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Canadian Estate Plans with U.S. Beneficiaries or Appointees

With the transient nature of a cross-border sports career, estate planning can become complicated when Canadian estate plans name U.S. citizens as beneficiaries, estate executors, or powers of attorney. Let's dive a bit deeper into this:

Canadian Wills with U.S. Beneficiaries

If you have an estate comprised of Canadian assets and you plan to leave those assets to a person living in the U.S., there are varying legal, tax, and financial rules you'll need to understand.

For example, if a U.S. beneficiary inherits property in Canada and then wants to sell the property, the beneficiary may need to follow both Canadian and American procedures. Transferring assets across borders, such as bank accounts or investment portfolios, also may involve differing or conflicting banking regulations or tax reporting requirements.

For tax purposes, the U.S. imposes an estate tax on the worldwide estate of a resident. This means that your U.S. beneficiary could be taxed on assets he or she inherits from you. The U.S. has a federal estate tax (the current exemption is quite high—$13.61 million per individual—but is subject to change), and several U.S. states also impose state estate taxes, including New York, Minnesota, Massachusetts, to name a few that are home to NHL cities. State taxes generally have lower exemption limits than the federal exemption.

Because of the many differences in the Canadian and U.S. legal systems, we maintain a network of U.S. solicitors in various states to help us navigate these scenarios.

Naming U.S. Executors or Other Appointees

When creating an estate plan, some of our clients choose executors or powers of attorney who live, or plan to live, in the U.S. This can create complexity and potentially lead to unintended tax consequences.

For example, in Ontario, estate law requires that a surety bond be posted if the executor is a resident of the U.S. An estate essentially is considered a trust, and in the case where the executor of that trust is a non-resident, the trust is also considered a non-resident of Canada. The same holds true if the executor is currently a Canadian resident and moves to the U.S. after the date of death of the testator and during the administration of the estate. In this case, the trust becomes a non-resident of Canada.

Additionally, if an individual in the U.S. is acting as the executor of a Canadian estate, there are U.S. reporting obligations and investment management concerns that would need to be addressed.

One final point to remember: the issues above and others are not avoided solely by the citizenship of the appointee, executor, or power of attorney. It is the residency of that individual, not the passport or dual citizenship with Canada, that creates the issue.

So, here's the bottom line: if you are considering naming people who are now or may become residents of the U.S. as your beneficiaries, executors, or powers of attorney, proper care and planning is required to ensure that your privacy and intended wishes do not have negative consequences.