new properties OTP and established homes to settle and live in. They seem to have relatively low sensitivity to tax policy changes and short-term market conditions, but are impacted by migration policy changes and access to debt.

7 Australian Bureau of Statistics. "Number of Dwelling Unit Completions by Sector," 5752.0 Building Activity Australia, 2017.

8 "International education in Australia – soft power and solid results," Department of Foreign Affairs and Trade, accessed February 23, 2018 http://dfat.gov.au/about-us/publications/trade-investment/business-envoy/Pages/august-2017/international-education-in-australia-soft-power-and-solid-results.aspx.

9 "Victoria State Profile," Department of Foreign affairs and trade, accessed February 23, 2018, https://dfat.gov.au/trade/resources/Documents/vic.pdf.

10 "International education in Australia – soft power and solid results," Department of Foreign Affairs and Trade, accessed February 23, 2018 http://dfat.gov.au/about-us/publications/trade-investment/business-envoy/Pages/august-2017/international-education-in-australia-soft-power-and-solid-results.aspx.

jobs in the construction industry, helps support economic growth, and alleviates risk of a housing bubble led by demand-supply imbalance. It can also increase government revenues, in the form of stamp duties and other taxes as well as increased economic activity generated by additional investment. Foreign investment applications are therefore generally considered in light of the overarching principle that the proposed investment should increase Australia's housing stock.[11]

While the general policy is to channel foreign investment into new dwellings, certain categories of foreign nationals who hold visas entitling them to reside in Australia continuously for at least 12 months may be given Foreign Investment Review Board (FIRB) approval to purchase established residential property (second-hand dwellings). However, they must use the property as their principal place of residence. They must also sell the property when they leave Australia, when their visa expires, or when the property is no longer used as their principal place of residence.[12]

INTRODUCTION OF THE SIGNIFICANT INVESTOR VISA

On November 24, 2012, the Australian Government announced the introduction of the Significant Investor Visa (SIV) in addition to other Business Innovation and Investment visa programs. The SIV required an investment of AUD 5.0 million in complying investments and entitled the applicant to a four-year visa and, importantly, a pathway to permanent residency. SIV holders were also eligible to purchase established residential property, subject to FIRB conditions.

The SIV program drew strong interest in its first two years, as it offered candidates the flexibility to invest the entirety of their AUD 5.0 million commitments into a single asset class, which, aside from government bonds, was required to be effected through a managed fund. Exposure to real estate was popular, with complying managed fund asset classes, including commercial real estate and A-REITs, but not established residential real estate. This initial framework yielded 1,641 SIVs or AUD 8.2 billion in complying investments. Substantially more investment and economic activity is thought to have been generated by the new migrants and their families outside of their AUD 5.0 million investments.[13]

Coinciding with the introduction of the SIV program were optimal conditions for above-average price growth, most notably in New South Wales and Victoria, with robust population growth, record-low interest rates, and a strong lending market. Of the many SIV targeted investment products established, some appeared to incorporate spurious access to residential investment and development. While possibly compliant under the original investment framework, these products were not in the spirit of the legislation and did not engender public goodwill towards the SIV program.

Fears of instability in the Chinese economy, most notably reflected in material devaluation of its currency, the Renminbi (RMB), drove wealthy Chinese to pursue capital preservation strategies—including international diversification.

By 2014, the impact of the additional foreign demand for residential (and commercial) property was revealed in rapidly rising real estate prices across Sydney and Melbourne markets, causing housing affordability and immigration to become major political issues. The Australian Government announced a review of the SIV program as well as a review into the Foreign Investment Review Board's monitoring process and enforcement capability.

In 2015, state and federal governments in Australia started introducing various surcharges and taxes to capture additional revenue from increased foreign demand. In mid-2015, changes to the SIV complying investment framework were introduced, closing loopholes that had enabled SIV investors the access to residential property. The changes appear to have markedly reduced the demand for the program, with just 250 SIV visas granted under the new investment regime (July 1, 2015 to October 31, 2017); 8.9 per month as compared to 52.9 per month under the original program.[14]

Figures published by the federal government show that 87.3% of all SIVs granted were to applicants from China, and a further 3.1% were to applicants from Hong Kong. The vast majority of all SIVs granted have been in New South Wales and Victoria.[15]

By 2015, accelerated credit growth, historically low interest rates, high levels of household debt, and strong competition in the housing market prompted the Australian banking regulator, the Australian Prudential Regulation Authority (APRA), to increase the level of regulatory oversight on mortgage lending in Australia. A consequential major credit squeeze for property investors and developers, particularly those from offshore and/or seeking interest-only loans, led to fears of a material

11 "Residential Real Estate" Foreign Investment Review Board, accessed February 23, 2018, http://firb.gov.au/real-estate/.

12 Ibid.

13 "Significant Investor Visa (SIV) Statistics," Australian Government – Department of Home Affairs, accessed February 23, 2018, https://www.homeaffairs.gov.au/about/reports-publications/research-statistics/statistics/work-in-australia/significant-investor-visa-statistics.

14 Ibid.

15 Ibid.

housing price correction. Among the measures APRA implemented were lower loan-to-value ratios (LVR) and increased "serviceability floors." For example, lenders began testing a borrower's ability to service their loans at an assessment rate of more than 300 basis points above their current mortgage interest rate.

Prior to APRA's increased activity, major Australian banks had been willing to lend to investors and foreign buyers of Australian real estate supported by overseas income at relatively high LVRs, reducing the equity required to settle transactions. Interest-only loans were

SUMMARY OF MATERIAL POLICY CHANGES IN VICTORIA

	MIGRATION/TAX	ACCESS TO DEBT
2014	• Foreign purchasers are treated the same as locals; no additional tax surcharges. • March 7, 2014: Australian Government announces a review of the SIV program.[16]	• Australian banks welcome overseas investors and accept loan applications supported by overseas income. No visa is required.
2015	• Australian Government inquiry into home ownership. » July 1, 2015: Victoria State Government levies a foreign purchaser stamp duty surcharge of 3.0% on contract price.[17] » Australian Government introduces new complying investment policy for SIV program.[18] • December 1, 2015: Australian Government introduces stricter Foreign Investment Review Board (FIRB) policies and AUD 5,000 application fee for foreign buyers.[19]	• Australian Prudential Regulation Authority (APRA) starts to introduce a range of initiatives relating to management of lending risks by authorized deposit-taking institutions (Australian regulated banks).
2016	• July 1, 2016: Victoria State Government increases foreign stamp duty surcharge from 3.0% to 7.0% on contract price.[20] • Victoria State Government introduces absentee owner land tax surcharge of 0.5%.[21]	• The credit squeeze begins to show as Australian banks clamp down on interest-only loans and stop lending to applicants supported by overseas income and those without residency. • Foreign banks and non-bank lenders emerge to try to fill the gap, but access to debt is very difficult for foreign buyers of off-the-plan property. • Instances of cash settlements for purchases start to increase.
2017	• July 1, 2017: Victoria State Government removes off-the-plan stamp duty savings for both domestic and foreign investors, instead becoming the principal place of residence exemption to encourage first-home buyers.[22] • Victoria State Government increases the absentee owner land tax surcharge from 0.5% to 1.5%.[23] • FIRB increases application fee for foreign buyers from AUD 5,000 to AUD 5,500.[24]	• Foreign investor reliance on non-bank lenders increases in order to settle on their pre-sale contracts.

16 "FAQs," Australian Trade and Investment Commission, accessed February 23, 2018, https://www.austrade.gov.au/international/invest/guide-to-investing/coming-to-australia/significant-and-premium-investor-programs/faqs.

17 "Foreign purchasers of Property," State Revenues Office Victoria, accessed February 23, 2018, https://www.sro.vic.gov.au/foreignpurchaser

18 Australian Trade and Investment Commission, accessed February 23, 2018, https://www.austrade.gov.au/international/invest/guide-to-investing/coming-to-australia/significant-and-premium-investor-programs/faqs.

19 "2015 FIRB Reforms: A new regime for foreign investment in Australia – 1 December 2015," HopgoodGanim, accessed February 23, 2018, http://www.hopgoodganim.com.au/page/Publications/2015_FIRB_Reforms_A_new_regime_for_foreign_investment_in_Australia_-_1_December_2015/.

20 "Foreign Purchasers of Property," State Revenues Office Victoria, accessed February 23, 2018, https://www.sro.vic.gov.au/foreignpurchaser.

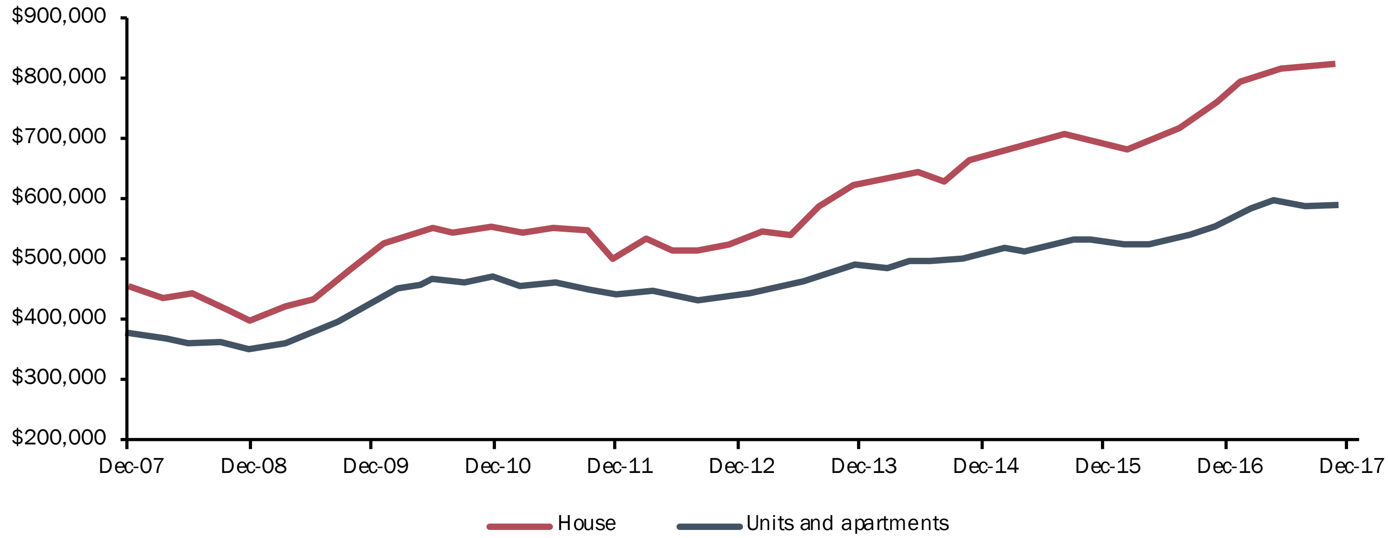
21 "Absentee Owner Surcharge," State Revenues Office Victoria, accessed February 23, 2018, https://www.sro.vic.gov.au/news/absentee-owner-surcharge.

22 "2017 Off-the-plan Duty Concession Changes," State Revenues Office Victoria, accessed February 23, 2018, https://www.sro.vic.gov.au/2017-plan-duty-concession-changes-faqs.

23 "Absentee Owner Surcharge," State Revenues Office Victoria, accessed February 23, 2018, https://www.sro.vic.gov.au/news/absentee-owner-surcharge.

24 "Fees- residential land [GN29]," Australian Government Foreign Investment Review Board, accessed February 23, 2018, http://firb.gov.au/resources/guidance/gn29/.

Melbourne Median Prices, Seasonally Adjusted



Source: Real Estate Institute of Victoria "Median house prices by quarter," 2018. KordaMentha Real Estate research, 2018

also prevalent, reducing the ongoing holding costs for purchasers. In addition to various global economic drivers, the low deposit (down payment) requirements for new residential off-the-plan (OTP) property purchases (generally no more than 10%), the rising property market, and the ability for purchasers to acquire freehold title attracted unprecedented levels of offshore demand.

Provided (on page 11) is a summary table of the changes introduced in the State of Victoria between 2014 and 2018, together with federal government initiatives. New South Wales and Queensland also introduced similar taxes and duties over the same period of time.

