

# Ask the Expert: Tax, Legal & Estate Considerations for Owning a U.S. Property



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**Jonah Spiegelman**  
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**David Altro**  
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President & CEO,  
MCA Cross Border Advisors Inc.



# Today's Facilitator



## **ALAIN FORGET**

*Head of Business Development*

Alain has been working for RBC for over 40 years, holding various business and sales leadership roles in Canada, the Caribbean and the U.S. He is passionate about helping Canadians purchase U.S. homes and works closely with consumers, real estate professionals and other strategic partners to provide education and opportunity to Canadian buyers in the U.S. Alain acts as spokesperson for the media and at real estate conferences as a subject matter expert. He is also a licensed real estate agent in Florida and holds a degree in Finance & Management.



# Register Questions

Please use the *Chat* bar to submit your questions in writing during the live presentation

*Note, this webinar is being recorded, and the presentation will be made available on our virtual advice event landing page at [rbcbank.com/VAE](https://rbcbank.com/VAE).*



# ABOUT THE SPEAKER

## SHLOMI STEVE LEVY


B.A., LL.B., J.D., TEP


Partner, Member of the Québec Bar (Barreau du Québec),  
Member of the Law Society of Ontario & STEP

Shlomi Steve Levy is a Partner of Levy Salis LLP and is a member of the Quebec Bar, the Law Society of Ontario, the Society of Trust and Estate Practitioners, and the Canadian Bar Association. He was the co-founder of one of the leading cross border tax and estate planning law firms in Canada prior to founding Levy Salis LLP. His practice is dedicated to US and Canadian tax and estate planning for individuals and corporations, Canadians doing business in the United States, US real estate transactions for Canadians, Americans living in Canada, domestic and international trusts, international taxation, corporate law, and cryptocurrency transactions.



 @shlomistevelevy

 @shlomilevy13

 @shlomilevy13





# PROBATE

## Scenario:

We bought a condominium in Florida for \$300,000 and put the title in my husband's name alone. Everything was fine until he passed away.

After that, I couldn't sell the property because the estate was frozen, probate took over a year and cost between \$10,000 and \$15,000!







# CANADIAN TAX AND ESTATE PLANNING

BEWARE! WHEN SIGNING  
U.S. ESTATE PLANNING  
DOCUMENTS, DO NOT  
REVOKE YOUR  
CANADIAN ESTATE  
PLANNING DOCUMENTS!

WHAT ABOUT ESTATE  
PLANNING FOR U.S.  
BENEFICIARY CHILDREN  
AND GRANDCHILDREN?

A man in a dark suit and white shirt is seen from the back, looking out a large window. The window shows a blurred cityscape with a body of water in the foreground. The lighting is bright and natural, suggesting daytime. There are decorative blue circular shapes in the top left and bottom center of the page.

# INCAPACITY

## Scenario:

My parents own a condominium together in Florida but they can't enjoy it anymore since my mom developed dementia.

My dad couldn't sell the property because of my mom's condition and so we had to do a costly and time-consuming Florida guardianship procedure.



# PROTECTION FOR YOUR BENEFICIARIES

## Scenario:

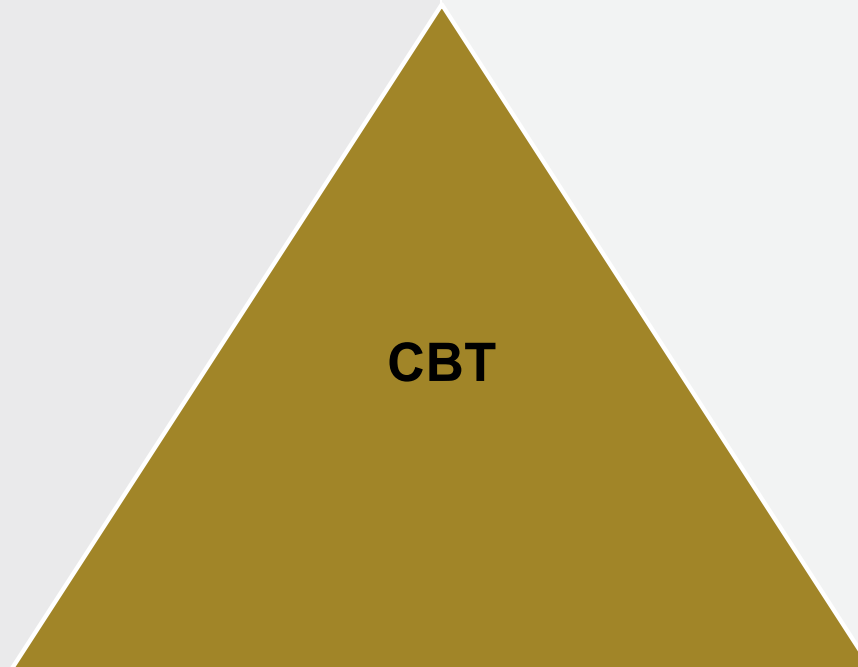
We are worried about what happens to our kids after we pass away. What if my son/daughter inherits my \$300,000 house in Florida and then his/her business goes bankrupt, can his/her creditors seize the house? Also, if his wife divorces him, will she get 50% of the property? What if I want to add my children to the title?

