We make it *easy.*

THE ART AND SCIENCE

of Estate Planning

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Investment Planning Counsel®

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Estate planning has often been described as more of an art form than a science. When it's created, an estate plan can precisely reflect your assets, your wishes and your legal situation at a point in time.

But as your situation and goals change, you will be relying on the spirit and intent of your estate plan, more so than the precise letter of it. The most important element of an effective estate plan is a regular review with competent advisors who can ensure that it continues to meet the four main goals of estate planning:

- Preserve the value of your assets, for yourself and your heirs
- Establish legal and enforceable means to ensure your wishes can be met
- Minimize and defer tax and other costs arising on your death
- Allow for a smooth and timely transfer of assets to your beneficiaries

ESTATE PRESERVATION

The first objective of your estate plan is to preserve the value of your assets for yourself and for your heirs by protecting you from erosive costs of long-term care, serious illness and perhaps even premature death.

Critical Illness Insurance

A critical illness can happen to anyone. Actuaries report there are over 70,000 heart attacks and 40,000 strokes in Canada each year. On top of that, over 3000 Canadians are diagnosed with cancer every week. The physical and emotional strain of a critical illness can be severe and when you combine that with the potentially damaging financial impact, the result can be devastating.

Critical illness insurance is a form of protection that can provide you with a lump sum payment if you suffer from a covered critical illness. The critical illness benefit comes as a lump sum and you are free to spend the money as you wish – to help cover lost income, to pay for private nursing or out-of-country treatment, for medical equipment or even to pay off your mortgage. It can help you where you need it most so you can focus all your energy on recovering.

Protect Against the Costs of Long Term Care

With longer life spans, one threat to your estate is the risk of requiring long-term care later in life. The cost of care in a facility or special treatment in your home can be substantial and are not likely to be fully covered through your provincial health plan. Long-term care insurance can help fund these costs without eroding your assets.

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Protect Your Family

Of course, no guide on estate planning would be complete without a mention of life insurance as a means to provide protection for your family. For example, you may want to ensure that you have sufficient life insurance to pay the mortgage on your home so that your family will not have to give up their home if you die. Once children are older, many individuals continue to hold insurance as a means of building their estate. On your death, the proceeds of the policy can benefit a specific beneficiary or be made payable to your estate, to be distributed according to the instructions in your will. In effect, a life insurance policy can create an "instant estate."

LEGAL ISSUES

Although there are plenty of 'do-it-yourself' kits online and in book stores to prepare your own will and powers of attorney, we believe that it is much too important to leave the wording of these documents to chance. If you have dependent children, a business, multiple properties, multiple generations of beneficiaries, blended families, or even multiple families, a lawyer will help you ensure that your documents are valid and consistent with the Family Law Act in your province to avoid any challenges.

Prepare Powers of Attorney

If you suddenly became mentally incapacitated, who would you want to manage your financial affairs, and to make important decisions about your housing and health care? You can't assume that family members can act on your behalf on short notice, or if they can, that there will be harmony and accord among them.

To ensure your wishes are met, you need to prepare two legal documents known as powers of attorney:

- One to name someone to manage your financial assets according the instructions you set out. It's important to have one that 'continues' to be in effect should you lose mental capacity.
- One to oversee your personal care, according to your wishes. These are also known as health care directives that guide doctors and family members with end-of-life decisions in certain circumstances.

If you don't have valid Powers of Attorney, provincial laws will determine who can act on your behalf. Although interested parties can generally apply to the courts to be one or both of your attorneys, this process can be time-consuming and expensive.

Ensure you have a Properly Drafted Will

A will is a legal document that contains instructions to carry out your wishes on your death. It determines who will receive your assets, how and when the amounts will be paid, and any other instructions important for an orderly

Business owner?

If you own a business and intend to turn it over to your children, additional planning will be required. You are not only passing on ownership of the business, but also providing for business succession. Generally speaking, unless you plan ahead for succession, your business will not maintain its value with the change in ownership. In some cases, the business may not even survive, or it may have to be sold.

distribution of your estate. If you have minor children, your will is the best place to clearly set out your wishes as to who should be their guardian.

