

Migrating south: The changing landscape for Canadian snowbirds in the U.S.

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As the cold, snowy winter batters the determined, hearty residents of Canada, many look to the U.S. sunshine states for relief from shovelling, slippery roads and other headaches of daily life. These travellers teem across the Canada-U.S. border each year, bringing dollars and a cultural richness to the communities they visit.

In 2016, Canadians made more than eight million visits to Florida, California, Nevada, Hawaii and Arizona alone, spending more than \$10 billion (approximately US\$8.3 billion) in the five most-visited sunshine states.

New challenges are arising every day at the border, as immigration-related U.S. government agencies increasingly demonstrate an eagerness to take President Donald Trump's "America First" slogan as an open invitation to limit the legal entry of foreign nationals. However, knowledge is power, and an awareness of risks and pitfalls can help Canadian snowbirds avoid procedural delays or denial of entry at the border.

Making a bona fide entry

In order for Canadians to qualify as B-2 visitors, they must (1) have a foreign residence to which they plan to return; and (2) demonstrate real and meaningful ties to Canada, and a true intention not to reside or work in the U.S. This can be a challenge when Canadians own property in the U.S., as Customs and Border Protection (CBP) officers may take a deeper dive into their intentions when travelling across the border to determine whether they are, in fact, residing or intending to reside in the U.S.

Bringing evidence that their primary residence is in Canada and of any strong ties to Canada is always prudent, particularly when they are making multiple entries over time and remaining in the U.S. for extended periods.

The impact of departing the U.S. for short periods

In general, when returning to Canada temporarily during an extended stay in the U.S., the length of time an individual stays in Canada can affect a U.S. CBP officer's interpretation of their intent to remain legally in the U.S. upon their return. If a Canadian has been in the U.S. for months and only returns to Canada for a few days, an officer could determine that his or her visit to Canada does not merit a "new admission," and the traveller may not be admitted for a full visitor period of six months. Instead, CBP may "revalidate" the individual's existing I-94 arrival/departure record, leaving the unsuspecting traveller with a shorter period of permissible stay in the U.S. than one might otherwise think is available.

This issue is complicated by the fact that many Canadians do not receive notice of their period of authorized stay, such as stamps in their passport. Instead, Canadian snowbirds should check their status at <https://i94.cbp.dhs.gov> each and every time they enter, to be sure that they are not staying past the “admit until” date. CBP officers may not tell travellers if their status has been revalidated instead of granting six more months under a “new admission,” so it is critical that snowbirds stay vigilant and know when, precisely, they are expected to end their legal stay in the U.S.

Limiting the risk of refusal of entry

Knowing potential pitfalls and problems can help keep travel smooth and uneventful for snowbirds. Clearly, re-entry is dependent on continued eligibility to enter. While this may seem obvious, it is important to be aware of how actions in the U.S., Canada or elsewhere can affect one’s ability to spend time basking in the southern sunshine. Arrests and/or convictions for certain criminal activities can result in a bar to entry, and should be reviewed carefully and proactively with a qualified U.S. immigration lawyer to determine whether the offence might result in the individual being turned away at the border or incurring a bar to entry to the U.S.

Don’t wait until there is a denial of entry on the record and in the Department of Homeland Security database. Strategically resolving negative consequences before they become immigration issues can make the difference between not being able to enter for years and freely moving across borders.

Don’t be scared off by media rhetoric

Importantly, Canadian snowbirds shouldn’t be intimidated by headlines decrying the difficulty of travelling to and remaining in the U.S. for more than a short time. In many ways, the United States remains open and welcoming to Canadian snowbirds. As evidence of this, the Canadian Snowbird Visa Act was introduced this past year in the U.S. House of Representatives, which proposed extending the time frame Canadian snowbirds can stay in the U.S. from 182 days per year to 240 days out of every 365 days, for certain individuals meeting specific conditions.

On a practical level, if enacted, this bill would effectively encourage additional spending of foreign funds in the U.S., without offering the politically unpopular benefits of the right to work, access to public assistance or permanent resident status. It would also offer non-resident alien tax status to snowbirds, despite the longer admission — something not currently available to them if they stay longer than the normal six-month legal visit period. While similar legislation proposed in the past has been unsuccessful, the continued suggestion of extending the available time of permissible stay in the U.S. for Canadian snowbirds demonstrates an ongoing recognition of the great benefits — both economic and cultural — that Canadian snowbirds offer the U.S.

As with anything, there are many ways to approach an analysis of how to most effectively spend extended time in the U.S. In addition to immigration, real estate issues — such as how to best take title of a purchased property — and tax issues can take centre stage, depending on priorities, and should be discussed with experienced counsel to help Canadians take advantage of opportunities and adhere to limitations.

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