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What Is Happening In The Ontario Market in 2008?

The best source for predictions that I have found is CMHC and here's what they say:

"The average MLS price in Ontario will rise by 6.2 per cent and 2.9 per cent in 2008 and 2009 respectively. Price growth will be running above inflation in the immediate term thanks to tighter resale market conditions. However, a more balanced resale market resulting from higher listings points to weakening price pressures longer term."

Here are the actual numbers, including estimates for 2007 and forecasts for 2008 and 2009. You will see the years, followed by the average price, followed by the percentage increase:

| | | |
|----------------------|-----------|------|
| 2003 | \$226,824 | 7.5% |
| 2004 | \$245,230 | 8.1% |
| 2005 | \$263,042 | 7.3% |
| 2006 | \$278,455 | 5.9% |
| 2007 (Estimated) | \$299,493 | 7.6% |
| 2008 (Forecasted) | \$318,200 | 6.2% |
| 2009 (Forecasted) | \$327,500 | 2.9% |

This would suggest that if you are a buyer, you buy now before the 6.2% price increase, and if you are a seller, you would be wiser to sell this year rather than hold onto the expectation that there will be significant increases in 2009.

However, only time will tell, but CMHC has had a fairly good track record when it comes to predictions.

Caledon Professional Offices

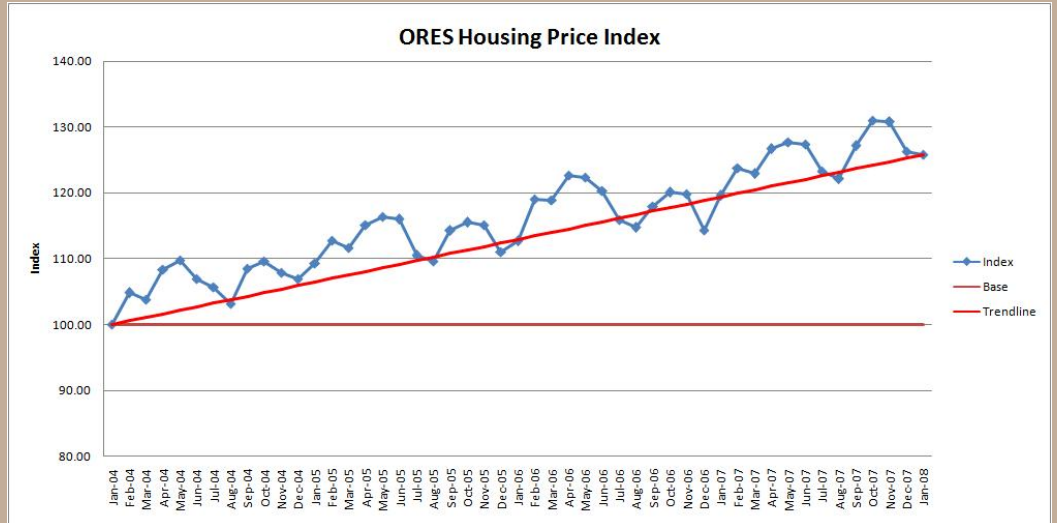


\$759,000
Cheltenham

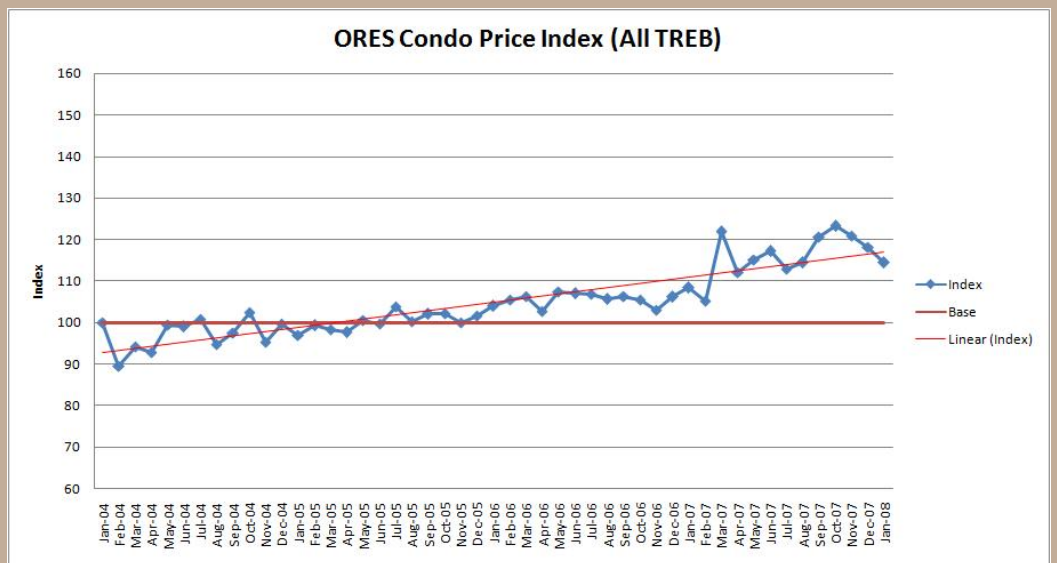


\$445,000
150 ft. frontage
Airport Road

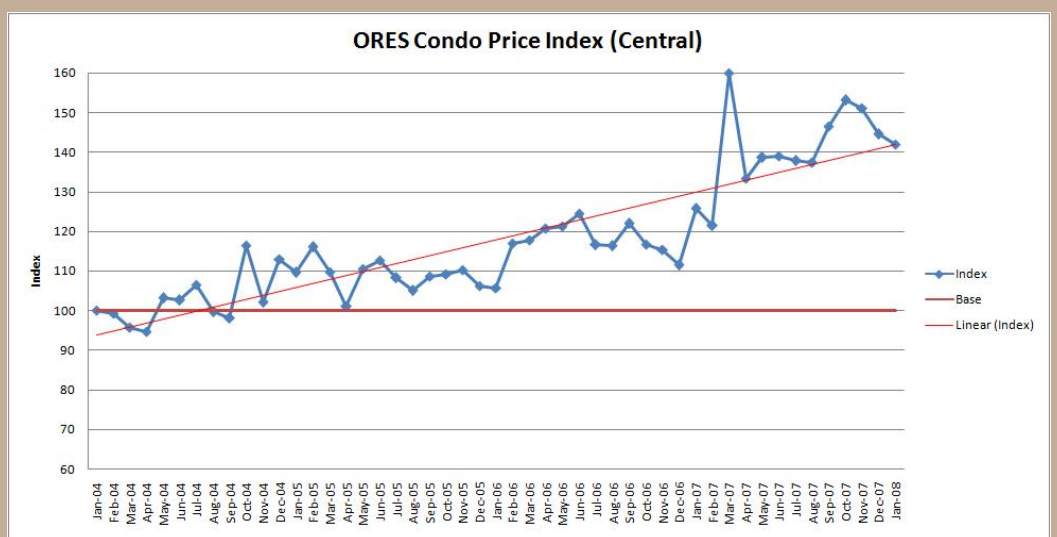
Tracking Past Performance



GTA single family homes up **25.83 %** since 1 January 2004



GTA condos up **14.39%** since 1 January 2004



Downtown Toronto condos up **41.90%** since 1 January 2004



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Location, Location, Location

Who said this? I've been searching for the source for some time but have been unable to determine the original author.

Obviously, this infamous real estate cliché has an element of truth. But, just exactly what does it mean and who said it first?

Everyone seems to know what it means, until you ask them to kindly detail their response.

In terms of the basic meaning, there appears to be two distinct possibilities:

1) **drill down approach:** in this interpretation, the repetition of the single word is intended to mean, the general area, the more specific area, and finally the very specific area.

2) **Repeated emphasis approach:** in this interpretation, the use of the same word on three separate occasions is simply to reinforce the true meaning and importance of the word in the first place, just in case you missed it.

Simply in terms of anecdotal research, I have found that my colleagues are split about 50/50 in respect to the two different approaches. By the way, more people think that Ben Franklin said it than any other person, but a little investigation will show that the expression "location, location, location" cannot be attributed to him. And, the mere fact that I can say "**locatio, locatio, locatio**" does not mean that Julius Caesar said it during the Gallic Wars.

