

# Ask the Expert

## Tax and Legal Considerations for Owning a U.S. Property



# 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.

# Questions



- Please use the CHAT bar to submit your questions in writing during the live presentation.
- To register a question over the phone following the formal portion of our presentation:
  - Enter 1 followed by 4 on your phone.
  - If your question has already been asked, you can unregister your question by dialing 1 followed by 3.

*Note, this webinar is being recorded, and the presentation will be made available on our virtual advice event landing page.*

# Your Presenter



## **David Altro**

**B.A., LL.L., J.D., D.D.N., F.P.I., TEP, Florida Attorney & Canadian Legal Advisor Altro LLP**

David is the managing partner of Altro LLP, which he founded in 1988 with offices in Montreal, Toronto, Calgary, Vancouver, Florida, Arizona and California. David is the author of the books *Owning US Property the Canadian Way*, Third Edition and his most recent book: *Americans Living in Canada – Smile, The IRS is Watching You*. Mr. Altro has been practicing law for over 30 years in Canada and the US and specializes in cross border tax, estate planning and real estate.

MONTRÉAL / TORONTO / CALGARY / VANCOUVER / FT. LAUDERDALE / ORLANDO / NAPLES / PHOENIX / LOS ANGELES



**ALTRO**  
— *LLP* —  
US & CANADIAN ATTORNEYS, NOTARIES  
AND LEGAL COUNSEL

SEPTEMBER 29, 2021

# US Home Ownership and Selling US Real Estate: Tax and Legal Considerations

**David A. Altro**

**B.A., LL.L., J.D., D.D.N., FLC, CLA, TEP**

Managing Partner, Florida Attorney &  
Canadian Legal Advisor













daltro@altrolaw.com / 416.477.8155

**155 University Avenue, Suite 300, Toronto, ON, M5H  
3B7**

**1.888.GO.ALTRO / www.altrolaw.com**

# TEAM OF PROFESSIONALS



 <p><b>David A. Altro</b> B.A., LL.L., J.D., DD.N., FLC, TEP, CL.A. Managing Partner, Florida Attorney, Canadian Legal Advisor &amp; Quebec Notary Email: <a href="mailto:daltro@altrolaw.com">daltro@altrolaw.com</a> Telephone: 416-477-8150</p> <p><a href="#">Read More</a></p>	 <p><b>Samantha Y.F. Wu</b> B.A., J.D. Partner, Ontario &amp; New York Attorney Email: <a href="mailto:swu@altrolaw.com">swu@altrolaw.com</a> Telephone: 416-477-8157</p> <p><a href="#">Read More</a></p>	 <p><b>Bradley R. Thompson</b> B.A., M.A., B.C.L., LL.B., LL.M. (US Dep) Partner, Ontario &amp; New York Attorney Email: <a href="mailto:bthompson@altrolaw.com">bthompson@altrolaw.com</a> Telephone: 416-477-8150</p> <p><a href="#">Read More</a></p>	 <p><b>Avi Guttman</b> B.A., J.D., FLC, CL.A. Senior Associate, Ontario, New Jersey, &amp; New York Attorney Email: <a href="mailto:aguttman@altrolaw.com">aguttman@altrolaw.com</a> Telephone: 714-940-8099</p> <p><a href="#">Read More</a></p>
 <p><b>Zaina Kottis</b> B.A. (Hons), J.D., TEP Senior Associate, Ontario Attorney Email: <a href="mailto:zkottis@altrolaw.com">zkottis@altrolaw.com</a> Telephone: 416-477-8158</p> <p><a href="#">Read More</a></p>	 <p><b>Ryan Robertson</b> B. Comm., J.D. (Canada), J.D. (USA) Associate, Ontario Attorney Email: <a href="mailto:rrobertson@altrolaw.com">rrobertson@altrolaw.com</a> Telephone: 416-477-8155</p> <p><a href="#">Read More</a></p>	 <p><b>Alessandro Tortis</b> B.A., LL.B., DD.N. Associate, Quebec Notary &amp; Legal Counsel Alex is on leave of absence</p> <p><a href="#">Read More</a></p>	 <p><b>Bonnie L. Altro</b> B.A., B.C.L., LL.B. Consultant, Ontario &amp; New York Attorney Email: <a href="mailto:baltro@altrolaw.com">baltro@altrolaw.com</a> Telephone: 416-477-8153</p> <p><a href="#">Read More</a></p>
 <p><b>Jeffrey Feinberg</b> B.A., J.D. Of Counsel, Florida Attorney Email: <a href="mailto:jfeinberg@altrolaw.com">jfeinberg@altrolaw.com</a> Telephone: 1-888-OO-ALTRO (462-2878)</p> <p><a href="#">Read More</a></p>	 <p><b>Matthew Silver</b> J.D., LL.M., FLC, CL.A. Counsel, Ontario &amp; Florida Attorney Email: <a href="mailto:matsilver@altrolaw.com">matsilver@altrolaw.com</a> Telephone: 1(888) 796-4789</p> <p><a href="#">Read More</a></p>	 <p><b>George A. Babits</b> B.A., J.D. Counsel, Ontario Lawyer Email: <a href="mailto:gbabits@altrolaw.com">gbabits@altrolaw.com</a> Telephone: 416-595-1333</p> <p><a href="#">Read More</a></p>	 <p><b>Olga Bekmeteva</b> M.F. &amp; Operations Manager Email: <a href="mailto:obekmeteva@altrolaw.com">obekmeteva@altrolaw.com</a> Tel: 416-477-8150</p> <p><a href="#">Read More</a></p>



