

Willing it Away:

**What You Should Know
Before Appointing a
Foreign Executor to
Your Estate**



You're drafting your will, and want to bestow the honour of being your executor to someone you trust. But, if they don't live here in Canada, that could have some big implications for your estate.

Brought to
you by



When drafting a will, one of the biggest decisions you'll make is who will be appointed to carry out your wishes. That person is called an executor, and should be someone who is trustworthy and has your best interests at heart. With one in five Canadians being born abroad, and the increased ease of moving from country to country, that means that many of us have significant ties to family and friends elsewhere.¹ If you are considering someone abroad as the executor of your estate, Nicole Ewing, Tax and Estate Planner at TD Wealth wants you to understand what that could mean for your estate plan.

MoneyTalk Life: Is this becoming more common? Are more people looking to appoint foreign executors?

Nicole Ewing: I see foreign executors being appointed in increasing numbers for a variety of reasons. Most commonly it's simply because, in this era of globalization, friends and family members are more frequently relocating, either temporarily or permanently, to other jurisdictions. Similarly, individuals who have immigrated to Canada are appointing trusted friends or family members who live in their previous country of residence. I also see people wishing to appoint foreign executors to deal with assets or beneficiaries in other jurisdictions. In some cases, it often doesn't occur to folks



**Nicole Ewing,
Tax and Estate
Planner, TD Wealth**

As a TD Wealth Tax and Estate Planner, Nicole helps create customized estate plans to optimize the transfer of wealth to future generations. Nicole utilizes her extensive experience in tax, corporate, trust and estate law to provide comprehensive planning solutions. Nicole holds an Honours Bachelor of Arts degree from the University of Western Ontario and a Law Degree from Osgoode Hall Law School. She earned her TEP designation from the Society of Trust and Estate Practitioners (STEP) and is in the final stages of obtaining her CFP designation. She is also completing the CPA Canada (CICA) In-Depth Tax Course.

that the person they've named would be a "non-resident executor" or that there could be complications related to that.

MoneyTalk Life: What are the tax implications of having a foreign executor?

Nicole Ewing: When an executor makes decisions and exercises control from a different country, your estate may be deemed to be "non-resident" for tax purposes. That could result in losing your preferential capital gains and Canadian dividend tax treatments, as well as the loss of other opportunities for tax savings. At the same time, the estate's reporting and tax withholding obligations are significantly increased. Even when the estate is considered a Canadian estate for Canadian tax purposes, the country of the executor may lay claim to the estate, making it subject to the tax laws of that country as well.

When an executor makes decisions and exercises control from a different country, your estate may be deemed to be "non-resident" for tax purposes, as well.

MoneyTalk Life: Are there other challenges of having a foreign executor?

Nicole Ewing: If the executor is not a resident of the province where a court will oversee the estate, or a Commonwealth country, the executor will generally be required to post an administration bond when applying for the Certificate of Estate Trustee, also known as probate. This bond is typically equal to the value of the estate, and can be purchased from an insurance company. Both the process of obtaining the bond and the process of applying to the court to dispense with the bond are time-consuming and expensive.

There are also other more practical challenges — administrative tasks such as opening accounts, signing documents, selling estate assets, dealing with

beneficiaries and government officials — these are all the more difficult when the executor is in another jurisdiction and perhaps in a different time zone. Even when the executor is willing to come to Canada to wrap up the estate, the typical estate administration takes at least 18 months. In most cases, it's simply impractical and expensive to be travelling as often as would be needed. Additional issues may arise when the estate owns shares of a private corporation.

MoneyTalk Life: What about the other side? What about being asked to be an executor of a foreign estate? Do you see this frequently?

Nicole Ewing: I do see this fairly regularly and the best advice I can give is to seek professional advice immediately. You could very easily find yourself on the wrong side of both foreign and Canadian laws. In most countries, an executor will have personal liability for their actions and inactions. Getting professional advice right away is in your best interest as well as in the best interests of the estate, and its beneficiaries.

MoneyTalk Life: What if, for some reason, you really need to appoint a foreign executor, what can you do to prepare?

Nicole Ewing: Unless you're dealing with an asset in a foreign jurisdiction or establishing a trust in a foreign jurisdiction, I really can't think of why one would need to appoint a foreign executor. If it's because you don't have a local individual with the ability or inclination to act as your executor, appointing a professional trust company may be a great solution.

A corporate executor won't move, like an individual can, and won't inadvertently trigger a tax event. It can obtain a bond and not hold-up the administration of the estate. This option also provides certainty, professionalism, and unparalleled expertise.

— *Denise O'Connell, MoneyTalk Life*

¹Statistics Canada. Immigration and Ethnocultural Diversity in Canada: 2011 Census. 2013. Accessed September 23, 2016. www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.pdf

DISCLAIMER: The information contained herein has been provided by TD Wealth and is for information purposes only. The information has been drawn from sources believed to be reliable. Where such statements are based in whole or in part on information provided by third parties, they are not guaranteed to be accurate or complete. Graphs and charts are used for illustrative purposes only and do not reflect future values or future performance of any investment. The information does not provide financial, legal, tax, or investment advice. Particular investment, trading, or tax strategies should be evaluated relative to each individual's objectives and risk tolerance. TD Wealth, The Toronto-Dominion Bank and its affiliates and related entities are not liable for any errors or omissions in the information or for any loss or damage suffered. TD Wealth represents the products and services offered by TD Waterhouse Canada Inc. (Member – Canadian Investor Protection Fund), TD Waterhouse Private Investment Counsel Inc., TD Wealth Private Banking (offered by The Toronto-Dominion Bank) and TD Wealth Private Trust (offered by The Canada Trust Company).

All trademarks are properties of their respective owners.

®The TD logo and other trade-marks are the property of The Toronto-Dominion Bank.

Brought to
you by

