

FAQS ON U.S. LEGAL TOPICS OF INTEREST TO CANADIANS – ESTATE PLANNING

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Practices & Industries

Canada-U.S. Cross-Border

Question: Because I travel frequently from my home in Toronto to South Florida on business, I recently purchased a condo in the Boca Raton area. Are there any special planning considerations for people like me who live away from home for periods of time?

Answer: A couple of years ago, environmentalists coined the term “locavore” to describe someone who shops for locally grown and produced food. Perhaps the estate planning community should coin the term “locacogitore” to describe someone who plans locally, especially regarding their estate and personal document planning. Particularly for the many Canadians who have property in the United States or another foreign country and/or who frequently travel to another country on business, becoming a locacogitore is important.

Where issues arise most often is in regard to ancillary estate planning documents, such as living wills and powers of attorney, including powers of attorney for health care. While there are statutes and court systems that give formal effect to wills and trusts (although local planning is encourage here as well, especially in international cross-border situations), the laws and policies regarding living wills and powers of attorney are not nearly as developed. This gap is widened by the fact that lay persons (bankers, brokers, and health care professionals) are being asked to rely on documents for which there are no accepted international (or even national, for that matter) standards.

For example, in Florida, the statutes provide specific protection for those relying on living wills and powers of attorney, and it is customary to specifically cite those statutes in the documents to direct the attention of those being asked to rely on them for the protections offered. When a living will or power of attorney from another country either contains no such protection or cites a statute from that other country, who can blame the hospital administrator, for example, for telling a family that the hospital’s legal department will have to review the documents before the individual’s wishes or the family’s decisions will be respected.

For a small investment in time and money, a person who intends to spend any significant amount of time in another country or who has acquired property there should have a general power of attorney and a health care power of attorney (living



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will) prepared that complies and conforms with the law of the state or country being visited in order to deal with situations that may arise during his or her stay.

Because the use of these documents in most instances is extremely time sensitive and emotionally charged, becoming a locacogitore is a wise investment.