MARKET IMPACT

The Australian residential property market has been very strong post-GFC, particularly since 2012, and has remained highly resilient amid ongoing commentary of an imminent downturn. The base conditions of strong population growth (particularly in Victoria and New South Wales), low interest rates, and easy access to debt have continued to propel the real estate boom with median house prices rising 73% in Sydney and 51% in Melbourne between 2012 and 2017.[25]

The steep price growth prompted both state and federal governments to take action in an attempt to cool the booming market.

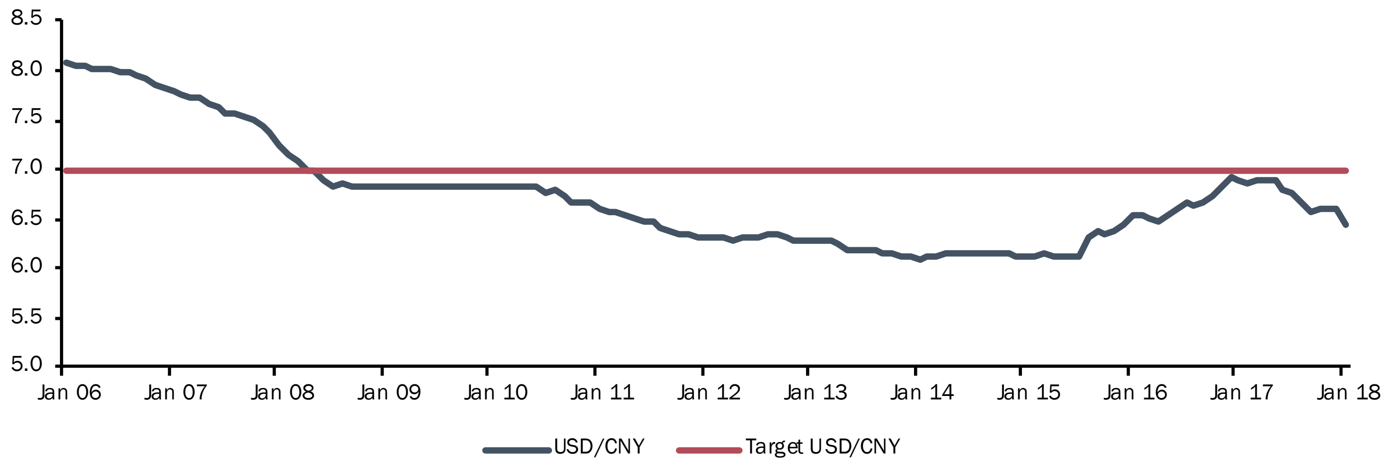
As a result, the Australian residential market has faced several domestic and offshore headwinds since 2015, notably:

- a tightening credit environment driven by APRA
- new foreign-purchaser property taxes
- increased foreign-purchaser government oversight
- a tightening of immigration controls
- a tightening of Chinese outbound capital controls
- a strengthening of Chinese currency

While it is difficult to accurately attribute specific weight to any particular factor, collectively these factors have lowered demand for Australian residential property, particularly in the booming markets of Sydney and Melbourne. Changes to immigration policies and the introduction of new taxes have each weakened confidence. However, the macro-prudential intervention of APRA to moderate access to debt for investors has plausibly had the most significant impact on the market.

25 "Residential property price Indexes: Eight Capital Cities, 2017" Australian Bureau of Statistics, accessed February 23, 2018, http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6416.0Sep%202017?OpenDocument.

USD/RMB Exchange Rate



Source: China Foreign Exchange Trade System, Accessed February 23, 2018, http://www.chinamoney.com.cn/english/

As Australia was introducing a range of domestic regulations to address the booming housing market, China, too, was tightening capital controls to maintain capital reserves and support its economy. Chinese currency devaluation was a concern for investors during the early part of this decade, fuelling international diversification and outbound investment. The strong appreciation of the RMB against the US dollar and resilience of the Chinese economy since late 2015 are also likely contributors to the decline in demand for Australian property.

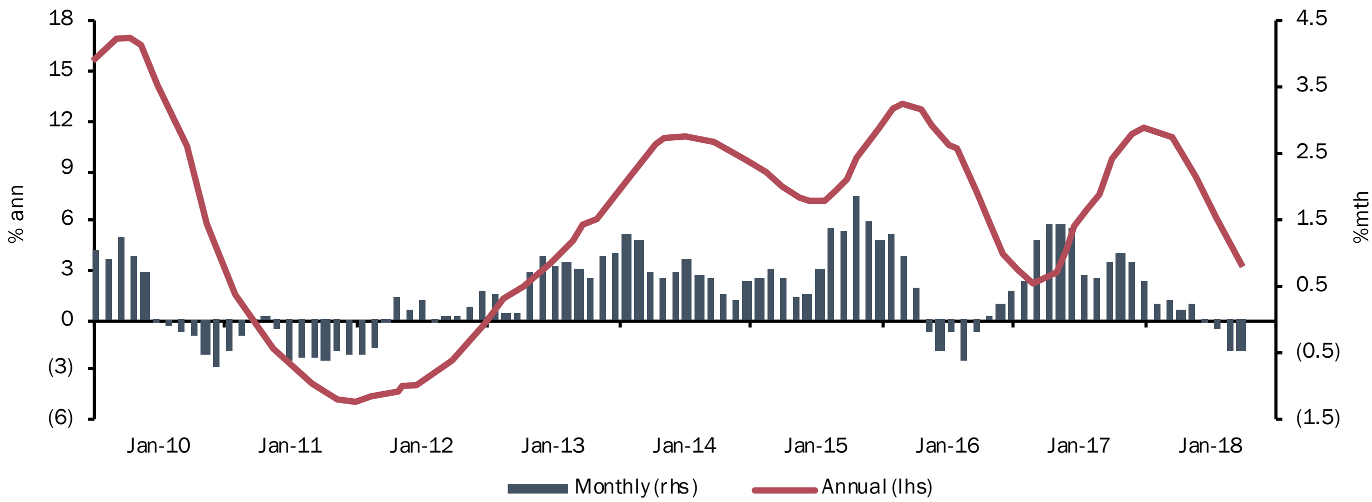
Market statistics from CoreLogic indicate that Australia's latest residential real estate boom may have peaked in July 2017, with both Sydney and Melbourne housing markets now starting to slow. The data indicates Sydney is cooling faster than other capital cities, declining 3.1% since the peak in July last year, albeit following a 74% rise in the past five years. Melbourne is stabilizing, following a 59.0% increase since 2012.

CORELOGIC HOME VALUE INDEX, JANUARY 2018

	%MTH				%ANN			
	OCT-17	NOV-17	DEC-17	JAN-18	OCT-17	NOV-17	DEC-17	JAN-18
AUSTRALIA*	0.0	-0.1	-0.4	-0.5	7.0	5.5	4.3	3.2
HOUSES	-0.1	-0.2	-0.5	-0.4	7.2	5.4	4.0	2.8
UNITS	0	0.3	-0.2	-0.6	6.5	5.7	5.1	4.3
MAJOR CAPITAL CITIES								
SYDNEY	-0.5	-0.7	-0.9	-0.9	7.7	5.0	3.1	1.3
MELBOURNE	0.5	0.5	-0.2	-0.2	11.0	10.1	8.9	8.0
BRISBANE	0.2	0.1	0.0	0.0	2.7	2.4	2.4	2.1
ADELAIDE	0.0	0.0	0.2	-0.2	4.6	3.4	3.0	2.4
PERTH	0.0	0.2	-0.1	-0.4	-2.5	-2.6	-2.3	-2.6

*combined capital cities

Australian Dwelling Prices, Annualized



Source: Matthew Hassan, "Australian dwelling prices: Slippage continues," Westpac Economics, February 1, 2018. CoreLogic, "Home Value Index," accessed, February 23, 2018, https://www.corelogic.com.au/research/back-series.

COMPARATIVE ANALYSIS (2014–2018)

		2014		2018
PURCHASE PRICE		$800,000		$800,000
ESTIMATED STAMP DUTY	0.4%*	$3,200	5.5%	$44,000
FOREIGN STAMP DUTY SURCHARGE		$0	7.0%	$56,000
FIRB FEE		$0		$5,500
TOTAL ACQUISITION COSTS		**$803,200**		**$905,500**
DEBT AVAILABLE AT SETTLEMENT	80.0%	$640,000	65.0%	$520,000
EQUITY REQUIREMENT AT SETTLEMENT	**20.4%**	**$163,200**	**48.2%**	**$385,500**

*OTP stamp duty concession applied – stamp duty calculated based on dutiable land value.

There is much conjecture in the Australian media and broader commentary as to whether this is the start of a soft landing for the booming residential market or something more drastic. The Australian Government believes APRA's macro-prudential intervention is successfully slowing a booming housing market. Developers, on the other hand, have expressed increased concern about numerous government policies and tax changes in the past four years that have substantially undermined foreign confidence in Australia as an investment destination.

While data for the established housing market is relatively accessible and transparent, demand data for the new apartment market is far less so. Pre-sale statistics are typically maintained by developers and their financiers; larger projects tend to have lengthy sale and construction periods prior to settlement. Anecdotally, we understand that offshore demand for pre-construction or off-the-plan investment property has slowed significantly. Given the numerous tax and policy changes in the past few years, it is hard to accurately attribute the decline to one specific change, but collectively it seems that access to debt and regularly changing government regulations appear to have negatively impacted foreign purchaser confidence.

Investors, both domestic and foreign, typically make up a high percentage of purchasers for most apartment developments in large cities. The recent investor credit squeeze and new tax initiatives have changed the economics of residential property investment, particularly for foreign buyers.

Provided (on page 14) is a hypothetical example of the impact of the tax and finance changes in recent years, assuming a foreign investor purchases an $800,000 apartment off-the-plan in Melbourne, Victoria, in 2014 and in 2018.

Debt is typically determined based on a loan-to-value ratio with the value being the value of the property (excluding duties and taxes) as determined by independent valuation at the time of settlement, which, depending on market conditions, may be lower than the original purchase price. For the purposes of this example, we have assumed valuation is at purchase price. Most financiers providing debt to foreign purchasers of new investment property have a maximum LVR criteria of 65%, but typically aim for 50–60%.

In addition to the increased upfront equity requirement, the cost of debt has also increased with debt providers that fund offshore investors typically requiring higher application fees, establishment fees, and annual interest rates as compared to established tier-one banks. Many cash-rich investors have chosen to settle in cash rather than pay the additional costs associated with using non-bank lenders. However, their investment returns are impacted as the benefit of leverage is reduced and their eligibility to acquire additional investment properties is restricted, overall reducing demand for investment property.

For less wealthy investors and speculators, however, the large equity gap is creating unexpected problems, increasing settlement risk for developers and their financiers given that most purchasers only pay a 10% deposit with the balance due on completion. While most developers are not reporting a large increase in pre-sale contract defaults, we understand that settlement delays are building and nominations (where a purchaser on-sells their pre-sale contract) are growing. Depending on the location and project, those who purchased at the start of the boom may have enjoyed capital growth while the project has been under construction and therefore may be motivated to settle with equity or on-sell their contract for a profit. However, those who purchased at or near the peak of the market and are now facing a large, unexpected equity gap as a result of declining values, reduced demand, and limited financing options may be less motivated to settle.

The Australian residential property market is now finely balanced. The various regulatory policy responses designed to cool the booming housing market are taking effect to the satisfaction of the Australian Government and regulatory authorities. The medium- to longer-term impact on foreign purchaser demand, particularly the impact on new apartment sales and upcoming settlements, is, however, uncertain. The 2018 year will be one where the Australian property market will be deeply scrutinized by government regulators, developers, financiers, owners, and investors alike.

Graphics provided by KordaMentha Real Estate, except as noted.

RI

PRESIDENTS LUNCHEON

On December 14, 2017, REIBC hosted its annual Presidents Luncheon at the Four Seasons Hotel in Downtown Vancouver. President Troy Abromaitis greeted attendees at the door as they arrived while President-Elect Daniel John hosted this year's event as the emcee. Over 200 people, including a number of past presidents, gathered for one of the largest events in REIBC history.

The event was highlighted by a very entertaining discussion on the current real estate market by masters of real estate David Podmore, RI, chairman of Concert Properties; Neil Chrystal, president and CEO of Polygon Homes; and Avtar Bains, president of Premise Properties. The discussion was a very honest and spirited assessment of the current market in Vancouver. It touched a variety of topics, including buying and selling in the current market, chasing great opportunities when they come up, having the courage to make bold decisions, and the current political climate for real estate investment.

