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# Quarterly Exchange

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**TD Wealth** |



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I own a home  
in Florida.  
What are my  
options?



**Many snowbirds may find themselves grounded by the COVID-19 pandemic this year. If you own property in the U.S. you might be weighing options to rent, sell or simply eat the expense. Chris Gandhu offers some things to consider.**

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With COVID-19 there is much in flux for a snowbird to consider this year, especially if you winter in the United States. As I write this, border closures for non-essential travel continue, and many of the snowbird states are still seeing a significant number of COVID-19 cases. This will have a major impact on the hundreds of thousands of Canadians that winter in the sunshine belt of the U.S.

With land borders closed for non-essential travel, that means snowbirds may be grounded this year. Canadians could theoretically fly to the U.S., as the U.S is still allowing Canadians to fly into the country, but even though you may be able to get to your destination, there are still many issues that would need to be accounted for. For example, would you be covered under a travel health insurance plan? Would you want to expose yourselves to the increased risk of spending time on an international flight or in a COVID-19 hotspot? And if you do need to return to Canada immediately, are you confident you could get back?

For these reasons, many Canadians may decide to stay put this year. While you could always do nothing, eat the costs and wait things out, you might wonder what other options are available. If that's the case, here are some considerations if you are thinking of selling or renting your U.S. property.

#### **If you decide to rent it out**

Renting the property may be a good option this year. The proceeds could help offset some of your expenses and, potentially, provide some extra income. But since you can't be nearby, you may have to hire a property manager to look in on your property and help with any repairs or maintenance that needs to be done. Of course, you will need to declare any income you receive to the Internal Revenue Agency (IRS), and that can create some complexities.

Canadian residents who earn rental income from their U.S. property will have to remit a withholding tax of 30% of the gross rental income to the IRS. Your tenant will have to withhold this amount and remit on your behalf. Otherwise, non-residents of the U.S. can also choose to be taxed as if their rental income was part of a business in the U.S. That means that you could deduct your expenses related to the rental, which may be a better option.

Bear in mind that a Canadian taxpayer must report rental income in the state where the property is located as well as in Canada. Since we have a Canada–U.S. Tax Treaty, the U.S. tax paid will be creditable against the Canadian tax. However, be aware that deductions permissible in the U.S. may not necessarily be permissible in Canada; our rules and their rules on deductible expenses are different. And it's not a good idea to try and hide anything under the rug. Just recently, the Canada Revenue Agency (CRA) openly declared that it will be auditing Canadians who own U.S. properties.<sup>1</sup>

### **If you decide to sell it**

We don't know when snowbird life will take flight again. If you were already thinking of selling that U.S. property, now might be a good time – especially if you feel like you may not get much use or enjoyment from it in the coming years. Areas hardest hit by COVID-19 could suffer reduced property values amid lower demand for tourism, so your investment might be down, but so too might your capital gains tax obligation. And while meeting with a realtor or real estate lawyer in the U.S. could present logistical challenges, it's not impossible with digital technology.

As a Canadian, if you sell your U.S. property, you

are most likely subject to an IRS withholding tax on the selling price. If the property sells for between \$300,000 and \$1 million, and the property was originally purchased with the intention of being used as the buyer's residence, not for renting, it may only be subject to a 10% withholding tax. The withholding tax will be offset against the capital gain tax on the sale.

You would have to report the gain or loss on the sale to the IRS, as well as to the CRA. But you may be interested to note that your U.S. property could qualify for the Principal Residence Tax Exemption which may save you some money in capital gains taxes.

Note that state income tax may apply on the sale depending on where the property is located. And, if you pack up your belongings and ship them up to Canada, you may face customs and import taxes.

Whether you decide to rent or sell, both require some expertise in U.S. tax law, which a cross-border tax professional could help with. And there is always the choice to wait things out. Besides your carrying costs, you may wish to pay a local property manager to keep an eye on the place until it is viable to visit again.

<sup>1</sup>Financial Post. "Snowbirds beware: The CRA is hunting for bulk U.S. real estate data to keep tabs on transactions by Canadians". July 10, 2020.



# How to make a will



## 15 things you want to get right

**Whether you're making your will for the first time or giving it an update, this checklist can help ensure your wishes are respected. Lesson one: to avoid disaster, don't do this yourself**

Will is a legal document that captures your wishes and intentions for your property. Unfortunately, small mistakes can cause big headaches. Laima Alberings, a Tax and Estate Planner at TD Wealth, says one of her first suggestions to those who want to make a Will is to work with a lawyer who focuses primarily on Will and estate planning. Needless to say, she also advises against using a make-your-own-will kit or worse, attempting to write one yourself.