However, the essential meaning of the term was certainly well-known in ancient times. This is evident from an archeological history of human developments and civilization.

Mankind was always looking for good real estate in a good location. Valleys were sought out as the prime choices for nesting. Otherwise, hunters simply stayed on the move following their prey. But, when they found a really special place, they stayed. Essentially they looked for the following:

Valleys

Protected environments, from weather and their enemies
Good, rich, fertile soil so that they may grow their crops
Water as a nutrient
Water as a food source
Water as a transportation corridor

You will find that these were the main characteristics that our early ancestors demanded in terms of real estate. Basically, **protection, sustenance and transportation**, these were the key original concepts behind the notion of location. Interestingly enough, if I were to offer those three words as the true meaning of the expression "location, location, location", they fit in well with both general approaches.

From the drill down perspective, we might speculate that it means: Canada, Ontario, and Toronto, with each area getting more specific. Or, we could do it again, and say Central Toronto, north of St. Clair Avenue, Forest Hill Village. Or, even once more, Dunvegan Road, north of Forest Hill Road, east side. And, with each area becoming more and more specific we are finally able to conclude that we have isolated a great real estate location.

However, if we look to the key elements, they equate more favourably with far more general areas like Canada (protection, laws, basic inalienable rights), Ontario (sustenance, the economy and employment opportunities), Toronto (transportation, as a local initiative whether travel be for long or short hauls).

When we come to the repeated emphasis approach, we could be talking about anywhere from Canada (in general) or to the east side of Dunvegan Road in Forest Hill Village north of Forest Hill Road, which is indeed very specific.

So, no matter what definition is the true meaning, the fact remains that **in real estate location is very important.**

Opportunities

COMMERCIAL

| | |
|------------------------|---------------|
| Newmarket Plaza | \$3.5 Million |
| Scarborough Plaza | \$3.4 Million |
| Aurora Plaza | \$3.3 Million |
| Guelph Retirement Home | \$2.8 Million |
| Scarborough Plaza | \$1.7 Million |
| Caledon Greenhouse | \$389,000.00 |

RESIDENTIAL

| | |
|-------------------|--------------|
| Guildwood Village | \$659,000.00 |
| Port Union | \$389,000.00 |
| Mississauga | \$489,900.00 |

Perimeter Fencing: Who Owns It?

That's a good question and it's not easy to figure out. Well, it starts out easy, but then fences fall down, get repaired or replaced and people move. So, eventually no one seems to know the answer.



Let's start with a simple subdivision and a series of rectangular lots. Bob, Jack and Brenda live side by side on 50 foot by 125 foot lots. They back onto Wilma, Ismail and Robin, each on similar lots.

So, let's have a look at Jack's situation. He fronts onto the north side of Main Street. Bob is his neighbour to the west, and Brenda is his neighbour to the east, and rear of his property (at the north) meets the rear of Ismail's property.

There is complete perimeter fencing and you as the purchaser buy this property from Jack, 15 years after the fences have gone in. Only one little problem, after you move in, Brenda says she owns the fence to the east, Bob says he owns the fence to the west and Ismail says he owns the fence at the north. This could be a problem!

Who really owns the fence? What legal rules apply? What evidence is needed? What about the boundary of the property? Who has to repair the fence if it falls down?

First, let me remind you that there are two different legal systems in Ontario when it comes to property ownership. The answer will depend upon which legal system applies to your particular property.

The two systems are:

- 1) Registry, and
- 2) Land Titles.

It is important to note, that in Registry the boundary of the land can move around in accordance with the laws of adverse possession, just like they did in medieval times. In Land Titles the boundary stays in place.

Adverse possession is a principle of law designed to rectify and clarify boundaries between properties. If one landowner erects a fence, encloses the neighbour's property with his own, for a period of time and excludes the true owner of the property from exercising rights of ownership, then that person is entitled to a Court Order confirming that he owns the property that has been "stolen" from the neighbour. In Ontario, the time period is 10 years. The occupation of the neighbour's land must be open, continuous and must not have been with the neighbour's permission.

Initial ownership of the fence is somewhat easy. Whoever builds it owns it! But, that's perhaps a little too simplistic. Sometimes neighbours contribute to the construction of the fence either by helping to build it, or contributing to its cost. These two matters may effect the decision as to who owns it at the outset.