The luncheon offered an opportunity for RIs from all real estate backgrounds to interact and share insights with one another. REIBC invited second-year students from BCIT's Professional Real Estate Studies program, providing them with an opportunity to interact with real estate professionals throughout the province. We send a very special thank-you to our sponsors who allowed these students to attend the event.

Four amazing door prizes were given away. Nick Davies from the Real Estate Foundation of BC won two tickets to the LA Kings vs. Vancouver Canucks hockey game, and Jillian Mann, RI, from GWL Realty Advisors won two tickets to see the Montreal Canadiens play the Canucks. Kieran Kandola of Concert Properties won a two-night stay at the Executive Inn in Squamish, and Mona Murray, RI, from Colliers International won a full conference registration, hotel stay, and travel voucher to attend the 2018 AIC-BC & REIBC Valuing Diversity conference.

As usual, this event would not have been possible without support from all of our sponsors. We would like to thank all of them for their continued support!

We look forward to this year's event and hope that you will be able to join us in December for the 2018 REIBC Presidents Luncheon.

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VANCOUVER:
OUR INGLORIOUS SUCCESS

Cameron Muir

“Coal Harbour from Stanley Park,” Vancouver (flickrcc/Colin Knowles; cropped).

Vancouver: The Ultimate Housing Market? That was the title of a presentation I delivered to the CMHC Housing Outlook Conference back in 2003. It was a different time and, in many ways, a different place. It's hard to imagine now that Vancouver entered the twenty-first century with every second or third building clothed in a giant green tarp. In 2001, home construction had fallen to its lowest level since 1962, when Vancouver had just half the population. The home building sector was decimated.

At the time I scribbled down that hyperbolic title, it was apparent certain fundamentals were lining up that could propel the region into an auspicious future. Global gateway cities were becoming increasingly magnetic to commerce, innovation, and people. Supply chains had organized to take advantage of trade agreements and offshore production, with well-located distribution centres a key beneficiary. The rise of Asia, particularly the economic prominence of China, also heightened investment interest in everything Pacific Rim, leaving Canada's west coast ripe for investment.

Mortgage interest rates were continuing along a 20-year slide, causing purchasing power to rise despite lackluster wage growth. Demographic realities also played a role. Many baby boomers were looking to buy their forever home or at least renovate their existing location to the newest standards. Immigration, long the dominant driver of the adult population, was providing a base to population growth that was largely immune from the vagaries of the business cycle. Many immigrants were also wealthy, enabling a direct path to Vancouver's posh neighbourhoods without the requisite generation-long climb to home ownership and financial success.

Home sales skyrocketed in the ensuing years. However, home-builder efforts to ramp up production were hampered by increasingly complex multi-family projects and a lack of available workers in the skilled trades. The 2010 Olympic Winter Games in Vancouver effectively siphoned off workers to complete necessary infrastructure before the world came to town. Deficiencies soared. A newly built apartment that previously would have only a handful of problems with fit and function had as many as 30 in the height of the construction boom.

The party ended with the financial crisis and ensuing global recession. Home inventories ballooned and prices corrected. By January 2009, the media landscape was largely populated by gloomy commentators certain this was only the beginning to a more catastrophic result. People were afraid. I remember receiving daily drudgings via email, as apparently I was too positive or too negative in my public comments. One home builder even called to inform me that he initiated a campaign to get me fired.

Housing demand began that year at its lowest level since the 1980s and climbed to a near record by Christmas. The market recovered, because the fundamentals remained sound. Once the clouds of uncertainty that infected the market dissipated, consumers came back in droves. However, one thing that didn't fade away was talk of a housing bubble. I was first exposed to the hysteria in early 2004. During the usual post-presentation queue of audience members, I began hearing that some were planning to sell in anticipation of a major correction, presumably to buy back later at a fully depreciated price. My advice was the same then as it is today: never gamble with the family home.

Housing bubble 2.0 didn't just arrive, it embodied the same argument from the previous decade. The rebirth metastasized from the rhetoric of a few into a full-fledged belief system, championed by the press. No one could convince them otherwise, especially not the real estate industry. The same federal government that juiced up an already hot 2006 market, by increasing mortgage amortizations from 25 to 40 years, was pulling back the same stimulus in the relatively weak 2012 market. There was cause for concern, at least in the short-term. The incessant drum beat of impending doom was unsubstantiated by market fundamentals, yet every news outlet found itself caught up in the fever. Maclean's magazine devoted two full covers to the charade, replete with the usual cabal of doomsayers.

History has a way of making fools of us all. Rather than being the start of a dramatic correction, it was the beginning of a significant expansion. During the height of housing bubble 2.0, home sales in Vancouver were averaging 1,850 units a month. By 2016, they had climbed to 4,350 units a month, with the average home price rising from $710,000 in 2012 to $1,071,000.

Little credit has been given to the phenomenal growth of the economy over the last four years and how the cumulative effect of employment growth, consumer confidence, and favourable demographics have driven housing demand. Instead, rising prices are largely blamed on a grab bag of foreign buyers, wealthy immigrants, and money laundering. The same metrics used to incorrectly predict housing bubble 2.0 are now being deployed as evidence that a foreign invasion into our neigbourhoods is the root cause of unaffordability.

> Little credit has been given to the phenomenal growth of the economy over the last four years and how the cumulative effect of employment growth, consumer confidence, and favourable demographics have driven housing demand. Instead, rising prices are largely blamed on a grab bag of foreign buyers, wealthy immigrants, and money laundering.

The lack of hard data on foreign ownership created a vacuum in which an insatiable thirst for any evidence, especially the damming kind, was highly prized. As a result, we were exposed to one set of lousy data after another. A local real estate brokerage, specializing in foreign investors, traced its transactions involving Chinese buyers using non-anglicized last names. They claimed that 70% of their sales over $3 million were to Mainland Chinese buyers and that 21% of the same group purchased homes between $1 and $3 million. In total, one-third of their home sales involved mainland Chinese buyers.[1] The fact that most of them were likely immigrants never made it past the first reporting. No one seemed to notice that 30% of Vancouver's existing population identified themselves as ethnic Chinese and within such a large group there was little need to anglicize one's last name. This chasing of last names was repeated in a West Side neighbourhood study and the inflammatory results also widely publicized.[2]

The onslaught continued with "back of the envelope" calculations by a bank analyst asserting $13 billion in foreign home purchases were occurring each year, which would amount to one-third of all monies spent on homes in the region. This conclusion was based on a preference survey of 77 affluent people of Chinese ancestry.[3] It continues to be cited in the media in today.

Data on foreign ownership, both the stock and flow, is available. Our best institutions have done their homework. Statistics Canada studied the stock of homes in Vancouver and Toronto and estimated that non-residents owned 4.8% of homes in Metro Vancouver and 3.4% in Toronto.[4] Canada Mortgage and Housing Corporation has also studied the penetration of foreign ownership and non-permanent residents in the housing market. The BC government now tracks foreign buyers, and the data for Metro Vancouver shows that 3.6% of home sales in 2017 went to foreign owners.[5] To put this into context, home sales through the Real Estate Board of Greater Vancouver fell 10.5% last year, with no demonstrable effect on affordability. The benchmark price for an apartment climbed 26% during the same year.[6]

Obviously, there are other things going on here. The land-strapped region has made it necessary that almost all new construction activity be multi-family, which has lengthened the time between conception of a housing project and its eventual completion. This means home builders are less able to supply the market in a timely way. A typical apartment project takes two years to complete after the parking structure is finished, and at least as long to plan, secure financing, and get the necessary permits and approvals. When housing demand surges, the existing inventory of resale and newly built homes gets drawn down. Home values are then pushed higher as buyers compete with one another for what's left on the market. This leads to a ramp and plateau trajectory of home prices, with the latter occurring long after home builders receive the signal to increase production.

Perhaps it's a decidedly Canadian perspective that when things are going well there must be something terribly wrong, but growing pains are necessary. There are now 42,000 homes under construction in Metro Vancouver, 50% above the previously recorded peak in 2008. Many of these units are just now being completed and growing the housing stock in a tangible way. Over the next several quarters, new home completions are expected to increase 50% above trend. This much needed supply should help stabilize home prices in a way that clamping down on foreign buyers can never do.

1 Darryl Dyck, "Chinese Buyers Making Mark on Vancouver's Luxury Housing," *Globe and Mail*, March 25, 2017, accessed April 5, 2018, https://www.theglobeandmail.com/report-on-business/economy/housing/the-real-estate-beat/data-reveals-chinese-buyers-making-mark-on-vancouvers-luxury-housing/article25932534/.

2 "In a six-month period, 70% of detached homes sold in Vancouver's west side went to Mainland China buyers," *National Post*, November 3, 2015, accessed April 5, 2018, http://nationalpost.com/news/canada/in-a-six-month-period-70-of-detached-homes-sold-in-vancouvers-west-side-went-to-mainland-china-buyers.

3 "Chinese investors buy one-third of Vancouver homes: National Bank estimate," *Vancouver Sun*, March 23, 2016, accessed April 5, 2018, http://vancouversun.com/business/local-business/chinese-investors-buy-one-third-of-vancouver-homes-national-bank-estimate.

4 Guy Gellatly and René Morissette, "Non-resident Ownership of Residential Properties in Toronto and Vancouver: Initial Information from the Canadian Housing Statistics Program," Statistics Canada, accessed April 5, 2018, http://www.statcan.gc.ca/pub/11-626-x/11-626-x2017078-eng.htm.

5 Property Transfer Tax data for the province for the year 2017. See BC Data Catalogue, https://catalogue.data.gov.bc.ca/dataset/property-transfer-tax-data-2017/resource/d51e15fd-2471-48dc-87fe-6eb9580e7c97.

Who is advocating on behalf of rental housing providers in BC? LandlordBC!

LandlordBC is the industry association representing owners and managers of rental housing in British Columbia.

In British Columbia, the rental housing industry provides housing to over 30 per cent of households, in approximately 500,000 units of rental housing. The number is even higher in cities such as Vancouver, Burnaby and Surrey, where it is estimated that over 50 per cent of households rent. The industry contributes almost $7 billion annually towards British Columbia's economy. This is a significant amount for an industry that's comprised as much by small mom-and-pop landlords, as it is by larger owners and managers of rental housing.

So, who advocates on behalf of all rental housing providers in British Columbia? LandlordBC does! LandlordBC is a non-profit, membership-based, professional industry association which represents landlords of any size, including owners and managers of purpose-built rental housing, secondary suites (basement suites and laneway houses), and/or real estate investment properties (like condos).

The members of LandlordBC are provided with professional development opportunities, educational resources and support. However, a lot of what the association does consists of various types of advocacy. Since the association's inception in 2013, LandlordBC has developed a strong relationship with the municipal and provincial governments, the media and, a broad range of rental housing stakeholders, including tenant advocates. This allows the organization to consult, comment, and advocate for change at the provincial, regional and, municipal level, on legislation, regulation, taxation and other policies that could impact the industry. The government and the media regularly rely on LandlordBC to help develop legislation and policy, and to respond to various issues that shape the rental housing industry in British Columbia. Through activism and media outreach, LandlordBC safeguards the interests and rights of rental housing providers and fosters public understanding of the industry. We are the singular voice of the rental housing industry in BC.

Advocacy in Action! Some of the issues that LandlordBC has recently advocated for and/or supported:

- Increase in development of purpose-built rental projects;
- Banning the consumption and cultivation of cannabis in all rental housing;
- Yes In My Back Yard affordable housing movement;
- Landlord's right to determine whether their properties are pet-friendly;
- Legalization of secondary suites in Clayton Heights area; and
- Regulation of home-sharing platforms to temper negative impact on long term rental housing supply.

Learn more at www.landlordbc.ca.

LANDLORDBC

ASK A LAWYER

John McLachlan, LLB

Q: *How is housing affordability being addressed through legislation?*

A:

Housing affordability has been a hot topic in British Columbia for the last number of years. While skyrocketing housing prices in Metro Vancouver have dominated the headlines in the news, other areas in the province have also seen large increases in their average residential selling price over the last couple of years. The view at the government level, rightly or wrongly, is that the source of the rampant increases in residential housing value and lack of affordable rental inventory is due to foreign investment in the residential real estate market.

In response, the provincial and municipal governments have implemented various taxes in an effort to dampen prices and increase supply in the residential housing market.