If you die without a valid will, you will have died "intestate." This means that the court must appoint someone to administer your assets. If you do not have any next-of-kin, the courts may turn your estate over to provincial authorities. Even where you do have next-of-kin, it is unlikely that provincial estate division rules will match your wishes exactly.

Choose an Executor who has experience with the job

A key decision to make when drafting your will is the choice of an executor to carry out your wishes. Although many people appoint a family member, you need to ask yourself if that person will have the ability or the time to carry out the duties required. In many cases, acting as an executor can be a large undertaking, and the responsibilities will arise at a difficult time. The larger your estate, the bigger the job. Professional organizations can be appointed. Their fee is usually set as a percentage of the value of your estate.

DEATH AND TAXES

After you have identified opportunities to preserve your estate and you've taken steps to ensure that your final wishes can be legally met, the next step is to ensure the tax on it is minimized. Along with taxes on income earned during your final year, there may be additional taxes triggered on your investments.

Upon death, an individual is deemed to have disposed of most assets for tax purposes at their fair market value.

- For capital property, this means that all accrued capital gains will be taxed.
- If you own depreciable property such as a rental property, depreciation you claimed in the past will be included in your income, assuming that the current fair market value of the property exceeds its original cost.
- The value of Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs) is also generally included in an individual's income on death. For most people, the tax arising on these deemed dispositions will represent the largest tax cost on death.
- For TFSAs, neither investment capital nor income is taxed at death.

In addition to income tax, other taxes can apply on death including probate fees and U.S. estate tax. Unlike income tax, these taxes are based on the value of your estate and not accrued gains. However, with planning, it is possible to reduce the effect of both taxes on your estate. Here are key strategies to help reduce or defer taxes on your death.

Roll Over Assets to Family

Income tax can sometimes be deferred on death by transferring assets to a spouse or other family members in a strategy known as a tax rollover.

Second Family?

Do you have significant assets and are you about to marry or remarry? If so, it is important to understand the family law rules that apply in your province. First, consider that marriage itself invalidates a will signed before the wedding, unless it was made "in contemplation" of marriage to that person. And in many cases, a division of assets will be required in the event of marriage breakdown.

A marriage contract allows you and your spouse to agree beforehand on how your assets will be divided if the marriage were to fail. For individuals with children from a previous marriage, this can be extremely important.

In some provinces, family law can override the rules for property division contained in your will. A marriage contract can also help ensure that your estate is divided as you intend on your death. For common law spouses, a contract and a will may be the only ways to ensure your intentions are met in the case of a separation or death. Consult a lawyer to determine what a contract could do to help accomplish your estate objectives.

Properly implemented, a rollover can provide significant opportunity to defer tax, as both past and future gains will be taxed in the hands of the beneficiary instead of your estate. In the case of deferred income plans such as your RRSP, your beneficiary will pay tax on any amounts withdrawn from the plan. Since tax rollovers are limited, you'll want to take full advantage of those available:

- *Transfer assets to a spouse:* If you leave capital assets directly to your spouse or to a trust for the benefit of your spouse under the terms of your will, you will be deemed to dispose of these assets at their tax cost without immediate tax. In addition, funds held in RRSPs, RRIFs and registered pension plans can be transferred to a plan for your spouse on a rollover basis.
- *Transfer your RRSP to an infirm child:* If you have a child or grandchild who is financially dependent on you due to a physical or mental disability, the balance of your RRSP or RRIF may be transferable to an RRSP or life annuity for the child upon your death.
- *Transfer farm property to a child or grandchild:* If you own farm property, tax can be deferred if the property is left to a child, grandchild, or greatgrandchild. Many conditions must be met to qualify for this rollover. For example, the land must be in Canada and used in farming by you (the deceased), your spouse, or your children, grandchildren, or greatgrandchildren immediately before your death. However, if the conditions are satisfied, you will be deemed to dispose of the property at your tax cost on your death. Your beneficiary will assume the same tax cost. This rollover allows tax on this property to be deferred one or more generations.

