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## PERSONAL FINANCE: ESTATE PLANNING

### JOINT VENTURE WITH STEP CANADA

# Avoiding snags for your heirs

For most people, tax and estate planning used to be simple and straightforward. Typically, there was a primary residence to be passed on to the children and perhaps some other assets.

Today, many of the issues that were once problems only of the wealthy have become a headache for the vast middle class of Canadians. Globalization, mobility and greater wealth accumulation means that many families have a member who lives and works in another province or country, or someone owns property or a business in another jurisdiction. Many Canadians of middle class means, for example, end up owning real estate in the United States or becoming U.S. citizens for tax purposes.

The largely unforeseen problem for this growing group of Canadians is that tax, estate and trust laws are different from country to country. This can result in major problems when the inter-generational transfer of wealth meets international variances in laws governing estates and trust administration. Even within Canada, a federal state, each province is a separate legal unit, constituting a “foreign” jurisdiction for succession and trust law purposes.

“The reality is that today we live in that global village that we spoke about years ago,” says Thomas Grozinger, principal trust specialist with RBC Wealth Management in Ottawa. “Mobility across borders is so much more prevalent, not only with family members but also with their parents who are making wills. Individuals are moving from one jurisdiction to another — potentially several times during their lives.”

Living in different jurisdictions, and sometimes acquiring assets along the way, means that people can fall under different systems of laws that govern not only estate planning but estate adminis-

tration of assets after death.

“What this globalization brings into focus is that different systems of laws may apply to a particular estate plan or a particular estate administration, and trying to work through that sometimes murky area of law is complex,” Mr. Grozinger says.

For Canadians in this position, or even those who think they may be in the future, Mr. Grozinger suggests that they consider seeking out a trust and estate planning professional who is a member of STEP, which stands for the Society of Trust and Estate Practitioners. STEP has more than 2,000 members in Canada and more than 17,800 members in 84 countries in total.

STEP is unique given its focus on dealing with the issues of international (and

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even interprovincial) estate planning and estate administration, and it has created a network of global members who can advise on the problems that arise and develop solutions for them.

“STEP is really the only organization that is international in scope and can assist people with these types of issues,” says Pamela Cross, a partner and the regional leader of the tax group of Borden Ladner Gervais LLP. “The good news is that there is a resource available.”

Ms. Cross notes that an increasingly common issue for Canadians occurs with the ownership of vacation property in the United States, primarily in hot spots such as Florida, Arizona and Califor-

nia. “You could be subject to some U.S. tax rules relating to that asset on your death. It also could be difficult for your estate professions to deal with that asset after death if it is not previously planned for.”

The Canadian and U.S. tax and estate rules “really don’t work well together,” she says, “but these conflicts come up all the time.”

It can get even trickier in countries such as France, where a plan to leave an apartment or other real estate to a specific family member is all but impossible because of that country’s forced heirship rules. “The French rules will require that apartment will be left to specific heirs in specific proportions and there is nothing that you can do in Canada with your will to prevent that from happening,” explains Ms. Cross.

Even in a more extreme case, such as passing on a Paris apartment, Ms. Cross notes that careful estate planning will allow people to accomplish the result that they want — or at least something fairly close to their end goal.

“But you need to do the planning at the right time, and it is usually not possible to do it after the fact.”

Estate planning and administration headaches can also occur within Canada, as family members and assets have spread across the country. It can be as simple as marriage. In all of the common-law provinces, until the end of last year a marriage would generally revoke prior valid wills made by the individuals, meaning that they would have to create a new will to avoid distribution of their estates based on intestacy rules. Recently, Alberta passed new legislation in which marriage no longer revokes a prior will.

“This creates an interesting conflict of laws issue,” says Mr. Grozinger, who, like Ms. Cross, is a member of STEP Canada. “What happens if, for example, they marry in Alberta and then move to Ontario, which still has the rule that wills are revoked, and then die in Ontario? What rules govern?” The issues could be further complicated if they own real estate in a third jurisdiction. Add in foreign marriages and the issues grow even more complicated.

“There is a whole array of elements that now have to be considered to ensure that the proper beneficiaries do in fact receive what they are entitled to.”



DAVID KAWAI / POSTMEDIA NEWS

Photographer Brent Gervais, 25, knows that having a will is important, “but right now it’s not high on the priority list,” he says.