The measures that have been, or will be implemented, include:

- a foreign buyer tax
- an empty homes tax
- a speculation tax
- increase in the property transfer tax
- increase in the school tax

Each of these measures are discussed below.

FOREIGN BUYER TAX

Effective August 2, 2016, the provincial government amended the Property Transfer Tax Act to include a 15% transfer tax on the fair market value of residential property purchased in the Metro Vancouver region by "foreign nationals" or "foreign corporations." As at February 21, 2018, this tax has been increased to 20% and its expanded scope includes residential property purchases in the Fraser Valley, Central Okanagan, Nanaimo Regional District, and the Capital Regional District. This tax is in addition to the general property transfer tax. The purpose of the tax is to try to reduce competition for British Columbia residents trying to buy a home in some of the most expensive real estate markets in Canada.

A "foreign national" is any individual who is not a Canadian citizen or permanent resident. While a fair number of people think of this tax as being focused on Asian purchasers, it applies to all foreign nationals, including US citizens who are not permanent residents in Canada.

The definition of a "foreign corporation" is complicated, but it is essentially any corporation not incorporated in Canada or not a Canadian corporation, whose shares are not listed on a Canadian exchange, that is "controlled" by a foreign national, or a corporation whose controlling shareholders are foreign nationals or foreign corporations. "Controlled" is defined with reference to the Income Tax Act.

The tax also applies to trusts. If any trustee or current beneficiary of the trust is a foreign national or foreign corporation at the time the property is purchased, the purchase will be subject to the additional tax.

There are steep penalties for failure to disclose or making false filings, and there is a six-year window for reassessment.

> It remains to be seen if these taxes have the effect of increasing rental supply and making housing more affordable. Despite the introduction of some of these taxes in 2016, property prices have still increased in the province and the debate about rental supply and affordability continues.

EMPTY HOMES TAX

The City of Vancouver's Vacancy Tax Bylaw was enacted in November 2016 and came into effect this year. The purpose of the resulting "empty homes tax" is to encourage residential property owners to either live in, rent, develop, or sell their properties instead of holding them for investment or renting them for nightly or short-term stays.

The tax imposes a vacancy tax of 1% of assessed value on "vacant" residential properties located in Vancouver. Property is deemed "vacant" if it is not either the principal residence of an individual or "occupied" by a tenant or subtenant for terms of at least 30 days at a time, for a sufficient portion of the year. The tax will apply if the property is "vacant" for more than 180 days in a calendar year. The property will also be deemed to be "vacant" if the property owner fails or neglects to file a declaration as to occupancy each year by the prescribed date. Ordinarily this is February 2, but this year the date was extended to March 5. The tax is based on the use of the property in the preceding calendar year (the tax for 2018 is based on the use of the property during 2017).

There are limited exemptions under the bylaw. Some of the key exemptions are:

1. The property is being renovated/developed, provided that all permits have been issued; the property needs to be vacant for safety and the owner must be carrying out renovations without unnecessary delay.
2. The property is intended as a rental, where there is a rental restriction, passed prior to November 16, 2016, and rentals are at the maximum and the owner is on a wait-list to rent out the unit.
3. The property was sold in the prior year; the purchaser is exempt from payment based on the prior year's use.
4. The occupier is in a hospital or a long-term or supportive care facility. This exemption will not be allowed for more than two consecutive years.
5. The owner has passed away and a grant of probate or grant of administration of the estate has not yet been issued.
6. The property was not the principal residence of a registered owner but was occupied by a registered owner for a minimum of 180 days because the registered owner worked in the City of Vancouver.

Properties that are not exempt include vacation homes, property used for nightly rentals (AirBnB), properties that are listed for sale or rent without success, and bare land that is assessed as residential.

False declarations can result in fines up to $10,000 per day in addition to the payment of the tax.

SPECULATION TAX

In its 30-Point Plan for Housing Affordability in British Columbia, the BC Government announced plans to implement a speculation tax on residential property. The tax is intended to target owners of residential property in British Columbia who do not pay taxes in the province and owners who leave their properties vacant. The tax rate will be 0.5% of taxable value for the 2018 tax year, and will rise to 2% thereafter.

The tax will apply to residential property in Metro Vancouver, the Fraser Valley, Capital Regional District, Nanaimo Regional District, and the municipalities of Kelowna and West Kelowna.

The tax will apply to people who reside in another province or country and have residential property in British Columbia that is not being used for long-term rentals. For British Columbians who own more than one home, the intention is to provide a non-refundable tax credit that will help offset the tax for BC residents. At this time it is unknown what the amount of the tax credit will be and whether it will fully offset the speculation tax.

It is expected that further information will be available later this year, and that the intention is to implement the tax this fall.

INCREASE TO THE PROPERTY TRANSFER TAX

Another measure introduced by the BC Government is an increase to the property transfer tax for certain properties. Effective February 21, 2018, residential properties having a fair market value of over $3 million will incur a transfer tax of 5%, up from 3%, for the portion of value over $3 million. Although this increase is stated to target "luxury" homes, the tax will affect all properties assessed as residential, including multi-unit rental properties and many homes in Vancouver and West Vancouver.

INCREASE TO THE SCHOOL TAX

In addition to the increase in the property transfer tax, the annual school tax was amended to increase the tax payable for properties assessed at over $3 million. Starting in 2019, the additional tax will be applied to most high-valued residential properties in the province, including detached homes, stratified condominium or townhouse units, and most vacant land. The additional tax will not apply to non-stratified rental buildings with four or more housing units.

The additional tax rate will be 0.2% on the residential portion assessed between $3 million and $4 million, and 0.4% on the residential portion assessed over $4 million.

CONCLUSION

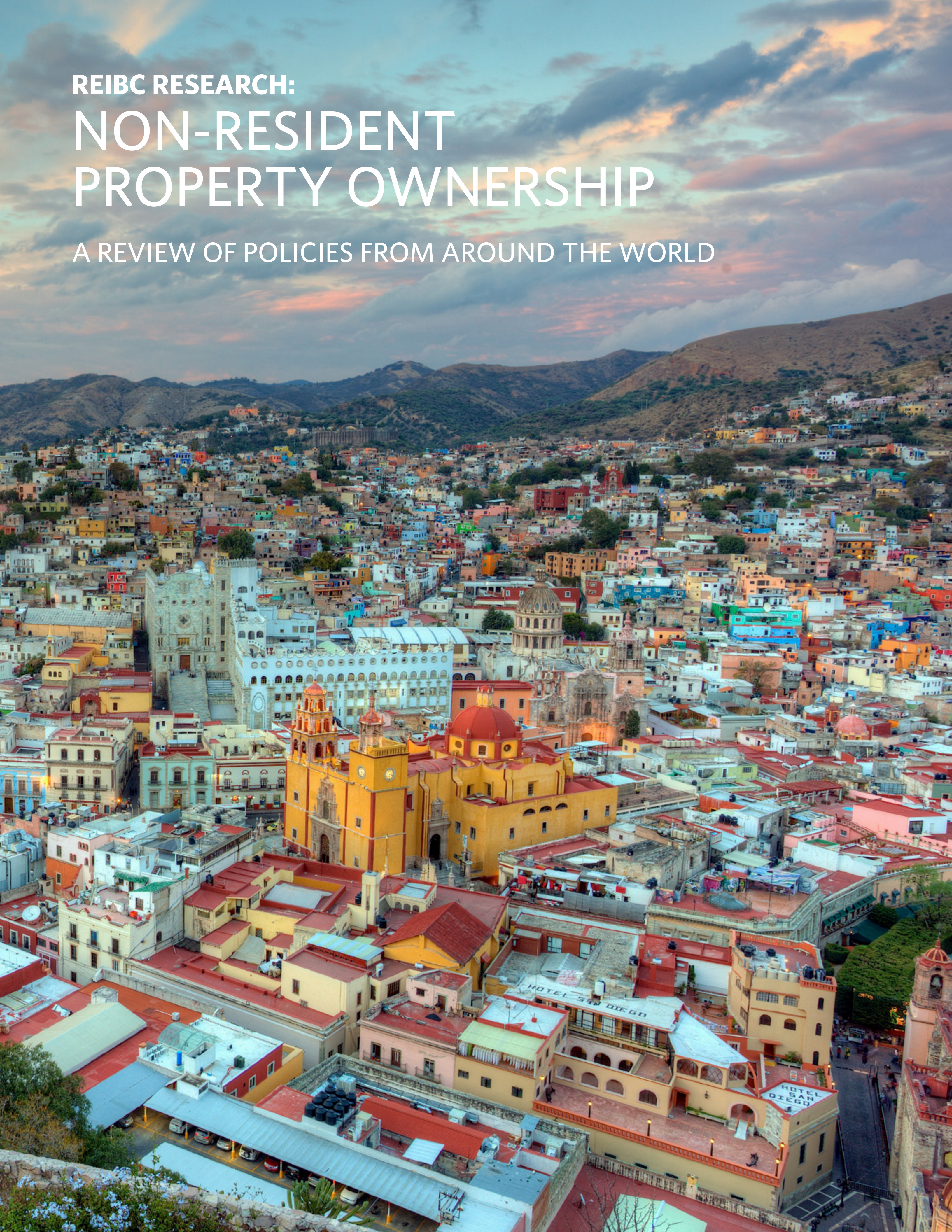
It remains to be seen if these taxes have the effect of increasing rental supply and making housing more affordable. Despite the introduction of some of these taxes in 2016, property prices have still increased in the province and the debate about rental supply and affordability continues.

It may be that other measures, such as streamlining the approval process for development, increasing residential density allowances, and making more funding available for affordable housing, may be required to address these issues.

REIBC RESEARCH:

NON-RESIDENT PROPERTY OWNERSHIP

A REVIEW OF POLICIES FROM AROUND THE WORLD



Housing affordability was a leading issue of concern in 2016 throughout British Columbia. The skyrocketing house prices in Metro Vancouver figured prominently in the media. However, it's not just the Lower Mainland—Fort St. John, Kitimat, and Terrace have all seen double-digit increases in their average residential selling prices in recent years. As a result, policy makers, planners, and real estate professionals across the province are grappling to understand the drivers behind the increases and design solutions that will effectively stabilize the real estate market and increase housing affordability for local residents without affecting a plunge in equity values or driving away foreign investment.

Work is underway in the province to trace and quantify the various factors influencing the residential market in BC. While the extent of influence is still not known, there is a high level of certainty that foreign investment has to some extent played a role in the housing price increases in this province.

Data on housing sales showed that foreign nationals invested more than $1 billion in BC property between June 10 and July 16, 2016, more than 85% of which was in the Lower Mainland.[1] As a result, the Province legislated a 15% property transfer tax to be applied to foreign nationals or foreign-controlled corporations purchasing residential properties in Metro Vancouver.

The new tax received mixed reviews from the BC real estate community and stimulated a significant amount of discussion on the issue of non-resident buyers. In the interest of informing this debate and broadening understanding about not just this response but the breadth of policy approaches available, the Real Estate Institute of BC approached the Community Development Institute at the University of Northern British Columbia to conduct a comparative review (2017) of policies and approaches from jurisdictions around the world aimed at limiting non-resident ownership of residential property.

A year later, a second review (2018), this time looking at commercial and industrial properties (referred to as simply "commercial"), explored whether there is any continuity between the level of restrictions for residential and commercial property. Since the implementation of the 15% residential property transfer tax for non-residents, there appears to have been a surge in the sale of commercial real estate in British Columbia overall and Metro Vancouver specifically. In March 2017, the Real Estate Board of Greater Vancouver reported a 47% increase in the value of commercial real estate in 2016.[2]

It is unknown what influence the new property transfer tax has had on commercial sales by non-resident buyers. At this time, there do not appear to be any policies in BC to restrict or limit non-residents from purchasing commercial real estate.

The comparative reviews examined policies from jurisdictions in North America, South America, Asia, Europe, and Oceania to ascertain not just whether restrictions existed, but how the limitations were applied, which regulatory bodies were involved, and what processes were in place for prospective investors. It included several nations with longstanding and extensive controls surrounding foreign investment as well as several which have just recently imposed mechanisms to deter or limit such investment. Information was gathered and triangulated from a variety of sources and wherever possible validated by government agencies. The intent of the comparative reviews was not to evaluate the success or relative effectiveness of these different approaches, but rather to provide insight into the array of mechanisms and policies that have been established in other jurisdictions to address the challenges that are being faced currently with respect to foreign investment in BC.