Give to Charity

Planned giving – leaving a legacy to a charitable organization – is encouraged by the federal government with specific tax benefits. Here are the five most popular ways that not only do good for the charity, but can also provide tax benefits to your estate.

- *Gift through a will:* A cash bequest through a will is a common way to make a significant gift to a registered charity. You can also specify a percentage of your estate. The benefit of making a donation this way is that your estate is entitled to a tax credit for the final income tax return and you can reduce your estate tax liability.
- *Gift of stocks, bonds or mutual funds:* If you own publicly traded securities, you could owe taxes when you sell them (if they're not in your RRSP or RRIF). However, you can donate the shares, mutual fund units or bonds to charity by what is known as an "in kind" transfer. The charity can then sell your securities and issue a receipt for the fair market value. Neither you nor the charity are taxed on any capital gains.

If you own farm property, tax can be deferred if the property is left to a child, grandchild, or greatgrandchild.

- *Gift of RRSPs, RRIFs:* You can simply designate the charity as the beneficiary of your RRSP or RRIF. The assets don't pass through your estate and your estate will receive the tax receipt in the year of death.
- *Gift of Life Insurance:* Similarly, if your life insurance policy no longer fits into your financial plan you may want to consider donating the policy to charity.
- *Charitable Remainder Trust:* With a Charitable Remainder Trust, you place certain assets in a trust (like real estate, cash or securities) and receive a net income from those assets for life. You also receive a tax credit in the year the gift is made. The charity receives whatever remains in the trust after your death.

If you're interested in establishing a lasting gift to charity, there are several steps to take to ensure your gift will be treated as intended – both by the Charity and the CRA. A quick check-up with a financial professional can help you get started on the right path to make it happen.

Prearrange your Funeral

Although not a pleasant topic, arranging for your funeral before you die will relieve your family of having to deal with these details at a difficult time. You will also be able to obtain a modest tax saving. You can provide a funeral home up to $15,000 for funeral services or $20,000 for cemetery services on deposit towards the cost of the funeral, and the investment income earned on these funds will not be taxable to you. Where the funeral home is providing funeral and cemetery services, the limit is $35,000 in total. In fact, if the investment income is eventually used for cemetery or funeral services, it will never be taxed.

Note that if the funds are returned to you, or if your estate receives a refund from the funeral home because the amount on deposit exceeded the funeral costs, these amounts will be taxed to the extent that investment income was earned.

Consider Probate Fees

Probate fees must be paid to a province when a court confirms the validity of a will. If you need a probated will to transfer ownership of one asset referred to in the will, the value of all assets referred to will be subject to probate fees. Except in Ontario and British Columbia, these fees are usually relatively minor. However, both B.C. and Ontario charge a fee based on the value of the assets with no upper limit. In Ontario, the top rate is 1.5% while in B.C. the top rate is 1.4%.

- If you name a direct beneficiary for your RRSP, RRIF or insurance policy, the proceeds payable on death will go directly to that person rather than passing through your estate and therefore avoid probate.

If you're interested in establishing a lasting gift to charity, there are several steps to take to ensure your gift will be treated as intended

- Probate can also be avoided on assets that are held jointly with rights of survivorship with other persons such as your spouse or children. Again, ownership of the property passes directly to them when you die.

More sophisticated planning techniques are also available. For example, Ontario residents could complete two wills— one covering assets that require probate and one covering assets that do not. And where assets are held in a trust at the time of death, the assets do not form part of your estate, and are therefore not subject to probate fees. It should be noted that these trusts will have a deemed disposition for income tax purposes on your death, so they should not be used for an estate freeze.

Use an Estate Freeze

Where a tax rollover isn't available, you can still take advantage of a tax planning technique known as an "estate freeze" to ensure future gains will be taxed in the hands of your heirs. An estate freeze is a process where you guarantee that the future growth of your estate accumulates in the hands of your beneficiaries.