Ten years later, who owns it?

Again, let's go back to the time the fence was erected. Bob said he didn't need a fence. He wouldn't contribute to the cost. Ismail at the rear helped build it and contributed one-half of the cost. Brenda paid for half. She says she owns it outright because Jack has moved, and she gets his share (just like joint tenancy).

Let's go around the perimeter once more. Bob has no initial rights concerning ownership. Ismail owns half and Brenda owns half. Unless there is a very clear document in writing setting out the transfer of Jack's one half upon the sale, then nothing can happen, Jack still owns one half of the fence and it is transferable in accordance with the provisions of the *Conveyancing and Law of Property Act*.

But the real question, relates to 10 years after, and the answer here depends on the system of laws that apply.

Registry

Bob does not own the fence. But, the rules of adverse possession apply. If Jack's fence was over on Bob's property by 8 inches, then Jack owns that 8 inch strip. It was open and continuous, but if Bob knew about the encroachment and consented, then, Bob still owns that 8 inch strip. In fact, Bob now owns the fence. It's entirely on his property, and he still owns the 8 inches on the other side of the fence because he never relinquished it.

So, Jack built it, paid for it in its entirety and Bob now owns it.

What about Ismail? Here, we have a joint fence, with co-ownership. The rules of adverse possession do not apply. So, even if it's over by 8 inches, Jack doesn't get to keep the extra land, since he had Ismail's consent right from the beginning.

What about Brenda? This situation would be treated in the same way as Ismail's. But, things might be a little different if she contributed more than half.

Land Titles

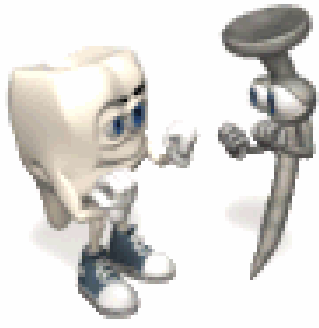
All the boundaries stay in place and don't get moved around. The ownership of the fence depends upon who constructed it and paid for it in the first place.

So, if you are considering purchasing a property with some perimeter fencing, you may have some questions to ask.

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Is A Holograph Will A Good Idea?

How would you like to spend about \$50,000 on estate planning? This should get you a good Will and a good plan.

Maybe not!

Consider the case of Olga Laczova. She was indeed very frugal and accumulated a good deal of money over her lifetime. She thought lawyers were expensive and consequently avoided them.

She had two RRSP's, one with the Royal Bank and one with Scotiabank. When she opened them up she completed the **Beneficiary Designation Forms**. The beneficiaries were duly noted and were relatives. Upon her death the RRSP's held \$42,000.00 and \$91,000.00 respectively. She died leaving an estate worth \$608,000.00.

Only one little problem, Olga decided to complete a holograph Will. This is a Will completely in the handwriting of the testator and executed without witnesses. Olga listed her assets and also listed her beneficiaries. This time, she included more relatives and 19 charities.

The person who was called to administer the estate was not certain of Olga's intentions, so applied to Court for directions. At issue, was whether the Will revoked the Beneficiary Designations made about a decade earlier.

There was a great deal of discussion by the Court about the application of the appropriate statutory law to the circumstances of the case, namely s. 52 of the *Succession Law Reform Act*.

The Court said:

"A careful reading of s. 52(1) is sufficient to dispose of this alternative argument. Whereas s. 51(2) requires that a designation by will must relate "expressly to a plan, either generally or specifically", s. 52(1) requires that a revocation in a will must relate "expressly to the designation, either generally or specifically". But,, nowhere in the deceased's will is there any expression that relates to either of the previous designations in favour of her family members. By its very language, s. 52(1) renders a revocation in a will that fails to relate expressly to the designation made by instrument ineffective to accomplish that purpose."

So, the answer was in the Court's view relatively straightforward.

However, this was the Ontario Court of Appeal and in order to get there, you first had to go to the Superior Court. Neither step is cheap. There were 19 charities and 5 relatives as beneficiaries as well as the Estate Trustee. That's 25 different parties, each with their own lawyers and legal proceedings that entailed discoveries, motions and appeals. That's a lot of money!

