Owning Property in the US

There are many issues that need to be considered before you buy property in the US, including, but not limited to:

1. Will the property be used only as a second home or will it be rented from time to time?
2. If you will be renting the property, how concerned are you about protecting your assets in case of a lawsuit?
3. How should you title the property?
4. How can you avoid probate at death?
5. What other forms need to be filed?
6. What are the tax consequences of renting the property?
7. What are the tax consequences of selling the property?
8. What are the US estate (death) tax rules and how can you avoid the estate tax, if it applies to you?

Owning property in the US has enough issues to fill a book, so we will simply give you the basics and provide a link for more details. In fact, there are a few books written on the subject. Most books written on buying US real estate are written by real estate agents, but one book; *Buying Real Estate in the US: The Concise Guide for Canadians* is written by cross border tax expert, Dale Walters.

The single most important decision in buying a property in the US is how to own the property. The way you own (title) the property will have an effect on income and estate taxes, asset protection and probate. Proper ownership depends on a number of factors so we cannot give you specific advice, but there are two general comments to keep in mind. Generally speaking, you do not want to own your US property in a corporation (US or Canadian), or in a limited liability company.

If you rent your property, you will generally be subject to a 30% withholding on the gross rent. You can avoid the withholding by making an election to be taxed on your net profits or by filing IRS form W-8ECI. This form must be given to your property manager (if you are using one) or to the tenant. You must file and pay US tax on the net profits from the rental activity. You will also have to report and pay tax in Canada. Any tax paid in the US can be taken as a credit on your Canadian return. If the property is located in a state that imposes taxes, you will also need to file and pay taxes to the state.

Note: Not all states recognize the federal election to be taxed on the net profits and you may be required to pay withholding tax to the state. Check with your tax advisor.

Canadian Form T1135 - Foreign Income Verification is required if you have C$100,000 of combined foreign assets such as US real estate. A second home does not count.

If your worldwide net worth exceeds the US exemption amount of US$5,430,000, per person (2015 and indexed for inflation), you will most likely be subject to US nonresident estate tax. The most common way of avoiding US estate tax is to own the US property through a Canadian or other foreign entity. The choices are a corporation, trust or partnership. In most cases you do not want to use a corporation because of double tax. In the right circumstances, an irrevocable Canadian trust might be a good choice, but in most cases the two-tiered limited partnership will be the best choice. When it comes time to sell the property you will generally be subject to withholding of 10% on the gross selling price. The Foreign Investment in Real Property Tax Act (FIRPTA), requires that for nonresidents, 10% of the sales price be withheld unless the sales meets an exception. If the home is sold for US$300,000 or less AND the buyer will live in the home at least 50% of the time it will be occupied, AND will attest to that fact under penalty of perjury.

Note: If the sale does not meet this criteria, the withholding can be reduced by filing IRS Form 8288-B - *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*.

Resources:

FIRPTA Flowchart

Book: Buying Real Estate in America: The Concise Guide for Canadians