# CROSS BORDER TRUST (“CBT”)

- Avoids probate & incapacity issues
- Protects inheritance from divorcing spouses/creditors
- Preserves foreign tax credits (on sale/death)
- Reduces and defers U.S. estate tax (QDOT & discounting)

TRUSTEE: YOU

BENEFICIARIES: YOU





# CORPORATIONS

- Avoids probate & incapacity issues
- Avoids U.S. Estate Tax
- Provides creditor protection
- Shareholder benefit rule
- LLC – **DOUBLE TAXATION PROBLEM**



U.S.  
CORP.  
100%

CND  
CORP.  
100%



# US CAPITAL GAINS TAX SUMMARY BY OWNERSHIP STRUCTURE

TRUSTS	LIMITED PARTNERSHIPS	PERSONALLY	CORPORATIONS *(U.S. OR CDN)	LLC – DOUBLE TAXATION
			IRS – 21%	IRS – 15 to 20%
IRS – 15 to 20%*	IRS – 15 to 20%*	IRS – 15 to 20%*	FL – 5,5%	CRA – 26%
			Total Tax Liability: 26,5%	Total Tax Liability: 41% to 46%*
*U.S. Federal Rates			*+ Canadian Dividend Tax and US withholding considerations	



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# Issues When Purchasing U.S. Real Estate

Jonah Spiegelman – Boughton Law Corporation

ISSUES WHEN PURCHASING U.S. REAL ESTATE  
RBC Bank USA – Cross Border Lifestyle



# Boughton Law

Jonah Spiegelman

**Boughton Law Corporation**

*Vancouver, British Columbia, Canada*

Jonah is a cross-border tax and estate planning lawyer, focused on assisting clients with international tax issues, including U.S.-Canada cross-border matters and questions regarding residency and Treaty benefits.

Licensed to practice law in British Columbia as well as California, Jonah can advise on both sides of the border to suit client objectives by creating tax-efficient estate plans and investment structures.



# Key Issues – Before you buy

Do your homework

## **LOCATION, LOCATION, LOCATION**

Location is important in any real estate transaction, but especially in cross-border purchases

Ensure your realtor has experience with Canadian clients

## **UNDERSTAND YOUR OBJECTIVES**

Potential rental property?

'Family' asset?

Exit plan?

## **COST & PAYMENT PLANNING**

Purchasing with a mortgage?

Cash purchase?

Who's on title?

# Key Issues – When you're ready to buy

Do I need a lawyer?

## **WHO HANDLES THE MONEY?**

Escrow office  
handles conveyance

## **PAPERWORK TAKES TIME**

Cross-border transactions  
can take additional  
time to process

## **GET ADVICE EARLY**

Structure decisions  
might need to be  
made early





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**ALTRO**  
— LLP —

US & CANADIAN ATTORNEYS, NOTARIES  
AND LEGAL COUNSEL

MAY 8, 2024

## CANADIANS SELLING U.S. REAL ESTATE: KEY ISSUES

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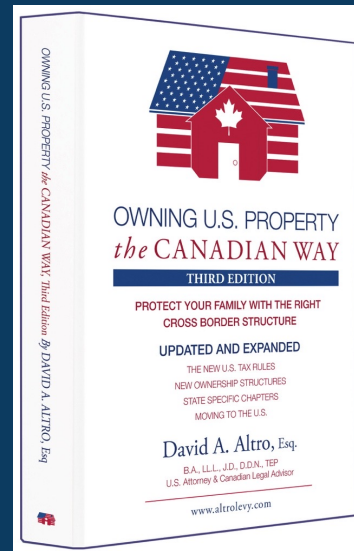
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*Managing Partner, Altro LLP*

Member of the Florida Bar since 1984



- Author of:
  - ❖ *Owning U.S. Property, the Canadian Way, Third Edition*
- Florida Attorney, Canadian Legal Advisor & Foreign Legal Consultant
- Practicing law for over 35 years
- Special contributor to the Globe and Mail
- Interviewed on CTV, CBC, radio
- Frequent presenter at legal and tax conferences in
- The Florida Bar (1984 to Present)
- Quebec Bar (1980 - 1989)
- Quebec Chambre Des Notaires (1989 to Present)
- Member of the Society of Trust and Estate Practitioners



- **Review of contract**
- **What does selling "AS IS" mean?**
- **Seller representations and warranties**
- **Who pays closing costs, including land transfer tax and title insurance?**
- **What if the buyer defaults?**
- **When is realtor commission payable?**

## **If you sell your US property for a gain, do you have to declare tax to the IRS ... to Canada?**

- **What is FIRPTA (Foreign Investment in Real Property Tax Act)**
- **What are the rules?**
  - ❑ **Withholding rates: 10% or 15%**
- **FIRPTA Strategies**
  - ❑ **Remitting the withholding to the IRS**
  - ❑ **Exemptions from withholding**
  - ❑ **Apply for a FIRPTA Withholding Certificate**
- **1031 Like-Kind Exchange**
  - ❑ **Double Taxation Issue**