Smart planning includes a will, no matter your age

# The youth of the matter

BY TERESA SMITH

Brent Gervais is in the prime of his life. Last year, the 25-year-old bought a house with his girlfriend in an Ottawa neighbourhood they both love, his freelance photography business is keeping him busy and by any estimation he’s well on his way.

But while planning for the future and building a successful business, he hasn’t considered one important fact of life: death. Experts say more young people — especially those with a business or a young family — need to plan for what happens to their life’s work after they die.

“I know it’s important at some point — but right now it’s not high on the priority list,” Gervais says. “I’m mostly thinking about career building and work — the stuff you do when you’re 25.”

According to a new survey conducted by Pollara for Bank of Montreal, Canadians between the ages of 18 and 39 are the least likely to have done any estate planning. Of that age group, only 43% of those polled said they have created a last will and testament; 68% of those between 50 and 64 and 84% of seniors have one.

“Twenty-year-olds aren’t interested in planning their funeral,” says Tom Carter, the Edmonton-based author of *Write Your Legal Will in 3 Easy Steps*. “They’ve got other things to spend their money on — and quite rightly.”

But having a will — regardless of a person’s age or assets — is part of sensible financial planning. In the event of your death, it will allow your family to spend time comforting each other rather than consulting lawyers about your estate.

Sara Plant, vice-president

and national director, wealth services, BMO Harris Private Banking, says making plans now can avoid emotional and financial pain in the future. Without a will, Ms. Plant says, it’s more complicated to administer the estate. “The courts can become involved, there are extra forms and documents to fill out, and it actually costs more than it would have cost to have the will put in place to begin with.”

To further complicate matters, Ms. Plant says, if a business owner passes away without a will, the executor of the estate won’t have the tools required to deal with the business assets, any employees or plans to wind up or sell the business.

In Mr. Gervais’s case, in addition to owning a home with his common-law partner — whose status changes depending on which province they live in — he is the sole owner and employee of his photography business. There are many loose ends that could unravel without careful planning.

As a photographer doing business in a digital environment, many of his assets are online in password-protected websites. He doesn’t own a storefront but he does own a webpage. “I have thousands of photos up on the Web ... and only I know who those photos belong to and what they could be useful for. But obviously that won’t help if I die.”

Digital assets are becoming an important part of estate planning, particularly for young people. Tim Hewitt, Ottawa-based founder of legal-wills.ca, says in the absence of clear instructions, family members could rack up costly legal fees trying to navigate a young business person’s online life.

“Their family may not know that they have a PayPal account or a blog that earns them money or an online gambling

account — all of these different assets could be worth a lot of money,” Mr. Hewitt says.

Lynne Butler, a St. John’s-based estate-planning lawyer and author of *Estate Planning Through Family Meetings*, says even if their affairs seems simple, young people should seek advice when crafting a will.

“There’s so much value to going through the process,” she says. For example, if a young couple with a house is expecting their first child, an estate-planning lawyer will ask them to think about every eventuality. “If one of them passed away, would the other one be able to keep the house? How should the title to the house be set up? Do they need life insurance? Is there an RRSP and how is the beneficiary set up? Are they starting an Registered Education Savings Plan for the child and, if so, what needs to be in the will to address that?”

It can seem daunting, but Ms. Butler says while thinking about death can be scary, a will should give people peace of mind. “You’re doing it for other people. It’s not really about you dying, it’s about saying ‘if something happens to me, these people are going to be left behind and I don’t want it to be any worse than it needs to be.’”

Mr. Gervais understands the importance of easing any potential burden on his family.

“I think it’s good to just stop life for a minute and think about this stuff,” he said. “None of us are planning to die young but obviously we can’t predict what’s going to happen ... That’s what scares me: What if something happens and all of my stuff gets taken away for some legal reason and none of it goes to my family?”

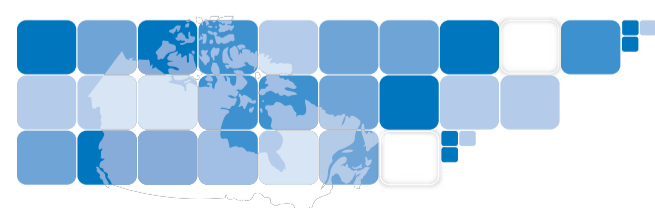
But is he ready to sit down and sort out his affairs?

“I’m pretty busy today,” he says, laughing.

Financial Post



Thomas Grozinger of RBC Wealth Management and Pamela Cross of Borden Ladner Gervais note that increasingly complex laws make estate planning more crucial.



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