With so many assets at stake and the well-being of your loved ones at risk, it is worth the extra effort and money to find the lawyer with the right expertise.

"I've seen too many Wills made by people who used Will kits or tried to do it themselves, that were done improperly or that didn't have proper witnesses — and that can invalidate a Will."

If you've decided to make or update your Will, here's a checklist to consider as you head to the lawyer's office.

## Use a lawyer whose practice is Wills

Alberings says there are a lot of lawyers available to use, but it's best to work with someone whose practice is dedicated to Wills and estate planning. With so many assets at stake and the well-being of your loved ones at risk, it is worth the extra effort and money to find the lawyer with the right expertise.

## Get your name right

Yes, it sounds simple but include all names you are known by. This includes your legal name, shortened forms or variations you have used on banking documents or legal documents, and Anglicized versions of your names you may have used when you immigrated to Canada. That way, your estate will be able to prove you are the person who has rights to any account that has variations on your name attached to it.

## Revoke older Wills

You may have made Wills previously, perhaps with other lawyers and maybe in other countries. A clause revoking those Wills negates them and limits any complications. If you do not wish to revoke a prior Will (if you still have assets in that other country), it is important you note the presence of

your other Will to your lawyer so they can carefully draft your new Will.

### **Choose an appropriate executor and guardian for your children**

The executor is charged with administering your estate and ensuring your intentions are fulfilled. Most people choose a close relative, but Alberings suggests that more thought should be put into the selection. She says the executor should be competent and willing at the time of your passing, therefore, a sibling may not be appropriate if you pass away in your upper years and your executor is of a similar age. She also says that the executor should ideally reside locally.

If you have minor children, you need to designate a guardian and the same concerns should be applied here. A guardian should also share the same attitudes to lifestyle and education that you do. Note that the courts ultimately decide who will be guardian, although your stated preference carries weight. Be aware that other people can make competing applications to be guardian.

### **Make a trust for those who are vulnerable**

If you have minor children, consider setting up a trust to help manage the money you pass over to kids. Not only should you appoint a responsible trustee, the trustee can offer ideas on when and how funds will be transferred to your children once they are mature enough to manage their inheritance. One thing to consider is at what age a young adult should receive their inheritance: You probably don't want them to have the burden of large sums of money as soon as they turn 18 but you also may want to ensure that their accommodations and education are looked after.

Similarly, if you have a child with a disability or someone you are responsible for, you should consider preparing a trust that can care for them for the rest of their life. Since the responsibilities are large, with minors or with people with disabilities, you may wish to consider getting help from a trust company to ensure these people are looked after as well as possible.

### **Always have a Plan B**

Once you have picked an executor and guardian, pick alternates in case anything should happen to your first choices. Alberings says that you should also consider alternate plans for all your decisions in your Will in case circumstances change. So, you will also need an alternate trustee if you include a

trust and alternative plans for your heirs if they die before you.

### **Be specific about personal items**

While the bulk of your estate may be money, it is the family heirlooms like wedding rings or war medals that may provoke the most emotion and conflict from your heirs. Alberings recommends first having a family discussion and discuss who exactly gets what. Secondly, she says people should include a personalized effects memorandum with their Will which accurately describes each item so that any possible resentments are headed off.

### **Think about where property should go**

While everyone's situation is different, it is often the vacation properties or summer homes which cause dissent among family. The heirs may not want to maintain — or can't afford to maintain the cottage — or may not want to be joint owners with their family members. Again, Alberings suggests having a family meeting to see how everyone involved feels and if there can be solutions made while you're still alive.

### **Give heirs shares**

Dividing up the rest of the estate can get complicated if you apportion cash amounts to heirs: What happens if the estate does not have enough funds for the heirs by the time you pass away or what happens if an heir predeceases you? Alberings says the best way is to allot shares to your primary heirs. That way, after taxes, debts, expenses and legacies have been paid, what remains can be divided into shares for each heir.

### **Make a Power of Attorney while you are at it**

A Power of Attorney (POA) is a legal document that gives someone of your choice — usually a close relative — control over your financial and legal affairs if you become incapacitated. You don't need a POA to complete your Will, but you often have to make similar decisions for these documents. Why not get them all done at the same time while you've booked your lawyer?

### **Ensure you coordinate with your spouse**

Your spouse's Will doesn't necessarily have to be a duplicate of yours, but you don't want them to have conflicting statements if you own assets jointly. Ensure that you are both on the same page. A lawyer can help ensure that both of your intentions are reflected in your Wills so that events proceed smoothly.

