

How to be a tax-smart snowbird with property in the U.S.



The smart snowbird structure for owning U.S. property is the cross-border trust.

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We have heard it said that a real Canadian plays hockey, is polite and pays high taxes. And a smart Canadian? Well, we say that a smart Canadian is a snowbird. Seriously, why remain in Canada during the winter if avoidable? This year, we have experienced bone-chilling cold, high winds and terrible blizzards.

But there are snowbirds and there are smart snowbirds. What's the difference? A snowbird goes to Florida or another area in the Sunbelt, buys a condo, puts title in their

name alone or as a couple, vacations there and believes all is good, which it probably is until something happens.

Remember a familiar saying about death and taxes? So, what happens if a Canadian snowbird passes away owning Florida property?

Probate

Besides the tragedy of the loss of a loved one, the Florida condo becomes one big hassle and expense for the surviving spouse or kids. It's called probate. It's the legal procedure required in Probate Court where the U.S. property is located so the property can be legally transferred to the beneficiaries of the deceased, then sold or kept in the family.

Probate always applies when title is solely in the name of the person who has died. Probate is expensive, freezes the estate and ties up the property for eight to 12 months. Court costs, newspaper publications, filing fees and attorney fees run up to 3 per cent to 4 per cent of the market value of the property.

The will has to be filed in the court; petitions have to be presented to the judge; the executor needs to be appointed as a personal representative (provided he or she qualify as related by blood to the deceased or is a Florida resident); notices must be published in the local newspaper twice; and a list of all assets of the estate must be filed in the public records of the Probate Court available to anyone to examine.

The smart snowbird

How can the Canadian snowbird avoid her family going through the expensive and time-consuming process upon death? Let me introduce you to Mary, a smart snowbird. Before Mary bought her Florida condo, she asked her Canadian accountant whether she should put it in her name alone, with her partner, with the kids or in a corporation. Her accountant told her she should seek advice from a cross-border specialist. Mary learned that there are several different ways of owning the condo which avoid Florida probate upon death.

Incorporation

She could incorporate a Canadian company; it would own the condo. Mary would own the company. If Mary died, there would be no probate as the company owns the condo and companies don't die. But there are some problems. Corporations have to file annual reports with the provincial and Florida governments. Additionally, the shareholder must include in her Canadian tax return the annual rental value of the condo, even if it's not rented, and pay tax on that hypothetical rental income.

Joint names

What about just putting title in both partners' names? That is better than in Mary's name alone, but if she leaves the condo to her husband Bob, and he keeps it, there will be probate when he dies.

Limited liability companies (LLCs)

An LLC is a U.S. company. Mary would be the owner of the LLC. Using an LLC to hold title is actually the worst way as there will be double taxation upon sale. Canada doesn't have LLCs so the Canada Revenue Agency taxes the LLC as a company. The IRS doesn't tax the LLC, but would tax Mary personally. Mary would effectively be taxed twice with no offsetting credit in Canada for the IRS tax as she and her company are considered two taxpayers.

Limited partnerships (LPs)

Mary could have put title in a limited partnership. She would own 99 per cent as limited partner with her corporation as a 1-per-cent general partner. This is not an appropriate structure. LPs are well suited for real estate investments for income-producing properties, not personal-use condos. Also, stay away from limited liability partnerships (LLPs) and limited liability limited partnerships (LLLPs), even for rental properties as there could be a double-taxation issue.

The smart snowbird structure

The smart snowbird structure is the cross-border trust (CBT). Mary is trustee and beneficiary of the CBT. She owns the CBT, which owns the condo. If Mary dies, probate would not apply as the owner is the CBT and trusts don't die. Her partner would take over the CBT. When he subsequently dies, once again, probate is avoided and the kids would inherit the property inside the CBT trust structure. No annual filing required, the lowest tax rates and no double taxation.

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