## David A. Altro

*B.A., LL.L., J.D., DD.N., FLC, TEP*

- Florida Attorney, Canadian Legal Advisor & Foreign Legal Consultant
- Practicing law for over 35 years
- Author of two books:
  - ❖ *Owning U.S. Property the Canadian Way, Third Edition*
  - ❖ *Americans Living in Canada - Smile, The IRS is Watching You*
- Special contributor to the Globe and Mail
- Interviewed on CTV, CBC, radio
- Frequent presenter at legal and tax conferences in
- Bachelors of Arts degree (B.A. Honours)
- Civil law degree (LL.L.)
- Juris Doctor (J.D.)
- Post-Graduate Legal Studies (D.D.N.)
- 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
- Former member of TIGER 21
- Board of Directors of the Maimonides Geriatric Center
- Admitted to the Florida Bar in 1984



# ***SELLING US REAL ESTATE***

## **Tax Considerations in the US**

- **The Contract for Purchase and Sale**
- **Selling "AS IS"**
- **Foreign Investments in Real Property Tax Act (FIRPTA)**
- **Capital Gains Tax**
  - **Short term vs. long term rates**
  - **Corporate rates vs. personal, trusts or Limited Partnerships (LP)**
- **International Tax Identification Number (ITIN)**
- **Filing US Income tax return form 1040NR**



# ***SELLING US REAL ESTATE: CONT'D***

## **Tax Considerations in Canada**

- **Capital Gains tax**
- **Currency Exchange Capital Gain**
- **Principal Residence Exemption**
- **Foreign Tax Credit**
- **Avoiding double taxation**
- **Tax traps**
- **Problems with revocable trusts, limited liability companies and limited liability partnerships**
- **Moving proceeds back to Canada**



# *PASSP* **Five Tax Traps for Canadians who Own U.S. Property**



**THE TAX WORLD  
HAS CHANGED A  
LOT IN RECENT  
YEARS**

**Be aware of the  
following Tax Traps:**

- X US LLCs and Florida revocable trusts**
- X US LLLPs and LLPs**
- X Gifting US real property**
- X Joint tenancy with right of survivorship**
- X Canadian corporations**



# ***ALTERNATIVES TO SELLING***

## **Options for Accessing Equity**

- **Refinancing your US property**
- **US tax issues**
- **Canadian tax issues**
- **Can you deduct the interest on the mortgage?**

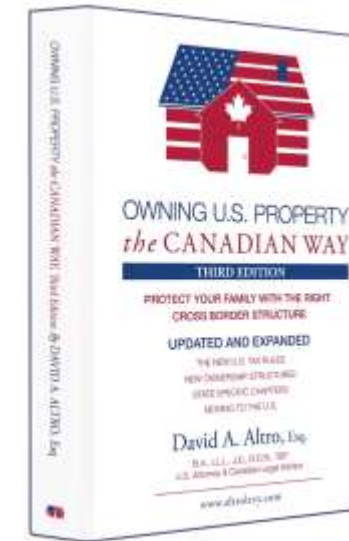
# Q & A

## David A. Altro

B.A., LL.L., J.D., D.D.N., FLC, CLA, TEP  
Florida Lawyer and Canadian Legal Advisor  
daltro@altrolaw.com



