

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



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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

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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://www.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
US ESTATE PLANNING
DOCUMENTS, DO NOT
REVOKE YOUR
CANADIAN ESTATE
PLANNING DOCUMENTS!

WHAT ABOUT ESTATE
PLANNING FOR US
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 overall tone is professional and contemplative.

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:

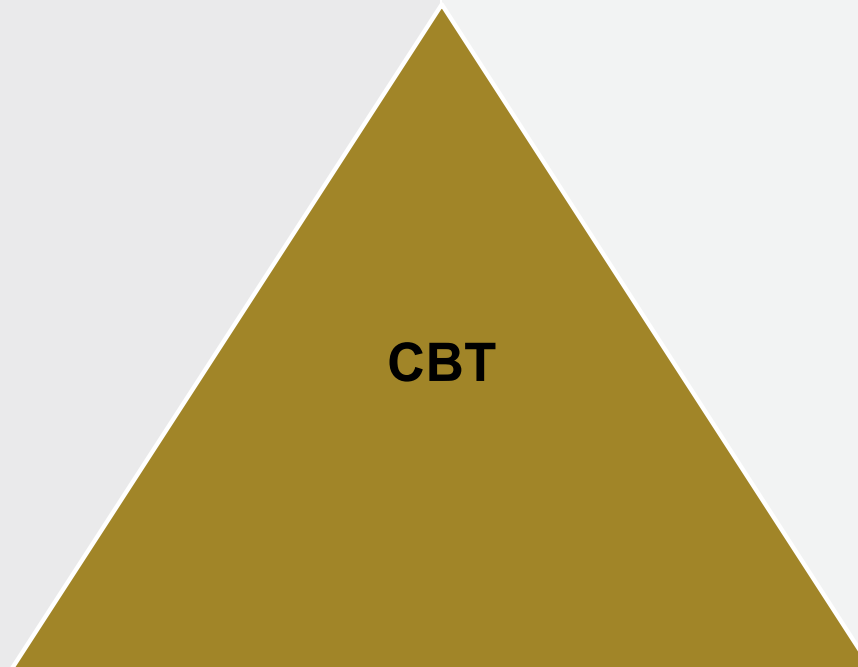
We are worried about what happens to our kids after we pass away. What if my son/daughter inherits my \$300,000 house in Florida and then his/her business goes bankrupt, can his/her creditors seize the house? Also, if his wife divorces him, will she get 50% of the property? What if I want to add my children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