Conservatively, my guess is \$50,000.00. That's more than the value of the Royal Bank RRSP. The simple mistake made by Olga Laczova when she signed her Will would easily have been caught by any lawyer.

Olga's Will has cost her estate (that is, her beneficiaries) over \$50,000.00, so far. And, as that noted philosopher of the 21st Century, Yogi Berra once said "it ain't over 'til it's over".

However, one thing, for sure, no where in Olga's Will did she state "the sum of \$50,000.00 to a group of random lawyers that I don't know".

If you have an estate, then get a lawyer to prepare your Will! It's very expensive to have the Ontario Court of Appeal draft one for you.

You can read more about Olga's case, see *Laczova v. House (2001), 207 D.L.R. (4th) 341*.market to a halt.

Sorry No Recipes!



BE SURE TO READ THE FINE PRINT!

Joint Tenancy Declarations

Now that the Supreme Court of Canada has changed the law, what are you going to do about it?

Just a quick summary about the law. There are basically two methods of holding title by co-owners of property:

- 1) tenants-in common, and
- 2) joint tenancy.

If two parties own property together, ordinarily it will be held as tenants-in-common. This is an undivided interest in the property, like partnership property. However, when it comes to joint ownership, there is a special deal between the owners. If one dies, then the surviving owner inherits the deceased's share of the property. For obvious reasons, joint tenancy is usually restricted to family situations, either married couples or parents and children.

Certainly, joint tenancy with right of survivorship had its origins in feudal England right after the Norman Invasion in 1066. In fact, some historians argue that it may even have pre-dated the common law. In any event, you get my point! Joint tenancy with right of survivorship has had a long history.

So, let's fast forward to May 2007. The Supreme Court of Canada changed over 1,000 years of established legal history with the stroke of a pen in two precedent setting cases, *Pecore v. Pecore* and *Madsen Estate v. Saylor*.

The two cases were similar in nature. An elderly father opened a joint account with his daughter. Upon his death, the daughter claimed that she inherited the proceeds of the bank account by right of survivorship. The other siblings claimed that this was not the case, and argued that just because the legal documents said "joint ownership" did not mean that the father intended to give the money to the surviving joint tenant. This was purely a procedural step to assist in the administration of the account throughout the father's lifetime and with his estate, after his death. This was an interesting and novel argument.

The Court looked at both cases, and concluded:

- 1) in *Pecore v. Pecore* the daughter should have the money, and
- 2) in *Madsen Estate v. Saylor* the daughter received it in trust for the beneficiaries of the estate.

Even though two different conclusions were drawn, each case turned on its own facts. The real issue at stake was the intention of the father. What did he intend, when he put the account in joint ownership?

The Court looked to a number of factors with respect to intention, including, the bank documents, other documents, the relationship between the parties, the existence of a power of attorney and the tax treatment of the income.

But, what's the real meaning of these cases? What's the next step? Estate practitioners should now prepare a Document entitled "Statement of Intention". Make it absolutely clear! **Is inheritance intended or not?** If so, say it. Simply, put it in writing!

Although these cases applied to bank accounts, the concept has its origins in the conveyancing of real property. So, real estate agents need to be aware of the new law. Just because the deed says it's joint tenancy, doesn't mean that the survivor will inherit.

This is precisely where a **Statement of Intention** will be helpful in real estate practice. Both cases involved parents and children and not married couples. In all likelihood, with married couples there is a "quid pro quo" and the presumption of survivorship will continue. However, I said that, not the Supreme Court of Canada, so be cautious and have a Statement of Intention signed here as well.

The two cases represent the law of the land in Canada. They are precedents that will apply to all lower Courts. In addition, you might find that Courts in other common law jurisdictions will start following these same cases. It makes sense in a modern society where legal documentation has become quite sophisticated. Over one thousand years ago, joint tenancy and the right of survivorship were quite sophisticated themselves. The concept had to be written out by long-hand, one document at a time in Deeds, Wills, and Trust Indentures. Today, just a click on a word processing program can produce the Statement of Intention.

So, if it were up to me, I'd sign one NOW

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