155 University Avenue, Suite 300  
Toronto, ON  
416.477.8150/ 1.888.GO.ALTRO (462-5876)  
www.altrolaw.com



ANALYZE

RECOMMEND

IMPLEMENT

# Your Presenter



## **Jonah Spiegelman** *J.D., M.A.*

Jonah is a cross-border tax and estate planning lawyer. His practice is focused on assisting clients that face taxation in both Canada and the U.S. Licensed to practice law in British Columbia and California, Jonah can give advice on both sides of the border, and implement that advice to create tax efficient investment structures to suit client objectives.

**boughtonlaw**

# **Cross Border Tax & Estate Planning Workshop**

Canadian Residents Buying US Property

September 2021

**Presented By**

**Jonah Spiegelman, J.D.**

*Cross Border Tax and Estate Planning Lawyer*



# Agenda



- How Many Days?
- Tax on Rental Income
- Incapacity
- Probate
- Taxation on Death
- Title Structure Options

# How many days can I spend in the US each year?



## Immigration Question

- 180 days from entry unless passport stamped for fewer

## Income Tax Question

### Substantial Presence Test

- 0 – 120: No problem
- 121 – 182: File Form 8840
- 182 – 365: File 1040NR

# What are the Issues if my US home is rented out?

- Withholding Tax  
v.s.
- File a Return
- Canadian  
Reporting
- Creditor Issues





# What happens if I lose my mental capacity?

- Canadian PoA's not enough
- Guardianship Proceeding
- Ownership structure is key



# What if I pass away owning US real estate?

- Is my Canadian will valid?
- How much does probate cost?
- Can I avoid US probate?



# What are the rules for US Estate Tax?

- Are Canadians liable for 'Death Tax'?
- Can the US tax my Canadian property?
- Didn't Trump fix that problem?



# How should I take Title to US Real Estate?



- Personal Name
- Partnership
- Corporation
- Trust

## Conclusion



*Good Advice Prevents Problems*

# Questions



- Please use the CHAT bar to submit your questions in writing during the live presentation.
- To register a question over the phone following the formal portion of our presentation:
  - Enter 1 followed by 4 on your phone.
  - If your question has already been asked, you can unregister your question by dialing 1 followed by 3.

*Note, this webinar is being recorded, and the presentation will be made available on our virtual advice event landing page.*

# Upcoming Events – Register at [rbcbank.com/vae](https://rbcbank.com/vae)

## **Ask the Expert - Everything You Need to Know about Buying U.S. Property**

Wed Oct 6 1:00 - 2:30 PM ET

## **Economic Update & Outlook**

Wed Oct 13 3:00-4:30 PM ET

# Disclaimer

This presentation offers general information only and is not intended as legal, financial or other professional advice. A professional advisor should be consulted for your specific situation. While information presented is intended to be factual and current, its accuracy is not guaranteed and it should not be considered a complete analysis of the subjects discussed. All expressions of opinion reflect the judgement of the presenter(s) as of the date of publication and are subject to change. No endorsement of any third parties or their advice, opinions, information, products or services is expressly given or implied by Royal Bank of Canada or its affiliates.



# Disclosures

Equal Housing Lender. Member FDIC.



® / ™ Registered trademarks of Royal Bank of Canada. Used under license.

RBC Bank means RBC Bank (Georgia), N.A., a subsidiary of Royal Bank of Canada.

Consult your financial, tax, legal, and other professional advisors prior to applying for a U.S. mortgage.

All loans and lines of credit are subject to credit approval.

Mortgages and Home Equity Lines of Credit (HELOCs) are subject to approval, including verification of acceptable income, credit worthiness and property valuations. Minimum and maximum property values and maximum loan-to-value ratios apply. Homeowner's insurance is required for all loans and lines of credit and flood insurance is required if the property is located in a Special Flood Hazard area. Escrows may be required on mortgages. There are closing costs associated with mortgage products. In addition to a ½% Origination fee (with a \$500 minimum and a \$2,000 maximum) due at origination and a \$50 annual fee, third party closing costs for Home Equity Lines of Credit may range from \$900 to \$9,000. Home Equity Lines of credit are not offered for properties in Texas. Home Equity Lines of Credit are not available for investment properties. An investment property is a property that is not occupied by the owner/borrower for at least two weeks per year.