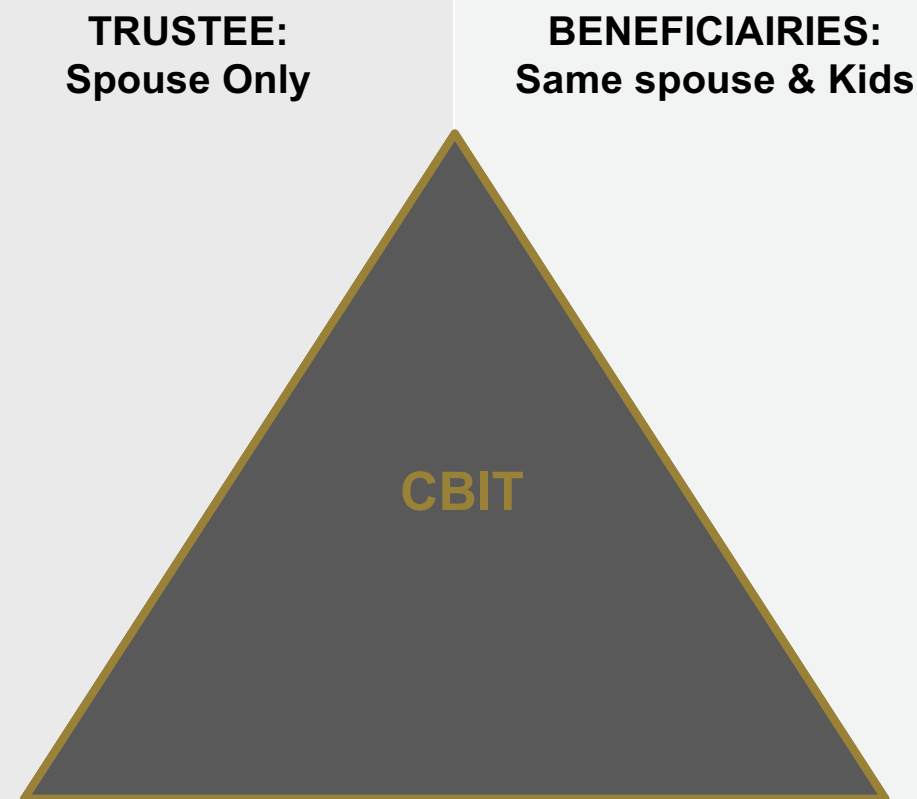
TRUSTEE: YOU

BENEFICIARIES: YOU



CROSS BORDER IRREVOCABLE TRUST (“CBIT”)

- Avoids probate & incapacity issues
- Avoids U.S. estate tax
- 21 year deemed disposition rule
- Preserves foreign tax credits (on sale/death)
- Provides creditor protection



CORPORATIONS

- Avoids probate & incapacity issues
- Avoids US 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 *(US 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%*
*US 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

Oct 31, 2023

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 US-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



ALTRO
— *LLP* —

US & CANADIAN ATTORNEYS, NOTARIES
AND LEGAL COUNSEL

OCTOBER 31, 2023

CANADIANS SELLING U.S. REAL ESTATE: KEY ISSUES

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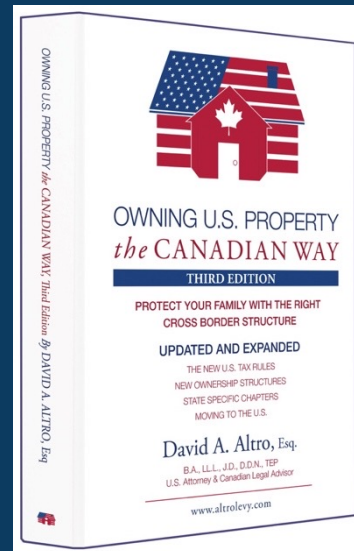
David A. Altro

Managing Partner

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

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
- 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

ALTRO LLP Services, Expertise and Clients

- **Canadians with US Real Estate**
- **Tax & Estate Planning for US Citizens Living in Canada**
- **Canadians Moving to the US**
- **Immigration to the US**
- **Tax & Estate Planning for Canadians**
- **Corporate Reorganizations and Estate Freezes**
- **American Residents Moving to Canada**
- **Probate and Settlement of Estates in Canada and Florida**





Selling your U.S. Property

- **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?

- US Guardianship procedure and expense**
- How to avoid US Guardianship**

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

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

Does it apply to Canadians owning U.S. assets, such as US real estate and US stocks?

- 1. Are your U.S. assets > \$60,000 U.S.?**
- 2. Is the value of your worldwide estate > \$12,920,000?**
- 3. Exemption dropping to \$5M on January 1, 2026**

U.S. Situs assets

- What is in?**
- What is out?**

Worldwide estate

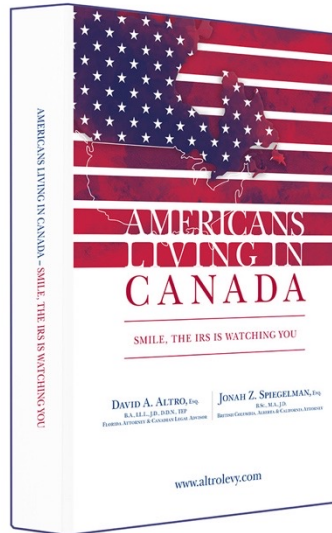
- Everything counts!**

Double-up the exemption under the Tax Treaty

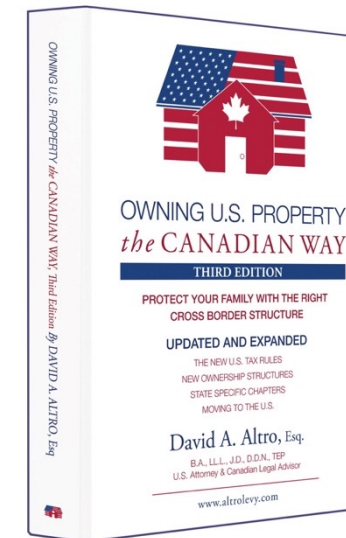
Avoid these complications with a Trust for Life "TFL"

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