The residential review looked at several countries, such as France and Nicaragua, and some US states, such as Arizona, Massachusetts, and Nevada, known for having highly desirable real estate—but found jurisdictions completely open to non-resident investment in residential real estate. Contrary to several recent condemnations of BC being "behind the curve" in controlling non-resident purchases of real estate, the review found this to be the case with many of the world's leading cities, including Paris, Tokyo, New York, Los Angeles, Berlin, and Stockholm. At the same time, there are many jurisdictions that have policy frameworks in place to limit and guide non-resident ownership; some restrict while other just impede.

The commercial review examined policies from the same jurisdictions as the residential review. In contrast to policies and regulations in place in many jurisdictions to restrict or limit the purchase of residential properties

Left: "Guanajuato from the El Pipila monument," Mexico (flickrcc/Jiuguang Wang; cropped).

by foreign owners, many of the same jurisdictions have no defined policies to guide the purchase of commercial real estate by foreign investors, and, in some cases, policies have been amended to make the process easier—to encourage new foreign investment. However, there are also examples of some jurisdictions that have been exploring new policies or regulations that would begin to impede foreign investment.

In the sections that follow, the findings are reported by jurisdiction. The various jurisdictions apply essentially four approaches to non-resident buyers of residential and commercial real estate:

1. Restrictors and Leviers: those with the most extensive policy frameworks that restrict foreign owners and make it more expensive for foreign owners.

2. Restrictors: those that just impose limits or restrictions on the types of residential property that could be bought and owned by foreigners.

3. Leviers: those that do not restrict foreign owners from owning a home, but make it more expensive for non-resident buyers.

4. Open Doors: those that grant foreigners exactly the same rights and obligations as citizens and residents with respect to acquiring and owning residential real estate.

1 RESIDENTIAL PROPERTY

1.1 RESTRICTORS AND LEVIERS

1.1.1 Australia

Australia has among the most robust and focused policy frameworks pertaining to non-resident residential property ownership. The Government of Australia has a policy to channel foreign investment into new dwellings as a means of increasing the housing stock, creating employment in the construction industry, fueling economic growth, and growing government revenues, in the form of stamp duties and other taxes. In most parts of the country, foreigners also face higher costs when it comes to selling or transferring residential property.

As established by its foreign investment framework, all non-residents are required to apply for approval in order to purchase residential real estate in Australia. These applications are submitted to the Foreign Investment Review Board (FIRB), a non-statutory advisory board of the Treasury. Different factors apply in the review of applications depending on whether the type of property being acquired will increase the housing stock or whether it is an established dwelling. The most stringent restrictions exist for established dwellings.

As a general rule, foreign non-residents are not permitted to purchase established dwellings for residential, vacation, or rental homes. Exceptions are made for foreigners who operate a substantial Australian business and are purchasing established dwellings to house their Australia-based employees, subject to several conditions, including that the dwelling be sold if it is expected to remain vacant for more than six months.

Applications for foreign purchases of other types of residential property depend on their capacity to genuinely increase the housing stock. Therefore, proposals to develop vacant land and those to redevelop and construct new, additional dwellings are all normally approved provided they are not rented out prior to demolition/redevelopment and that they are occupied within four years.

There are typically no conditions placed on non-residents seeking to purchase new dwellings that will be, are being, or have been built on residential land. New dwellings do not include established residential property that has been refurbished or renovated or a dwelling built to replace one or more demolished established dwellings. There is also no limit on the number of new dwellings a non-resident may purchase, but approval is generally required prior to each acquisition.[3]

While all non-resident applications for residential real estate are submitted to the FIRB, compliance and enforcement of the foreign investment rules are the responsibility of the Australian Treasury Office. This split of responsibilities, implemented by the Coalition Government in 2015, has enabled more active investigations and actions targeting illegitimate purchases.

The Coalition Government also imposed more severe penalties such that non-residents caught making illegal real estate purchases now attract criminal penalties of AUD 135,000 or three years' imprisonment, or both, for individuals, and up to AUD 675,000 for companies. Capital gains made on illegal investments are also forfeited. Between 2013 when the Coalition Government came into power and January 2016, 27 Australian residential properties ranging from AUD 200,000 to over AUD 5 million were held in breach of the foreign investment framework and were divested by foreign nationals.[4]

In addition to the restrictions placed on foreign ownership, it is also more expensive for non-residents to dispose of property in much of Australia. In 2016, three states in Australia (Queensland, New South Wales, and Victoria) introduced additional stamp duties for foreigners purchasing or transferring residential property.

The State of Victoria also has a new absentee-owner surcharge that applies to all dwellings owned by non-permanent residents or Australian citizens and left vacant for more than six months of the year. In January 2017 this surcharge was increased from 0.5 to 1.5%.[5]

1.1.2 China

China is another example of a jurisdiction that restricts foreign ownership of residential real estate and makes it more expensive for non-residents.

China has a complex set of laws and policies governing property and real estate. The state also has a history of intervening to employ measures to stabilize the real estate market.

According to its constitution and land laws, no individual (citizen or foreigner) is entitled to privately own land in China; however, people can privately own residential houses and apartments on the land. Real estate sales in China, therefore, involve a transfer of right to use land. To obtain land use rights, the land user must sign a land-grant contract with the local land authority and pay a land-grant fee up front. Land-grant contracts for residential property generally provide for 70 years of residential use only.

Foreigners have been able to buy homes in China and since 2015 restrictions on this ownership have been relaxed significantly in many parts of the country. Until recently, foreign individuals across China were allowed to purchase only one property for their own personal use, if they could prove that they had spent at least one year working or studying in the country. With the slowdown of the Chinese economy, the Chinese government reversed these rules on property sales to foreigners. However, local governments in several major or "first tier" cities, such as Shanghai, Beijing, Zhengzhou, and Wuhan, where the real estate markets have remained strong, have retained regulations restricting non-locals' home purchases. Some, such as Shanghai, went further in 2016 to tighten restrictions for foreigners. Non-local residents in Shanghai are now required to prove that they have been employed by a local firm for at least five years—up from the previous two-year period—and a 70% down payment is also required of foreigners seeking to buy a second home larger than 144 square metres or costing more than RMB 4.5 million (CAD $860,000).

In Zhengzhou, the capital of Henan Province, residents without local hukou (household registration) are required to pay at least two years' income tax or social security contributions before purchasing a home.

"Chinese architecture," (flickrcc/Harald Groven; cropped).

1.1.3 Hong Kong

As part of China, Hong Kong operates under a different real estate regime. Consistently listed among the most expensive cities in the world to purchase property, Hong Kong has established several mechanisms to curb residential ownership by foreigners. Until recently, their approach centered around a series of stamp duties which considerably raised the price of ownership for foreigners.

Non-permanent residents are charged a Buyer's Stamp Duty of 15% on the stated consideration or the market value of a property (whichever is higher). On top of the Buyer's Stamp Duty, foreigners are subject to an Ad Volorem Stamp Duty (AVD) on residential purchases that, as of November 2016, is an extra 15%. In addition, to prevent the flipping of properties, a Special Stamp Duty of 10–20% is levied on anyone that sells a property fewer than three years after purchasing.[6]

On top of these levies administered and enforced by the Hong Kong Inland Revenue Agency, in 2012 the Chief Executive established the "Hong Kong Property for Hong Kong People" policy under which certain areas of the city and new residential developments have limited sales to permanent residents of Hong Kong for the next 30 years.[7] The program was launched with the objective of meeting the population's needs for home purchase, but has also had the effect of curbing residential investments by non-residents.

"Seewurfel Collective Housing," Zurich, Switzerland (flickrcc/Wojtek Gurak; cropped).

1.1.4 Singapore

Singapore has long-established restrictions on foreign ownership of residential property.

Under the Residential Property Act, the transfer, purchase, and acquisition of landed residential property by foreigners is forbidden, meaning that non-residents are prohibited from having title on residential property, including vacant residential land, terrace and semi-detached houses, bungalow/detached houses, and townhouses (not within an approved condominium development). There are no limits, however, placed on foreign ownership of private apartments and condominiums in Singapore.

In the case of executive condominiums, foreigners are only permitted to purchase ten years after completion.

Foreigners seeking to purchase "restricted" landed residential property are required to seek approval from the government, through application to the Land Dealings Approval Unit of the Singapore Land Authority. The ownership of such properties by foreigners is restricted to permanent residents of Singapore and those who make "adequate economic contribution" to Singapore. Residential properties located on the luxury enclave of Sentosa Cove have a distinct application and approval process.

In addition to restricting the types of residential property open to foreign acquisition, non-residents are subject to a 15% Additional Buyer's Stamp Duty (on top of the standard Buyer's Stamp Duty) when purchasing any type of residential property. The Inland Revenue Authority of Singapore also imposes a Seller's Stamp Duty on residential properties sold in fewer than four years.[8]

In an effort to curb the practice of property flipping, Seller's Stamp Duty rates in Singapore have increased progressively and now stand at 16% on properties sold within a year of purchase, decreasing to 12% after one year, 8% after two years, and 4% after three.[9]

1.2 RESTRICTORS

A second group of jurisdictions, labelled here as the "restrictors," was found to place restrictions on who, what, and/or where foreigners can own residential property, but do not have additional levies for those foreigners that are approved to own land.

1.2.1 Switzerland

Switzerland first introduced legislation to restrict the sale of real estate to foreigners in 1961. While amendments have been made to relax these restrictions over the years, the Federal Act, commonly known as the "Lex Koller" or "Koller's Law," has been in place since 1997. The act places various limits on the types and locations of residential real estate that can be purchased by foreigners. Responsibility for enforcing the act lies with the local authorities, or cantons.

As a basic rule, the act essentially prohibits foreigners from purchasing single-family dwellings, apartment buildings, owner-occupied flats, and building land (destined to contain buildings of this kind) without special authorization from relevant authorities. However, the act also contains several exemptions to this rule. For example, real estate that is serving as a permanent business establishment for exercise of economic activity (i.e., industrial production, trading, and service activities) is typically permitted for purchase.

Similarly, restrictions are relaxed for foreigners acquiring secondary vacation homes in designated tourist areas. As of 2016, there were 17 cantons across Switzerland in which foreigners could purchase holiday homes without special authorization. A total of 1,500 permits were issued annually to foreigners seeking to purchase such properties. The number of permits available differs by canton, and in many locations there are additional provisions limiting property size and investments, letting, etc.[10]

A special exemption from the act has been established for foreigners purchasing property in the Andermatt

Swiss Alps Project. Similar to the exceptions made by Singapore for Sentosa Cove, the Andermatt Swiss Alps Project is a luxury alpine resort development, located approximately one hour from Zurich, being targeted to foreign investors.

Outside of the Andermatt Project, foreigners seeking to acquire residential real estate in Switzerland often have no other choice but to obtain a residence permit. This can be done by either establishing a business in Switzerland or by negotiating a lump sum tax with the local canton, both of which are complex and costly endeavours. One international real estate advisory firm indicated on its website that the minimum amount cantons expect for residence permits is CHF 150,000 (equivalent to just under CAD 200,000) yearly.[11]

1.2.2 Denmark

Denmark also has very strict rules governing who can purchase and own property in the country. The general rule is that permission of the Minister of Justice is required for anyone acquiring real property in Denmark, unless they have a permanent address in Denmark or have been a resident in Demark for at least five years. Even Danish citizens who do not meet these criteria can't acquire real property in Denmark. The rule covers all types of residential property including houses suitable for use throughout the year, shared ownership property, and vacation homes.

Foreigners seeking permission to purchase an all-year dwelling in Denmark are required to make an application to the Minister of Justice. Permission is granted on the condition that the applicant has lawful residence in Denmark and uses the property as an all-year dwelling.[12]

As a member of the European Union (EU), Demark is required to secure free movement of labour. Therefore an exception is made for nationals of a country that is a member state of the EU or nationals of a country that has acceded to the Agreement on the European Economic Area (EEA). Provided EU and EEA nationals have a permanent residence in the EU and intend to get a job in Denmark, they are generally permitted to acquire an all-year dwelling in Denmark without obtaining permission from the Ministry of Justice.