By freezing the value of your estate, you will effectively lock in the tax that will arise on your death (subject to changes in tax rates in the future). An effective estate freeze will allow you to pre-determine the taxes that will arise on your death so that you can ensure that cash will be available to pay that tax (for example, by taking out sufficient life insurance).

There are two main ways to implement an estate freeze.

- One is to transfer the assets you wish to freeze, such as shares of your business, to a corporation. By taking back fixed value shares, the transfer of assets can be accomplished on a tax-deferred basis using special rollover provisions in the tax rules. Your beneficiaries can then subscribe for the common or growth shares of the company. At the time of the estate freeze, the value of these common shares would be nominal, but the growth in value of assets in the company would be attributed to the common shares. You could continue to control the assets in the company by ensuring that your fixed value shares will always be able to outvote the common shareholders.
- You can also freeze your estate by using a family trust. Under this strategy, you can transfer the assets you wish to freeze to a trust whose beneficiaries would be your intended heirs. This will allow future growth to accrue to them without giving them control over your assets. The major difference between using a family trust and a corporation for an estate freeze is that it will not be possible to transfer property to the trust on a tax-deferred basis. You will have to pay tax on any accrued gains on the assets at the time of the transfer. However, if accrued gains are small, a trust may be advantageous, as assets held in the trust will not be

Capital Gains?

Business owners are eligible for a $750,000 exemption for shares of qualifying small business corporations, qualifying farm property and qualifying fishing property. If you own this type of property, there are two basic ways of using the exemption.

First, your executors can simply claim your remaining exemption against capital gains that arise on your death. However, there may be problems with this plan:

- *The property may not qualify at the time of your death.*
- *There is no guarantee that the exemption will always be available.*

The second option for using your exemption is a crystallization of some or all of your capital gains. Crystallization involves triggering a disposition of one or more qualifying assets with accrued capital gains for tax purposes. Any capital gain reported in your tax return will be offset by a capital gains exemption claim, meaning that you will generally not have any tax to pay. The benefit of the exemption will be realized in the future when you dispose of the asset, as it will now have an increased cost base for tax purposes. This will reduce the capital gain you have to report on the actual disposition.

subject to the deemed disposition rules that apply on death. It should be noted, however, that assets held in family trusts are subject to a deemed disposition every 21 years.

If your children have children, they may also want to perform an estate freeze with property received from your estate. If a freeze is performed shortly after your death, your beneficiaries can ensure that gains accruing in the future will be taxed in the hands of your grandchildren.

A word of caution: before undertaking an estate freeze, you should carefully consider whether you would have enough assets to live on without the future growth of the frozen assets. It may not be possible to reclaim your assets after a freeze.

TRANSFERRING YOUR ESTATE

Once you have taken steps to preserve the value of your estate and reduce the taxes payable on it, you want to ensure that your estate is passed on to your heirs in accordance with your wishes, and with minimum delay and difficulty for your heirs.

Two major problems can crop up once your executor takes the reins in managing your estate. First, if your instructions are not clear and legally effective, your assets may not pass to your intended heirs. The best way to ensure that these uncertainties don't arise is make sure that your will is reviewed on a reasonably frequent basis. Second, even with timely planning to reduce and defer income taxes and other costs, there will be costs that your executors will have to pay after your death. Unless there is enough cash available, your executors may have to sell some or all of your estate assets to pay these costs. For many people, life insurance is the best solution to ensure there is enough cash available after death.

The Double-Edged Sword of Joint Ownership

One simple option to avoid probate fees is to transfer title to assets to joint ownership. However, this type of transfers can involve giving up control over an asset, either in whole or in part, and can trigger an immediate disposition of the asset for income tax purposes. Because of this aspect, most people transfer assets to their heirs by a will. This allows you full control and the use of your estate assets during your lifetime.

Consider the Versatility of Life Insurance

Later in life, funding tax liabilities on death may become a significant task, especially if you own a business. If your executors do not have sufficient funds to pay these taxes, they may be forced to sell your business to pay the taxes. Life insurance is valuable in these situations, as it provides a source of funds to pay this tax cost, and the proceeds from the policy are generally

U.S. Property Owner?