## *Avoiding Complications*

### **A. What if one of the sellers is mentally incapacitated?**

- U.S. Guardianship procedure and expense**
- How to avoid U.S. Guardianship**

### **B. What if one of the sellers has passed away?**

- U.S. probate time and expense**
- How to avoid US probate**
- U.S. Estate Tax**

**PLAN AHEAD:**

**Avoid these complications with a Trust for Life "TFL"**





**Matt C. Altro,**  
**B. Comm., F. Pl., CFP® (CAN & US), TEP**  
**President & CEO**

Matt C. Altro is President & CEO of MCA Cross Border Advisors Inc. Matt is a CERTIFIED FINANCIAL PLANNER in Canada as certified by the Financial Planning Standards Council, a Certified Financial Planner in the U.S. with the U.S. CFP Board, a Quebec Financial Planner with the *Institut québécois de planification financière*, and obtained the TEP designation from the Society of Trust and Estate Practitioners. He is a graduate of McGill University, Faculty of Management, and is completing his Masters of Business Taxation at the University of Minnesota.

Matt has specialized and in-depth knowledge with respect to cross border tax and financial planning for Canadians moving to the U.S., U.S. residents moving to Canada, U.S. citizens living in Canada, or executive employees relocated between the countries.

Matt has nearly 20 years of experience in cross border planning and leads a team of multidisciplinary professionals including U.S. & Canadian CPAs, CFAs and Financial Planners. Matt and his team create comprehensive and customized plans that are designed to minimize tax, address estate planning issues, achieve retirement goals, identify investment opportunities, obtain healthcare coverage and meet immigration objectives.

Mr. Altro is a frequent speaker at national, international bank and industry seminars. He is a regular contributor to *The Globe and Mail & Advisor's Edge*, he's been interviewed on *BNN*, *CHCH Television* and by the *National Post*, *The Montreal Gazette*, *24 Hours newspaper*, published in the *STEP Journal* and has written various articles about moving between Canada and the U.S. Matt also authored a chapter about moving to the U.S. in David A. Altro's book *Owning US Property the Canadian Way, Third Edition*.

# Immigration from Canada to the U.S.



- > Differences between Visa, Green Card, and U.S. Citizenship
- > Immigration options can be grouped into three categories:
  1. Family Sponsorship
    - Spouse
    - US citizen adult child
  2. Investor Visas
    - E-2
    - EB-5
  3. Employment Visas

Employment Visas	Who is eligible?	Length of eligibility	Can spouse work?	Green Card path?
TN	Specific professional occupations	3 years, renewable	No	No
L-1	Intracompany transferee executive or manager	1 or 3 years, renewable up to 7 years	Yes	Yes
H1-B	Various professionals (quota)	3 years, renewable up to 7 years	Typically no	Yes

# Key Considerations when Relocating to the U.S.



## Canadian Departure Tax

- › Tax impact of becoming a non-resident of Canada
- › Deemed disposition of property at FMV
  - Realization of accrued gains prior to emigration
  - Capital Gains Tax
- › There are exceptions, not all assets are subject to departure tax
- › Final personal tax return (“exit return”)
- › Treaty election to bump US cost basis available, Treaty Article XIII(7)
- › CRA provides taxpayers with the option to **defer** departure tax

### Assets Subject to Departure Tax

Stocks of all companies, private or public

Real estate situated outside Canada

Certain personal property

Stock of privately held corporations

Mutual funds, exchange-traded funds, partnership interests

### Assets NOT Subject to Departure Tax

Canadian-situated real estate

Annuities / pensions in Canada

RRSP / RRIF / RESP / TFSA

Life Insurance

Certain employee benefit programs

Canadian business capital property and its inventory

# Key Considerations when Relocating to the U.S.



## What should I do with my RRSP/RRIF?

- > RRSPs in Canada allow for:
  - Tax deduction in year of contribution
  - Grow tax deferred
  - Taxed as regular income upon withdrawal
- > Moving to the U.S. with your RRSP/RRIF can lead to substantial savings
- > Canadian tax can be used as foreign tax credits against U.S. tax

Residency	Canadian Tax Rate on RRSP Withdrawal
Canada	Up to 54%
U.S.	15 or 25%

## Healthcare Options in the US

- Employer-sponsored group plans
- Private insurance (subsidies exist)
  - Obamacare remains the law – no discrimination re age or pre-existing conditions
- Government programs such as U.S. Medicare
- Global Health Insurance (available prior to moving)



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# Additional Spring 2024 **Virtual Advice Events**



## **Cross-Border Lifestyles: From Digital Nomad to Retiree**

- *May 29, 2024, 1-2:30 p.m. ET*

## **Affordable Florida: Your Guide to New Construction Communities in Florida**

- *June 12, 2024, 1-2:15 p.m. ET*

Visit [rbcbank.com/VAE](https://rbcbank.com/VAE) for more details

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