While an exception is made for EU and EEA nationals acquiring permanent homes, the same concession does not apply to secondary or vacation homes. All foreigners, irrespective of their nationality, are required to obtain permission from the Ministry of Justice to acquire a secondary dwelling in Denmark. Such permission

"VM Housing," Copenhagen, Denmark (flickrcc/Wojtek Gurak; cropped).

is conditional on the applicant having "special ties" to Denmark, as determined by numerous previous stays in Denmark, special family ties to Denmark, and special linguistic or cultural ties to Denmark. In principle, the Ministry will only grant permission for the acquisition of one secondary dwelling.[13]

1.2.3 New Zealand

New Zealand tracks the rate of foreign ownership by requiring that non-resident buyers of real estate in New Zealand register with the Department of Inland Revenue. However, there are no restrictions on foreigners purchasing residential property in New Zealand, unless the property is on land considered to be "sensitive," as defined by the country's overseas investment legislation. The intent of the legislation is to protect New Zealand's environmental, cultural, and historical assets. Sensitive land therefore includes land with specific characteristics that exceeds a particular area threshold (i.e., land that exceeds 0.2 hectares and adjoins foreshore, or non-urban land which exceeds 5.0 hectares). Land that adjoins sensitive land may also be qualified as sensitive.[14]

Foreigners interested in investing in such land are required to apply to the Overseas Investment Office. Applications are evaluated using several criteria including whether the transaction will benefit New Zealand and if the investor is intending to reside indefinitely in the country. Each application is assessed on a case-by-case basis.

In 2015, New Zealand established a new stamp duty levied on properties sold within two years; however, this is applied to residents and non-residents equally.

“Modern homes in Costa Rica,” (flickrcc/Costa Rica Beauty; cropped).

1.2.4 Mexico

Foreigners are able to purchase and own residential property in Mexico, although there are special requirements for land located along Mexican borders and coastlines. Originally, foreigners were prohibited under the Mexican Constitution from owning land anywhere within 100 km of a border and 50 km of the coast. However, in 1993, the Foreign Investment Act established a system of land trusts whereby foreigners are now able to purchase up to 2,000 square metres of real estate in these areas if done so through a trust agreement with a Mexican bank (i.e., a fideicomiso).

Under the fideicomiso system, the bank holds the legal title to the property while the foreign purchaser (the trust beneficiary) retains all rights, responsibilities, and privileges of ownership, including the right to sell, lease, mortgage, and pass the property on to heirs.

Fideicomisos have 50-year terms and are perpetually renewable as well as transferrable.[15] Owners pay annual fees to the bank; in turn, the bank is authorized by the Ministry of Foreign Affairs to hold fiduciary duties over the land.

1.2.5 Costa Rica

Foreigners are afforded the same rights as residents when owning, purchasing, and selling residential real estate in Costa Rica. The one exception is with beachfront properties restricted by the Maritime Zone Law. Costa Ricans and foreigners alike are prohibited from owning property or building on any beach lands that lie within the first 50 metres of the maritime zone unless government permission is granted. Use of land between the 50-metre mark and the 200-metre mark is also restricted by the Maritime Zone Law. In some areas, citizens and legal residents of Costa Rica (of at least five years) are able to lease this land from the government for up to 20 years. This right is not available to foreigners.[16]

1.3 LEVIERS

Distinct from the “restrictors,” there are jurisdictions that do not restrict non-residents from acquiring or owning real estate, but have made their markets less attractive to foreign investors by imposing taxes or fees on non-resident buyers/owners. These we have labeled as the “leviers.”

1.3.1 United States

The United States presents a mix of models. Federally, it does not have any blanket federal prohibitions on the acquisition and ownership of residential real estate, although there are various laws that can impact or impose monetary requirements on foreign investors. For example, there are laws, enforced by the Committee on Foreign Investment in the US (CFIUS), that allow certain foreign investment transactions to be blocked where they might impact on US national security. Under the Patriot Act, prospective buyers may be required to make certain disclosures.

Most significantly, however, through the Foreign Investment in Real Property Tax Act (FIRPTA), the US makes it more expensive for foreigners to sell property. Whenever a property in the US is sold, exchanged, gifted, transferred, or liquidated by a foreigner, 15% of the selling price is withheld by the Internal Revenue Service.[17] In many states, additional withholding obligations apply. California, Colorado, Georgia, Hawaii, Maine, Maryland, Mississippi, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, West Virginia, and Vermont all impose withholding requirements on foreigners, ranging from 2.0% to 8.8% on top of the FIRPTA tax.[18]

In addition, while federally the US is open to foreign investment in the residential real estate market, individual states have the power to unilaterally impose additional statutory restrictions on foreigners—legally often referred to as “aliens”—acquiring or owning property. These vary widely in their scope and application. The state of Kentucky, for example, permits foreigners to purchase property on the condition that they intend to become citizens. If, after eight years, an alien has not either become a citizen or sold the property to a citizen, Kentucky has escheatment legislation that enables the state to take back the property.

In Oklahoma, a non-citizen cannot own property for more than five years unless the non-citizen becomes a state resident (there are twelve states that have such a residency requirement).[19]

In Hawaii, approximately 810 square kilometres are held in trust for Native Hawaiians under the Hawaiian Homes Commission Act.[20]

Other states restrict alien property rights based on the type of property, but these typically pertain to agricultural or environmentally sensitive lands or those with mining interests, for example, as opposed to residential real estate.[21]

In California, for example, one must be a citizen in order to purchase inland lakes, unsegregated swamps, or overflowed lands.[22]

1.3.2 United Kingdom

Foreign ownership has been a hot issue in the United Kingdom for many years, particularly in cities such as London where the local demand for housing far outstrips the supply and middle- and lower-income earners are increasingly stretched to find and purchase a home. The "buy-to-leave" phenomenon, which sees foreign investors purchasing residential property in London and letting it sit vacant, has attracted much attention, just has it has in Vancouver.

In 2013, the British Property Federation reported that 15% of new homes in London, including 49% of those in prime Central London, were purchased by overseas buyers.[23]

While several political leaders have advanced different approaches to the issue, there remains no federal restrictions on foreigners purchasing or owning residential property in the UK.

In 2015, the British government revised its tax code to require that non-resident homebuyers pay up to 28% in capital gains tax upon selling property in the UK.[24] Camden, in north London, has also established a 50% surcharge on local council tax for homes left empty for more than two years in an effort to curb the rate of absentee ownership (a substantial proportion of these owners are foreigners) and invoke owners to place their properties into the rental pool. This surcharge is a tool that is available to other boroughs. However, while this policy is reported to have had the intended effect of reducing the number of vacant properties in Camden, to date it has not been implemented elsewhere.

Hounslow, London, United Kingdom (flickrcc/Anders Adermark; cropped).

Britain has established several other stamp duty taxes, aimed at enhancing housing affordability, which are levied on higher-value residential properties; however, these charges are applied to domestic and foreign owners equally.

1.4 OPEN DOORS

Finally, there are a large number of jurisdictions that do not impose restrictions on foreign real estate investors, although they may require non-resident purchasers to register with the state for information purposes.

1.4.1 Japan

In Japan, there are no restrictions placed on non-residents purchasing or owning residential property or buildings. Foreigners regardless of their visa status may purchase property. In Japan, the acquisition of real estate by a non-resident is considered a "capital transaction" under the Foreign Exchange and Foreign Trade Control Act. Therefore, within 20 days of the real estate acquisition, foreigners are required to notify the Minister of Finance (via the Bank of Japan) of their full name and acquisition cost. For foreigners, however, this requirement of notification is waived when a non-resident acquires the property for their own residence or for their family or employees, or when a non-resident acquires the property from another non-resident or intends to use the space as a place of business.[25]

1.4.2 Nicaragua

In Nicaragua, Foreign Investment Law 344 establishes equal treatment of foreign and domestic investment. There are no restrictions on the way in which foreign

Okinawa, Japan (flickrcc/Dennis Stone; cropped).

capital can enter the country; foreigners have equal rights under the law to own and use property without limitation.[26]

1.4.3 France

France has a complex tax regime for property ownership, which includes rules around succession, heirship and wealth, and capital gains taxes.[27] However, France does not presently have restrictions for foreigners purchasing residential real estate.

In the past, non-EU residents were subject to a higher capital gains tax upon selling secondary homes in France, but this differential rate was abolished in 2015.

Up until 2015, the French government also imposed social charges on the investment income, property income, and capital gains of non-Europeans. However, both the French courts and the European Court of Justice ruled it illegal for the government to levy social contributions on the income of a non-resident who is not affiliated to the social security system in France. The French Constitutional Council has yet to determine whether the ruling applies only to EEA nationals or all non-residents. In the meantime, the French government has been obliged to reimburse tens of thousands of social charges illegally imposed on foreigners.[28]

2 COMMERCIAL AND INDUSTRIAL PROPERTY

2.1 RESTRICTORS AND LEVIERS

2.1.1 Australia

Similar to its residential property policies, Australia has among the most robust and focused policy framework pertaining to non-resident commercial property ownership. They are only one of two jurisdictions that fall under the “Restrictors and Leviers” category.

The Government of Australia Foreign Investment Review Board (FIRB) implemented a new policy framework on July 1, 2017, which was implemented to streamline the foreign investment framework to enhance transparency and consistency and improve the treatment of low-risk commercial transactions to enable the system to operate more efficiently and reduce regulatory burden.[29]

Foreigners who wish to invest in commercial real estate in Australia may be required to notify and receive a “no objections” notification before acquiring an interest in the land. Different rules apply depending on whether the land is vacant or not, whether the proposed acquisition falls into the category of sensitive commercial land that is not vacant, and the value of the proposed acquisition.[30]

In addition to the notification requirement, the FIRB also sets the fees for foreign investment applications and notices. The fees are dependent on the value of the acquisition and the activity taking place and range from AUD 2,000 to AUD 101,500. For example, a foreign investor who wishes to purchase vacant commercial land with a value of AUD 20 million would be required to pay a notification fee of AUD 25,300.[31]

2.1.2 Mexico

Similar to Mexico’s residential property regulations, those for commercial property allow foreigners to purchase and own such property, although there are restrictions and costs. Foreigners can purchase commercial property through Mexican corporations, which must consist of a minimum of two shareholders, though neither is required to be a Mexican citizen. Corporations can purchase property anywhere in Mexico, including within the restricted zone. However, property that is owned by a corporation is considered commercial property and is subjected to higher water, electricity, and telephone rates.

With regard to property within restricted areas, defined as areas within 100 km of the border and 50 km of the coast, special requirements exist. Originally, the Mexican Constitution prohibited foreigners from purchasing land in these areas, but this has now changed.[32] Mexican corporations cannot own single-family residential property, and those wishing to purchase residential property have to do so through a trust agreement.[33]

The Mexican Tax Authority may choose to perform an appraisal after the purchase of a commercial property. If the appraisal value is 10% greater than the declared value, the difference between the two is subject to a 20% appraisal tax. In addition, commercial property transactions are subject to a Value Added Tax and a 2% Acquisition Tax.[34]

2.2 RESTRICTORS

2.2.1 China

China has a set of complex laws and policies that restrict the ownership of property to individuals, regardless of whether they are citizens or foreign, as all land is owned by the state. Real estate transactions that take place in China involve a transfer of land use rights. Land use rights can be acquired through transfers, leases, and mortgages, but more recently are obtained through a public tender process or an auction process, especially for new developments. The results of public tender or auction processes are publicly listed on the government's website. Land use rights for developments for commercial, tourist, or recreational purposes are issued for 40 years, while land use rights for industrial purposes are issued for 50 years.[35]

However, unlike its approach to residential property policies, China is open and supportive of foreign investments for certain commercial and industrial projects and produces the Catalogue for the Guidance of Foreign Investment Industries (the Catalogue) that divides projects into three types: encouraged, restricted, and banned. Since 2015, the trend has been for removal of restrictions for certain industries. The 2017 version reduced the number of special administrative measures restricting foreign investment from 93 to 63. Industries that are listed as "restricted" are subject to restrictions such as shareholding limits and must receive prior approval from the Ministry of Commerce.[36]

Industries that are listed as "encouraged" benefit from special incentives, such as reduced tax rates, and foreign investors are given equal treatment to domestic Chinese investors. Encouraged industries can still be subject to certain restrictions on foreign investments if they are also on the negative list. For examples, some industries

"Mikkel Bryggers Gade," Copenhagen, Denmark (flickrcc/kai.bates; cropped).

may be encouraged but also could be restricted to joint ventures with a Chinese partner entity.[37]

2.2.2 Denmark

As the commercial and tourist hub for Scandinavia and Northern Europe, Denmark has seen the arrival of an increasing number of international investors, particularly related to the acquisition of retail assets in the capital of Copenhagen.