When U.S. residents and citizens die, they are subject to an estate tax based on the value of their worldwide estate. However, even if you're not a U.S. citizen or resident, you may still be subject to U.S. estate taxes, based on the value of your U.S. property such as real estate (e.g., Florida condominiums), personal property located in the U.S. (such as boats and furniture), and U.S. stocks and bonds (even when held through a Canadian brokerage account).

If the value of your worldwide estate exceeds a certain amount, and you own U.S. property, your estate may be subject to U.S. estate tax – even if the value of your U.S. property is low relative to the value of your entire estate.

Tax rules are subject to change, so it's wise to speak with a specialist about potential planning opportunities to reduce your exposure to U.S. estate taxes.

received tax free. If you've performed an estate freeze during your lifetime, you will be in a good position to estimate the taxes that will be triggered on death and how much insurance you'll need.

You should regularly evaluate your insurance needs to ensure that you have in place the insurance policies that are appropriate for you.

Create a Testamentary Trust

A testamentary trust can be created on the death of an individual, under the terms of the deceased's will.

A testamentary trust pays tax using the marginal rates available to individuals. If members of your family will be in the top personal tax bracket, a testamentary trust can provide significant savings, as some or all of the income will be taxed at lower rates, year after year. In addition, the savings can be multiplied if you set up an individual testamentary trust for each of your children.

Maximize Tax Deductions and Credits

When tax returns are prepared for deceased taxpayers, a number of strategies can be used to lower taxes payable by the estate, particularly if you have income that is due, but will not be received until after death. An 'election to include income on a separate return' is a complicated strategy that is best undertaken by professional advisors.

Wind Up your Holding Company

If you own shares of a company, and the assets of the company are composed primarily of marketable securities and cash, the potential for double taxation should be addressed in your estate plan. The problem is related to the fact that there are two ways of realizing the value of a corporation from a tax point of view. First, if you sell the corporation (or are deemed to dispose of it on death), the accrued gain is taxed as a capital gain. However, if you decide to liquidate the company's assets and wind up the company, the net gain is generally taxed as a dividend.

If you hold shares in a holding company at death, capital gains tax may be triggered on the shares, and your heirs will take over the company with a higher tax cost.

However, if your children decide that they want to realize the value of the holding company in cash, it is unlikely that they will find a buyer for the company's shares, and they may wind it up. Double tax can arise since your children will realize a dividend on wind-up. Although they will get credit for the high cost of the shares as a capital loss, this loss can only be used to reduce capital gains. Even though capital losses can be carried forward indefinitely, if your children don't earn capital gains in the future, they may not benefit from this loss.

If you hold shares in a holding company at death, capital gains tax may be triggered on the shares, and your heirs will take over the company with a higher tax cost.

There is a solution to this problem. However, communication with your family is important. If your children intend to wind up the company, you should ensure that the holding company is wound up while the shares are still held by your executor (during the first year of the estate). Where a deceased individual's estate realizes a capital loss in the first taxation year following death, that capital loss can be carried back to offset capital gains arising on the deceased's final tax return. To ensure that this liquidation is done on time, it is advisable to put instructions in your will to ensure that the wind-up is done on a timely basis.

SUMMARY

One final consideration to keep in mind is the importance of discussing your intentions with your family. Too many people assume that the family understands their goals and objectives concerning their assets. Estate planning works best when your family is aware of your wishes and understands the reasons for your decisions. That's why we've also created a special report called *"Is it Time to Have the Talk?"* that is designed to help you prepare your family for the discussion and ensure the talk gets off to a good start and a fruitful (and loving) conclusion.

Too many people assume that the family understands their goals and objectives concerning their assets.

Estate planning is important, no matter what stage of life you are in. We have touched on only some of the issues and strategies most people should consider when creating an estate plan. Remember that as you grow older, your needs and goals will change, and your plan will also have to be modified. We invite you to make an appointment with us today to review or help create your plan. We can introduce you to a team of qualified accountants and lawyers as needed to make sure that your plan has the indepth attention to detail that is needed, as well as ensure it is structured to achieve your goals.

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