



Estate Planning

Estate planning is really a subset of sound financial planning and is a continuing process. An effective plan is one that you constantly monitor to ensure that it continues to be relevant for you.

Objectives

The goals of estate planning include:

- Minimizing exposure to income tax and probate fees.
- Ensuring adequate financial security is provided for any dependents.
- Ensuring adequate liquidity of your estate.
- Maintaining control over assets during your lifetime.

It is important that you ensure your family is aware of your plans and understands why certain decisions are made.

Preparing a Will

A will is the foundation of any properly structured estate plan. It determines who will administer your estate and ensures your assets are distributed in accordance with your wishes.

Choosing an Executor

This is one of the most difficult decisions that you will have to make. The executor is the person who is named in your will to be responsible, on your death, for making the funeral arrangements, identifying all of the assets and paying liabilities including probate fees, filing the tax

returns and obtaining a clearance certificate, and distributing the assets in accordance with the terms of the will. In many situations, a spouse or common-law partner is the appropriate choice.

But what happens if your spouse predeceases you? Then another family member, trusted friend, professional advisor or trust company should be considered. The role of an executor can be an onerous one. The person being asked to fill this position should clearly understand the responsibilities and be realistic in assessing whether he or she will have enough time and energy to devote to the task.

The choice of an executor is an important one. Choose someone who is capable, has the time to commit to the role and has the trust of those involved.

Maximizing the Value of Your Estate

There are a number of steps you can take to maximize the value of your estate. Some strategies include:

- **Pay down personal debts.**
- **Save for your retirement:** The Canadian tax system allows you to save for retirement on a tax-deferred basis, either through a pension plan at work or through your own registered retirement savings plan (RRSP), or the newly introduced Tax Free Savings Account.
- **Have appropriate life and disability insurance.**
- **Protect your assets from creditors.**

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- Split income with family members who have lower marginal tax rates than you do.
 - ✓ Have your spouse or common-law partner save money while you pay all the family expenses;
 - ✓ If you are already in retirement, you can elect to split Canada Pension Plan benefits with your lower-income spouse;
 - ✓ Elect to split other pension income with your lower-income spouse; or
 - ✓ Implement a family trust.
- Choose an appropriate power of attorney: choose the person who is best qualified to manage your affairs should you become mentally incapacitated (power of attorney gives written authority to this person to deal with your estate on your behalf).
- Cap your exposure to death taxes by “freezing” the value of your estate. This approach passes on the growth of your assets to other individuals.
- Make gifts to charity: money left to a registered charity in your will (bequest) can be claimed to reduce tax arising on death.
- Prearrange your funeral: you can give 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.

Minimizing and Deferring Tax on Death

There are two types of tax that can arise on your death:

- Income taxes: when you die, you are deemed to dispose of most assets for tax purposes at fair market value (FMV). The FMV less your original cost base results in a capital gain (loss) which can result in tax.
- Probate fees.

Strategies to Reduce Income Tax

- Claim capital gains deduction of \$750,000 on shares of qualifying small business corporations and qualifying farm property
 - ✓ You may want to consider crystallization of some or all of your gain which involves triggering disposition of one or more qualifying assets with accrued capital gains and reporting capital gain with offsetting deduction.
 - ✓ If you have not used the enhanced exemption and you think you have qualifying assets, consult your Collins Barrow tax advisor to see if crystallization makes sense.

Probate Fees

Probate fees have to be paid to the province where the court confirms the validity of the will. Ontario charges a fee based on the value of the assets with no upper limit. Ontario's top rate is 1.5%.

Methods of reducing probate fees:

- Name a direct beneficiary of your RRSP, registered retirement income fund (RRIF), and insurance policy.
- Hold assets jointly with rights of survivorship.
- Have two wills, one covering assets requiring probate, and one for those that do not require probate.
- Transfer assets to an inter vivos trust through an estate freeze.
- Gift assets prior to death.
- Forgive mortgages prior to death.

Transmitting Your Estate

Two potential major problems include:

- If your instructions are not clear and legally effective, assets may not pass to your intended heirs – the best way to ensure this does not happen is to have a properly drafted will.
- There will be costs that executors will have to pay after your death – having life insurance can assist with this.

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Life Insurance

Life insurance is an important part of many estate plans; as it may ensure your dependents have financial security and adequate liquidity in settling the estate.

It can be used to:

- Provide protection for your family,
- Assist with building your estate,
- Fund tax liabilities arising on death, and
- Fund buy-sell agreements.

Minimizing Tax after Death

- Provide for testamentary trusts in your will
 - ✓ Testamentary trusts pay tax using the marginal tax rates available to individuals and you are able to set multiple trusts via your will.
 - ✓ They can have a non-calendar tax year.
- Consider winding up corporations with the use of strategies such as the “pipeline.”
- Maximize tax deductions and credits including elections to include income on a separate return and exemptions for death benefits claimed.

The income tax rules associated with the above strategies are complex. Please contact your Collins Barrow tax advisor for more information.

Summary

As you grow older, your needs and goals will change. Therefore, your estate plan will have to be re-evaluated and modified over time. You should continually review it to make sure it is still relevant for your current situation.

Contact your Collins Barrow tax advisor to see what actions you should be taking.

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The information in this bulletin is current as of November 2009.

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