Welcome to FOCA's "Ask the Expert" series – "Passing the Torch." Each month, estate lawyer Peter Lillico will answer a member question about cottage succession.

April 2025 – ***QUESTION from Jim S****:*

We are dual residents currently residing in the U.S. and have owned a cottage in Canada for over 30 years. The property was purchased when we lived in Canada. Our children are Canadian residents and are very interested in keeping the cottage long term.

As we begin our estate planning, what key legal and tax considerations should we be aware of with respect to this property? Specifically:

- *Should we consider transferring ownership to our children now, either through a sale or by placing it in a trust? Tax implications?*
- *Are there advantages or disadvantages to making this transfer during our lifetime versus including the property in our estate?*
- *How should we weigh the implications under both Canadian and U.S. tax law, including potential capital gains, U.S. estate tax, and Canadian deemed disposition rules?*

We'd appreciate guidance on strategies to ensure a smooth and tax-efficient transfer, ideally preserving the cottage for the next generation.

Peter says… Here is the answer to Jim's question:

You ask very important questions and with your dual citizenship and split residency status the answers are too complicated to answer in a couple of paragraphs. Here is some summary advice:

- You should consider transferring ownership to the children during your lifetime, as a potentially viable succession approach. Once all tax, legal, financial and family aspects have been factored in, you can make an informed decision as to whether an "early inheritance" approach is preferable to passing the cottage on after the death of the parents.
- There are tax advantages and disadvantages to an "early inheritance", which will be quantified by exploring this approach thoroughly with your professional advisors as above. There are also important family aspects to be considered, including whether the parents have any control or usage after the inheritance.
- You will need to involve a tax planning accountant with cross-border expertise as a crucial part of your succession planning to inform you of the capital gains tax consequences in each country, the Canadian tax process whereby a non-resident transfers Canadian property, US Gift Tax applicability, and the impact if any of the US Federal and State Estate Tax.

Your best starting point is to get the fundamental tax advice, since all of your subsequent decisions will depend upon that. When the tax situation is clarified, then a lawyer can assist with succession planning methods, timing and implementation.

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To learn more about cottage succession,
register to attend an upcoming FOCA webinar with Peter Lillico, or
purchase access to a recording of one of his past talks or the
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