Much the same as its policies regulating residential use, Denmark policies for who can own commercial property are very strict. Generally, foreigners need to apply to and have permission from the Minister of Justice to purchase real estate used for commercial purposes, unless the person has resided in the country for at least five years or is an EU national working in Denmark. Due to the restrictions put on foreigners, many who are interested in purchasing commercial real estate often establish a public limited company registered in Denmark, known as an Anpartsselskab (ApS), to avoid the need for permission. The need for a permit does not apply to corporations registered in EU member states as long as the purpose of purchasing the real estate is business related.[38]

There are very few taxes to consider when purchasing commercial real estate in Denmark. In principle, the sale and purchase of real estate is not subject to Danish VAT, which is charged at a flat rate of 25%. However, anti-avoidance rules state that VAT will be applied if a building has been substantially rebuilt. In addition, the sale of building sites, the first sale of new buildings complete with land, and the delivery of built-up sites are subjected to the 25% VAT.[39]

"High Tables," Christchurch, New Zealand (flickrcc/Jocelyn Kinghorn; cropped).

2.2.3 New Zealand

The regulations that govern foreign ownership of residential real estate are similar for commercial real estate as well. New Zealand tracks the rate of foreign ownership by requiring that non-resident owners register with the Department of Inland Revenue. There are relatively few barriers to purchasing commercial property in New Zealand, unless the property is considered to be "sensitive" as defined by the overseas investment legislation. This legislation is intended to protect New Zealand's environmental, cultural, and historical assets. Sensitive land is defined as land of a particular type, such as farm land or land held for conservation purposes, which exceeds a particular area threshold. Land may also be considered sensitive if it adjoins land of a particular type and exceeds an area threshold. An example would include three hectares of farm land that is adjoined to a recreation reserve on the edge of a lake.[40]

Foreigners interested in investing in sensitive lands or acquiring large businesses or shares in large businesses must receive approval from the Overseas Investment Office. All applications are assessed on a case-by-case basis and are tested against four core investor criteria, which include business experience, financial commitment, good character, and absence of ineligible individuals listed under the Immigration Act 2009.[41]

2.2.4 Costa Rica

There appears to be no difference between regulations for foreign ownership of residential property and commercial property.

Foreigners are afforded the same rights as residents when owning, purchasing, and selling commercial real estate in Costa Rica. The one exception is with beachfront properties restricted by the Maritime Zone Law. Costa Ricans and foreigners alike are prohibited from owning property or building on any beach lands that lie within the first 50 metres of the maritime zone unless government permission is granted. Use of land between the 50-metre mark and the 200-metre mark is restricted by the Maritime Zone Law; 50 metres from the mean high tide line cannot be used for any reasons by private parties. The next 150 metres can be leased from the local municipalities or the Costa Rican Tourism Institute (ICT) for specific periods and particular uses, such as tourism installations. Concessions in this zone cannot be given to foreigners or foreign-owned companies.[42]

2.3 LEVIERS

2.3.1 Hong Kong

Though part of China, Hong Kong operates under a different real estate regime. The stable legal and banking systems in Hong Kong have drawn may overseas business firms to establish their regional headquarters in the city, which in turn has significantly increased the demand for Hong Kong's commercial real estate, including office, shopping malls, and retail stores. As Hong Kong is often considered one of the most expensive cities in which to purchase property, the government established several mechanisms to control ownership of property by foreigners. This has resulted in the implementation of stamp duties to raise the price of ownership as well as cancelling programs that offer incentives for investment by foreign owners.

There are no specific incentives for foreign investment, no restrictions to foreigners owning and operating businesses, and no residency requirements for directors or shareholders. Previously, a program known as Capital Investment Entrant Scheme, a program which facilitated the entry of residence by capital investment, was in place. However, this program was suspended by the Hong Kong government in January 2015.[43]

An Ad Valorem Stamp Duty (AVD) was introduced by the government and applied to both residential and commercial properties. For commercial properties, the AVD ranges between 1.5% and 8.5% depending on the value of the property in question. In addition, foreigners are subjected to a Buyer's Stamp Duty of 15% of the market value or stated consideration of the property (whichever is higher). This is imposed on top of the AVD.[44]

2.3.2 Singapore

Over the past few years, foreign investors have been attracted to invest in Singapore's commercial real estate market, which has seen an influx of overseas investments for the first time since the global financial crisis in 2008. The influx of foreign funds is partly due to the view that Singapore is a safer investment destination where investment is fairly protected due to the strength of the Singapore dollar.[45]

Unlike residential property, there are no restrictions of foreign ownership on commercial property in Singapore. There are also fewer taxes that are applied to the sale of commercial property. While a Buyer's Stamp Duty (BSD) is charged on the sale and purchase agreement, there is no Additional Buyer's Stamp Duty (ABSD) on commercial property. The BSD rate is 1–3% based on the value of the consideration.

Foreigners who own industrial property and who acquire the property and sell or dispose of the property within three years from the date of acquisition are subjected to a Seller's Stamp Duty of 5–15%. This was implemented to stop speculation on industrial land.

Due to land scarcity, most properties in Singapore are leasehold tenures and can be arranged in 30-, 60-, 99-, and 999-year agreements. An Ad Valorem Stamp Duty is payable on leases, and the rates are dependent on the lease or tenancy and vary with the average annual rent (AAR). Lease periods of four years or fewer are charged 0.4% of the total rent for the period of the lease. Lease periods of more than 40 years or any indefinite term are charged 0.4% of four times the AAR for the period of the lease. Leases where the AAR does not exceed SGD 1,000 are exempt.[46]

2.3.3 United Kingdom

Unlike residential property, there has been much less attention to foreign ownership of commercial property in the United Kingdom. There are no restrictions on foreigners purchasing commercial real estate in the UK; however, the market is very competitive. Based on a report from the British Property Federation, 28% of the UK's commercial real estate is owned by foreigners. This has started some discussion on policies to level the playing field between corporate Non-Resident Landlords (NRLs) and UK landlords by bringing NRLs into the corporation tax.[47]

Currently, there are additional taxes that foreigners need to consider when purchasing commercial property. Buyers must pay a stamp duty land tax at a rate of 4% of the price paid for a commercial real estate asset where the price is greater than GBP 500,000. Value Added Tax (VAT) does not automatically apply to the purchase of land, although in a few cases (such as newly built properties) the seller must charge VAT. Sellers will often elect to charge VAT so that they can recover any VAT incurred in relation to the property. Generally, VAT is charged at a rate of 20%. These taxes are in place for residents and foreigners alike.[48]

"Willis | Lloyd's | Leadenhall | St Helen's," London, England (flickrcc/Tom Parnell; cropped).

In Scotland, there are no restrictions on foreigners to purchase real estate and no special set of laws apply for the sale of commercial property.[49]

2.3.4 United States

At the federal level, the United States has the same policies for foreign ownership of commercial and residential properties. There are no blanket prohibitions on foreign ownership but there are many laws that may impose additional restrictions. For example, the Committee of Foreign Investment (CFIUS) can block foreign investment transactions that could impact US national security and can cause divestiture of completed transactions in some circumstances. Another example is the US Patriot Act, which has regulated investment in the US to have potential foreign buyers make certain disclosures.

The most significant law that impacts foreign ownership of commercial property is the Foreign Investment in Real Property Tax Act (FIRPTA). As of February 2016, foreign buyers of US property interests are required to withhold 15% of the full purchase price on real estate interests. When the property is disposed of, 15% of the selling price is withheld by the Internal Revenue Service (IRS).[50] Many individual states have their own withholding restrictions on foreign investment as well. California, Colorado, Georgia, Hawaii, Maine, Maryland, Mississippi, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, and West Virginia each have an additional withholding tax between 2% and 8.8% that is on top of the FIRPTA.[51]

2.4 OPEN DOORS

2.4.1 Switzerland

In Switzerland, the main legislation that restricts the sale of real estate to foreigners is commonly known as the "Lex Koller." The Lex Koller has been in place since 1997 and the act places various limits on the types and locations of residential real estate that can be purchased by foreigners. Commercial property has been exempt from the Lex Koller and foreigners have been able to enjoy the ability to purchase commercial properties for any intended purpose, including renting the space to another party.

In March 2017, the Swiss Federal Council presented a proposal to make amendments to the Lex Koller, some of which will impact foreign ownership of commercial properties. These amendments include the prohibition of foreigners to acquire Swiss commercial properties, except for self-use. In addition, under the proposed amendments, if commercial real estate is no longer used personally by the foreign buyer and the buyer's personal use did not exceed ten years, the property must be sold within two years.[52]

The public consultation period for the new amendments ended on June 20, 2017. There has been no formal change to the act at this time.

2.4.2 France

France is considered to be an attractive environment for investment, which has increased the real estate acquisitions by foreigners since the mid 1990s. In 2007, 65% of real estate acquisitions in France were made by non-French investors and most of those acquisitions were in the office sector, followed by retail and then warehousing and commercial premises.

Similar to policies for residential real estate, there are no restrictions in place that limit the ability of foreigners to purchase commercial property. In France, direct investment in commercial real estate can be carried out without ownership of a company registered in the country. However, if the property is used for business activities, the sale of the purchase must be reported to the Ministry of Finance under the foreign exchange regulations, which is not publicly listed and remains confidential. While there are specific legal and tax regimes that apply to the transfer of title of different kinds of real estate, there are no provisions linked specifically to the industrial, office, or retail sectors. French law recognizes the right to receive the income and produce from real estate without outright ownership.[53]

2.4.3 Japan

Over the past decade, there has been an increase in real estate acquisitions in Japan by foreign investors. Though domestic investors have dominated the market, foreign investors invested over one trillion yen into Japan's property market in 2014—a 29% increase over the prior year and the highest level since the 2008 global financial crisis. Japan was considered the largest real estate investment market in the Asia-Pacific in 2014.[54]

Similar to policies set in place for residential real estate, Japan places no restrictions on foreigners owning commercial property. An owner of real estate may freely utilize and dispose of real estate with no duration restriction. However, land and buildings are treated as separate and the owner of the land may lease the property to a separate party to construct a self-owned building.

There are no specific incentive regimes in Japan with respect to the investment in real estate by a foreigner. As the acquisition of real estate by a non-resident is considered a capital transaction under the Foreign Exchange and Foreign Trade Control Act, foreigners are required to notify the Ministry of Finance with their name and acquisition cost within 20 days of purchase. However, this requirement is waived when a foreigner who runs a non-profit business in Japan acquires the property to execute its business activities or intends to use the space as a place of business.[55]

2.4.4 Nicaragua

Foreign Investment Law 344 establishes equal treatment of foreign and domestic investment in Nicaragua, applying to residential and commercial real estate. Article 5 of the law recognizes fundamental guarantees for foreign investors, such as equal treatment—meaning all foreign investors shall receive the same treatment as national investors. It also guarantees rights and freedoms such as free access to the country, no minimum or maximum investment amount, access to financing from local banks, and the right for foreigners to own and use property without limitations. If foreign investors wish to obtain the benefits of Foreign Investment Law 344, they are required to register and update the nature and amount of their investment in the Statistical Registry of Foreign Investment Office of the Ministry of Development, Industry and Trade (MIFIC).[56]