## Get organized around second families

Second spouses, children from a second marriage, step children and common-law relationships can make Wills complicated. Make it clear in your Will who are the primary heirs and what should happen if anyone should predecease you. Family law varies province to province and your lawyer will be able to ensure that what you want in your Will doesn't conflict with these rules. As well, each province treats common-law relationships differently. Make sure that you work with a lawyer so your stated intentions are meeting your legal obligations and will effectively be carried out.

## Remember foreign assets

If you have a vacation property in Florida or Arizona, it might be best to have a Will prepared in those states. Each jurisdiction has its own laws around estate administration and taxation, and Alberings says things may go smoother if you have documents prepared in each jurisdiction where you own assets.

## Consider pet care

You can't leave money directly to your pet, but you can make provisions so that they're looked after. That can mean willing your pet to someone who's happy to take the pet on and giving them some funds to feed and care for your pet.

## Remember your digital life

Alberings says this is increasingly an area of concern for people and their heirs. You may have assets in a PayPal account that someone may need to access after you die. You may wish to consider whether you want your social media accounts to simply disappear or whether you want someone to curate a memorial to you. What do you want done with all your digitized photos or music? If you care about what happens, make sure it's dealt with through your estate plan.

"Thinking about having a Will prepared can make you uncomfortable and force you to make tough decisions. But the document is an expression of your feelings for your loved ones and what matters most in your life," says Alberings. "Not having a Will prepared, or having one done improperly, could result in increased costs for your estate and have a negative impact on the people you are trying to benefit and the goals you are trying to accomplish through your estate plan."



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## 7 ways to give your kids money



**A trust? A loan? A Deed of Gift? Parents with cash-strapped children may wonder what is the best way to help their kids. Before you open your wallet, you may want to read this.**

If your adult child is living at home or is still on your family “payroll,” you may be aware of this issue personally and don’t need the media to tell you: Young people, as a whole, may be feeling the financial pinch.

It’s not their fault. Wages have crept forward only slightly in the past 40 years, while costs of living, particularly the high prices of housing in major cities, means younger generations may not be enjoying the same standard of living their parents did at the same age. Statistics support this: The baby boomer generation (born between 1946 and 1964) currently owns nearly 50% of all household wealth in Canada while Millennials (born between 1981 and 1997) have just about 8%.<sup>1</sup>

The COVID-19 pandemic has made the situation worse. Economists say Millennials and Gen-Zers (born in the late 1990s and early 2000s) — some who are still in school and some who in the workforce — are suffering through the COVID-19 economic era with job losses, reduced income and financial insecurity.<sup>2</sup>

If your 20-something kid is still saving for a skateboard instead of a mortgage, you know what we’re talking about.

Parents may naturally want to help out and see their kids get on with their lives, and there are lots of ways to do it. Food and board are obvious, and family plans for car insurance and phones are both convenient and make a lot of sense. But as they get older, move out and still need funds, the size of the handouts can begin to balloon. Parents may rightly be concerned over the sums of money they are giving and how they are doing it.

Tannis Dawson, a High Net Worth Planner with TD Wealth, says without knowing the best way to give kids money, the transactions can be high-risk.

“It all depends on everyone’s individual situation and whether a parent is helping a kid to get through school, finance a wedding, purchase a car or even helping them buy their first home,” she says, pointing out that parents should ensure first that they can afford to help. “But if parents don’t plan properly, they could expose their money to their kid’s creditors or face a big tax bill if they don’t foresee the results of their short-term moves.”

Dawson cautions that there are other risks parents should consider, including what might happen to their loving contribution in the event of a broken marriage or a business partnership. So, if you are considering giving money to one or several children, here are seven ways you could do it.

<sup>1</sup> “Distributions of household economic accounts for income, consumption, saving and wealth of Canadian households, 2019,” Statistics Canada, June 26, 2020, accessed July 31, 2020, <https://www150.statcan.gc.ca/n1/daily-quotidien/200626/dq200626a-eng.htm>.

