

Explaining the principal-residence exemption and an heirless will

By PAUL DELEAN, The Gazette July 26, 2010 Be the first to post a comment



The tax implications of owning a country place and the fate of an estate with no heirs were among the topics raised recently by readers. Here's what they wanted to know.

Q: A friend is a recently-widowed senior citizen who owns a home on the South Shore that she plans to sell in the next few years. She also owns a secondary home on a large piece of land in the Charlevoix region. Can she avoid paying capital-gains tax on the eventual sale of the Charlevoix property if she treats it as her primary residence once the South Shore property is sold? Are there specific criteria to determine if a property qualifies as a primary residence?

A: Partner Mathieu Ouellette of accounting firm Bessner Gallay Kreisman says the basic requirement for the principal-residence exemption is that a house be "ordinarily inhabited" by the taxpayer, his or her spouse or one of the taxpayer's children. A cottage or summer home therefore qualifies as long as the family is there some of the time in any given year. In this case, the principal-residence exemption would appear to be available for either property, but as of 1982, only one property per family unit can be so designated for a given year. Normally, it's applied to the house that's appreciated the most. A possible complication in this case is the size of the Charlevoix property. Ouellette notes that if the total area exceeds one-half hectare, the surplus land might not be covered by the principal-residence exemption unless it's deemed essential for the use and enjoyment of the housing unit.

Q: What happens to one's estate when the person dies and he has no family to leave the money to? What happens if there is no will specifying what happens to the estate?

A: In Quebec, if a deceased has left no will, the estate liquidation is governed by the Quebec Civil Code. It specifies who the heirs are and in what proportion. If there is a spouse by marriage and children, the civil code assigns two-thirds to the children and one-third to the spouse unless people renounce. If there is no spouse, children, parent or sibling alive, the estate goes to the nieces and nephews. The heirs jointly perform the liquidator's duties, unless someone is designated as the liquidator. If no heir claims the estate, Revenue Quebec acts as liquidator and administrator of the assets until someone comes forward. It posts a notice it's performing that function and keeps a public register of the estates it's overseeing. If no heir has been found or comes forward in the 10 years after the death, any remaining funds go to the Quebec finance ministry.

The Gazette welcomes questions on tax and investment matters. If you have a query you'd like addressed, please send it to Paul Delean, Montreal Gazette Business Section, Suite 200, 1010 Ste. Catherine St. W.,