SUMMARY: RESIDENTIAL

		APPROACH TO RESIDENTIAL REAL ESTATE
RESTRICTORS AND LEVIERS	Australia	Foreign non-residents are generally not permitted to purchase established dwellings for residential, vacation, or rental homes, although consent may be granted if the property purchase will result in a genuine increase of the housing stock. Foreigners selling property in three states are subject to stamp duties. Victoria also imposes an absentee surcharge on non-resident-owned dwellings left vacant for more than six months.
	China	Foreigners in many parts of China are required to prove they have been residents and/or employees of a local company for a number of years in order to obtain the right to use the land. Different regions also impose financial duties on foreigners purchasing a home, such as requiring up-front payment of two years' income tax or social security contributions.
	Hong Kong	Non-permanent residents are charged various stamp duties on residential property acquisitions and on additional levies on properties sold within three years. In addition, under the "Hong Kong Property for Hong Kong People" policy, foreigners are prohibited from buying homes in certain areas of the city.
	Singapore	Foreigners are prohibited from owning landed residential property; however, there are no limits placed on foreign ownership of private apartments and condominiums. Special permission to purchase landed residential property may be granted to those that make "adequate economic contribution" to Singapore. Non-residents are subject to a 15% Additional Buyer's Stamp Duty when purchasing any type of residential property as well as a Sellers Stamp Duty on residential properties sold in fewer than four years.
RESTRICTORS	Switzerland	Foreigners are prohibited from purchasing residential real estate without special authorization from relevant authorities. A quota of permits is made available to foreigners purchasing secondary or vacation homes in designated tourist areas.
	Denmark	Anyone without a permanent address in Denmark or who has not been a resident for at least five years is required to seek permission of the Minister of Justice in order to acquire real property in Denmark as either a full-time residence or a secondary or vacation home.
	New Zealand	Foreigners are required to register all real estate acquisitions with the New Zealand government, but there are no restrictions on foreigners purchasing residential property unless the property is on land considered to be sensitive. Non-residents' applications to purchase such land, protected for environmental, cultural or historical reasons, are assessed on a case-by-case basis.
	Mexico	There are no restrictions on foreigners purchasing and owning residential property in Mexico, although there are special requirements for land located along Mexican borderers and coastlines. In these areas, non-residents are only able to purchase land by way of a 50-year renewal trust agreement with a Mexican bank (i.e., a fideicomiso) whereby the foreign purchaser retains all rights, responsibilities, and privileges of ownership, but the bank holds legal title to the land.
	Costa Rica	Foreigners have equal rights as residents to purchase, own, and sell residential real estate in all areas except beachfront properties.
LEVIERS	United States	Properties sold, exchanged, gifted, transferred, or liquidated by a foreigner are subject to a withholding tax of 15% of the selling price. In many states, additional withholding obligations apply.
	United Kingdom	Non-resident homebuyers pay up to 28% in capital gains tax upon selling property in the UK. In some areas, absentee owners are subject to a 50% surcharge on local council tax for homes left empty for more than two years.
OPEN DOORS	Japan	There are no restrictions placed on non-residents purchasing or owning residential property or buildings. Unless they intend to use the property for a family or employee residence or as a place of business, foreigners are just required to notify the Minister of Finance of property acquisitions.
	Nicaragua	Foreigners have equal rights under the law to purchase, own, and use property without limitation.
	France	There are no restrictions on foreigners acquiring residential real estate. Differential capital tax levies for foreigners have recently been abolished.

SUMMARY: COMMERCIAL AND INDUSTRIAL

		APPROACH TO COMMERCIAL AND INDUSTRIAL REAL ESTATE
RESTRICTORS AND LEVIERS	Australia	Foreigners wishing to purchase commercial real estate may be required to notify and receive “no objection” notification from the Foreign Investment Review Board, depending on certain criteria. In addition, foreigners are required to pay a notification requirement that ranges from AUD 2,000 to AUD 101,500.
	Mexico	Foreigners purchasing commercial property in Mexico are subjected to several restrictions and costs. A foreigner wanting to purchase land located along the Mexican borders and coastlines must set up a Mexican corporation. In addition, the Mexican Tax Authority may choose to do an appraisal after the purchase of commercial property and charge a 20% appraisal tax on the difference in value if it is greater than 10%.
RESTRICTORS	China	Despite the complex laws that restrict ownership of property, China is supportive of foreign investments into certain commercial and industrial projects and classifies them as encouraged, restricted, and banned. The trend has been for removal of restrictions, and those listed as “encouraged” receive benefits such as special incentives and reduced tax rates.
	Denmark	Denmark has very strict policies governing who can own commercial properties. Foreigners must apply and have permission from the Ministry of Justice to purchase real estate used for commercial purposes, unless the person has resided in the country for at least five years.
	New Zealand	There are no restrictions on foreigners purchasing commercial property unless the property is on land considered to be sensitive. Applications from foreigners to purchase sensitive lands are tested against four core investor criteria: business experience, financial commitment, good character, and absence of individuals listed as ineligible under the Immigration Act 2009.
	Costa Rica	Foreigners have equal rights as residents to purchase, own, and sell commercial real estate in all areas except beachfront properties.
LEVIERS	Hong Kong	Foreign residents are charged various stamp duties on commercial properties that include an Ad Valorem Stamp Duty and a Buyer’s Stamp Duty. There are no specific restrictions on foreigners owning and operating businesses in Hong Kong and, recently, residency programs that encourage residence by capital investment have been suspended.
	Singapore	There are no restrictions on foreign ownership of commercial property in Singapore, and there are fewer taxes applied to the sale of commercial property. Stamp duties may be applied to leases as well.
	United Kingdom	Foreign buyers are required to pay additional land tax at a rate of 4% of the price where the price is over GBP 500,000.
	United States	Properties disposed of by foreigners are subject to a withholding tax of 15% of the selling price. Many states charge an additional withholding tax.
OPEN DOORS	Switzerland	There are currently no restrictions in place for foreign buyers who wish to purchase commercial property. However, proposed amendments have been introduced to the Lex Koller to impose restrictions on foreign-owned commercial property.
	France	There are no limitations or restrictions for foreigners purchasing commercial real estate. However, the sale of properties that are used for business activities must be reported to the Ministry of Finance.
	Japan	There are no restrictions for foreigners purchasing commercial property in Japan. However, as the acquisition of real estate by non-residents is considered a capital transaction, foreign buyers are required to notify the Minister of Finance within 20 days of purchase.
	Nicaragua	Foreigners have rights equal to nationals under the law to purchase, own, and use property without limitations.

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MEMBER PROFILE

JASON GRANT, RI

PRESIDENT AND CEO,
BC ASSESSMENT

Jason started working at BC Assessment as a summer student in 1991...and has stayed for 27 years, being recently appointed as president and CEO in October 2017. He attributes this longevity to a positive working culture, amazing staff, and solid leadership.

Prior to the appointment, Jason served as acting vice president of Assessment. For over 13 years he served as an assessor for the Greater Vancouver region, he is the past chair of the BC Assessment Senior Leadership Team, and for the last several years has been the corporate media spokesperson. Jason is a designated appraiser and has extensive experience with complex appraisal and related legal matters.

“I have always been fascinated by the dynamic BC real estate industry,” says Jason, “and I feel very fortunate to have been able to find a role that provides me such a unique and broad vantage point of it.” As CEO, Jason ensures that BC Assessment’s legislative mandate is maintained—the yearly production of a fair and equitable assessment roll. He provides strategic leadership and is responsible for overseeing the implementation of the Strategic Plan and Corporate Business Plan, which provide direction and budgetary oversight for all projects.

Jason joined REIBC in 1994, where he spent many years volunteering at the local chapter level before moving to the Board of Governors. He served as president in 2014–15. Jason explains his close ties with REIBC: “At a very early stage in my career, REIBC allowed me to make critical business connections, facilitated valuable mentorship, and helped me navigate a complex industry. These connections and friendships endure to this day.” He also volunteered for many years as an Executive Committee member for the BC Chapter of the Canadian Property Tax Association.

Maintaining an active lifestyle and enjoying time with his two young children are particularly important to Jason right now, after a very busy last year that lead to his appointment to the CEO position. “My main goal at the moment is to ensure I deliver on my key work goals while maintaining a balanced commitment to my family,” says Jason.

Rivalling Jason’s long-term commitment to BC Assessment and REIBC is his devotion to his 1973 Mazda RX2, which he bought as a high school student in 1987 for $800. He had a friend build the motor but did most of the body and mechanical work himself as his high school auto body project. Over the three decades of ownership that have followed he has done most of the maintenance himself and enjoys driving it every summer, recently entering several vintage car rallies.

RI

ON THE JOB

>> KAREN JOHNSON, RI, MBA

ACTING PROPERTY RIGHTS ADVOCATE, GOVERNMENT OF ALBERTA, JUSTICE AND SOLICITOR GENERAL

WHAT DO YOU DO IN YOUR PROFESSIONAL POSITION?

Our office listens to stakeholder concerns about property rights and documents the issues. I write an annual report and make recommendations to improve fairness and equity for property rights.

HOW DO YOU SPEND YOUR DAY?

I may attend or speak at events, meet with representatives from various ministries to raise awareness about property rights issues, or work on the annual report.

WHAT PREPARED YOU FOR THIS ROLE?

After getting my real estate licence in B.C., I completed the Urban Land Economics diploma program at UBC and took jobs related to the courses I was taking. Later I completed an MBA at the University of Alberta with a specialty in Public Management.

WHAT DO YOU FIND CHALLENGING ABOUT YOUR WORK?

Sometimes people expect me to defend their position, but my role is to be impartial. I look at all sides of an issue and respect all views. I advocate for fairness and equity in regards to property rights.

WHAT DO YOU ENJOY ABOUT YOUR WORK?

I work under the Property Rights Advocate Act, so I am empowered to positively influence Alberta's property rights policies and laws. I am proud of the public, accountable, responsive, and transparent process our office has established because it allows citizens to provide feedback to government and receive a response.

ARE THERE COMMON MISUNDERSTANDINGS ABOUT THE WORK YOU DO?

My role is not to provide a quick fix for unique cases. I study the causes of a problem and develop recommendations for how similar issues can be avoided in the future. My role is to identify, and help find ways of addressing, systemic issues.

WHAT DO YOU WISH PEOPLE KNEW ABOUT THE WORK YOU DO?

The process for legislative changes takes time, which means results are not immediately known.

IS THE WORK YOU DO TYPICAL FOR YOUR TYPE OF POSITION?

The Property Rights Advocate Office is quite unique. It is part of a government ministry, but also has independence under the Property Rights Advocate Act.

WHAT TYPES OF ORGANIZATIONS EMPLOY YOUR POSITION?

My particular position was created under Alberta's Property Rights Advocate Act but advocacy roles have been around a long time and come in many forms.

WHAT OTHER OPPORTUNITIES MIGHT YOU HAVE SOUGHT WITH YOUR EXPERIENCE?

I have a keen interest in developing innovative affordable housing models but, for now, I feel privileged to be able to foster positive change and help stakeholders' voices to be heard.

WHAT GOALS ARE YOU WORKING TOWARD?

I want to review the structure and role of this office so it can be shaped for the best outcomes possible.

WHAT CHARACTERISTICS OR PERSONALITY TRAITS WOULD BE BEST FOR THIS TYPE OF CAREER?

This role requires the ability to walk a very fine line between being an employee and being an independent, non-partisan advisor. It is important to be politically aware while not being political and to have strong communication and listening skills.

NEW MEMBERS

PROFESSIONAL MEMBERS

Judith Adamick
Sutton Group West Coast Realty

Erin Smith
BC Assessment

Warren Alexander
Ministry of Transportation and Infrastructure

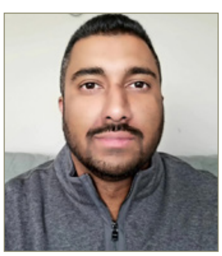
Blair Tarling
City of Burnaby

Manuela Ciric
City of Burnaby

Wingar Tsang
Anbang International

Derek Edstrom
City of Kelowna

Richard Vining
BC Assessment



Navdeep Kandola
Axis Real Estate Solutions Inc.

Tia-Toni Wilson
BC Assessment

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Power Strata is a comprehensive, easy-to-use, secure and cost-effective strata management software, specifically designed for managing BC strata corporations of any size and complexity efficiently.
powerstrata.com
info@powerstrata.com
1-604-971-5435

PAMA - Professional Association of Managing Agents
PAMA is focused on the creation and delivery of advanced education for professional residential property managers. PAMA promotes the values of professionalism and business ethics. In addition to the provision of the mandatory re-licensing education, PAMA delivers numerous seminars and workshops throughout the year.
pama.ca
admin@pama.ca, 1-604-267-0476

Real Estate Board of Greater Vancouver
The REBGV is a not-for-profit professional association that represents more than 14,000 REALTORS®. It provides a range of services, including the MLS®, education and training, business practices and arbitrations, advocacy, research and statistics and technology solutions.
realtylink.org
rebgv.org, 1-604-730-3000

Real Estate Council of British Columbia
The Council protects the public by ensuring the competence of the real estate professionals we license. We enforce the rules that real estate professionals must follow, and help consumers understand how to protect themselves.
recbc.ca
info@recbc.ca
1-604-683-9664, 1-877-683-9664 (toll free)

Schoenne & Associates
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