<sup>2</sup> Beata Caranci, James Marple, “Younger Workforce Pays A Steep Price During Recessions,” TD Economics, May 8, 2020, accessed July 20, 2020, [economics.td.com/younger-workforce](https://economics.td.com/younger-workforce), accessed Aug. 10, 2020

## **Give them the money...with no strings attached**

The simplest and cheapest way to give money away is to... just give it away, with no contracts, no conditions for payback and no lawyer's fees. However, Dawson warns that the informality of these interactions offers little support should family relations turn sour. Consider this scenario: A mother agrees to give one of her children some money to help them through an emergency. Years later, the child thinks the money was a gift with no payback expectations. Another sibling, however, thinks it was a loan because it was a sizable amount of money. After the mother passes away, the children may come into conflict if one sibling assumes the money should be paid back to the mother's estate and another believes it shouldn't. Dawson suggests that if you do give money away as a no-obligation gift, consider passing it along a little at a time rather than a lump sum because, in most cases, you lose control over how the money is used when you give it to your child.

## **Use a Deed of Gift**

A Deed of Gift is a legal contract that documents the gift of money from one individual to another. Dawson says it can help to avoid the problems of simply giving money away and may also protect the funds in case of a marriage breakup, as long as the gift is for the child alone and not the spouse. (Issues can likewise arise if the funds are used to buy the marital home or have become part of a couple's joint account.) There are legal fees involved to have a Deed of Gift drawn up, but Dawson points out that giving away assets may also help the parent tax-wise in the future. Fewer assets means potentially fewer taxes to pay and, in the case of death, less probate tax.

## **Draw up a certified loan**

If a parent wishes to be paid back, Dawson says the best choice is a documented loan prepared by a lawyer, which will stipulate the interest and payment schedule. There are legal fees involved, but funds from a loan are protected. As well, a loan has the flexibility to be forgiven in a Will so that the child may never have to pay it back. In this way, a parent can protect their gift while alive and ultimately let the child have the funds at a later date. Dawson notes however that the recipient must actually make interest payments. If there are no signs of payments after a number of years, the courts may declare the loan to be a gift and take away the protections a loan has.

One thing Dawson cautions against: making your own informal loan at the kitchen table. In case of a disagreement on the terms, the contract may not be enforceable and may not provide any protection that a certified loan would.

## **Use a prescribed rate loan**

In this arrangement, an adult child would invest the funds received from the parent and enjoy the income from those investments. And while prescribed rate loans can be complicated, require large sums of money and won't make sense in all economic climates, this method can help ensure the parent keeps a certain amount of control over the money and is also paid back. In this plan, high-income parents can lend funds for investment purposes to a child at the prescribed rate, which is currently 1% as of July 1, 2020. There is an added advantage that this method would reduce the income of the parent, which may result in a smaller tax bill overall. Dawson says that this method requires a promissory note to be signed and needs a financial advisor, accountant and a lawyer to set this in motion as it has to be economically viable for both parties.

## **Enact a Trust**

Dawson says one of the best ways to protect money is to set up a trust, which also uses a prescribed rate loan. Since the parent is often the trustee, they can remain in control over how much and in what circumstances the money is given. Dawson says that there are legal fees and ongoing accounting costs so a trust may not be a viable option unless





large sums of money are involved. But if helping out a child means providing them with housing, an option may be a “bare” trust, in which the child becomes the “beneficial owner” while the parent has legal title to hold the property. This allows the parent to retain control over their asset in case a child’s marriage breaks up or is pursued by creditors.

### **Hold a mortgage**

If a child wishes to buy a home, you can take the role of the bank — if you have the means — and lend the child money through a registered mortgage. The parent would have legal documents drawn up so that the child is legally obliged to pay back the loan while the parent has the assurance of knowing that they hold equity in the home should any problems arise. Again, the asset is protected from financial problems if the child has any. As with a certified loan, the mortgage can be forgiven in the Will.

### **Jointly purchase a home**

Dawson points out several problems with this method of helping out a child, starting with the fact this arrangement can complicate the principle

residence exemption for both parties. That could trigger a large tax bill down the line. Secondly, once you become joint owners, the decision can’t be changed. If either party disagrees over the terms of their arrangement, neither can sell the home without permission of the other. Additionally, Dawson says that if a parent is a joint owner of a property, and the child’s marriage ends, the ex-spouse will have a claim on the property, further complicating matters.

Some parents may consider being a guarantor to the mortgage if the child has a poor credit history. Dawson says that also comes with risks: If the child defaults on the loan, creditors could come after the parent if they don’t take responsibility to pay down the mortgage.

Ultimately, helping out your kids in a time of need can be a labour of love but it shouldn’t jeopardize your own financial plans, says Dawson. “It’s best to get help from a financial advisor and lawyer any time you are giving away large sums of money,” she says, “that way they can help to ensure the financial well-being of the parties involved are being looked after.”

— Don Sutton, *MoneyTalk Life*



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