



## 22 of the Best Estate Planning Tips

### Individuals

- 1 **Prepare a will** - otherwise your estate may be divided in ways you would not choose.
- 2 **Update your will** - at least every two years. Your changing finances, your family situation and government legislation may dramatically affect division of your estate.
- 3 **Consider creditor-proofing some of your assets** - placing RRSP funds with life insurance companies to "creditor-proof" them. This could be particularly important for professionals or others subject to malpractice suits. For example, CRA in a recent case succeeded in garnisheeing monthly pension payments.
- 4 **Appoint an attorney** - once you have taken the time and effort to craft a will, appoint an attorney under a power of attorney. He or she can manage your property if you become mentally or physically incompetent or incapable through accident, illness or progressive disease.
- 5 **Maybe name two attorneys** - if you are reluctant to give unrestricted power of attorney to one individual, name two attorneys who must act jointly. Or give clear written instructions to your attorney that the power of attorney is to be used only if you are unable to manage your own affairs.
- 6 **Update your old power of attorney** - if you have one, so the Public Trustee cannot intervene if you become a patient in a psychiatric facility and are certified incompetent to manage your estate.
- 7 **Select an executor** - who knows you and your family and has good business sense. If no one fits that description, find two or more executors, preferably younger than you.
- 8 **Consider alternate executors** - Consider a provision for alternate executors to serve if the one(s) appointed dies, resigns or become mentally incapacitated. Also make provision to change your executor if he or she becomes a non-resident. The residency of a trust is determined by the residency of the executor. You don't need the problems of a non-resident executor, which include paying 25% withholding taxes on gross rents (until you can file an NR6 before December 31 of the year requesting to pay tax on net rents) and requesting a clearance certificate if you sell a Canadian property (this means the lawyer holds the cash until CRA issues the clearance). (With a non-resident trust, you won't need a clearance before you pay a beneficiary, but you will with a resident trust).

- 9 **Plan your significant charitable contributions** - take advantage of the five-year carryforward when it is available. Having donations available could reduce your income to zero because the limit in the year of death is 100% per cent of net income.
- 10 **Careful with wording** - for your will to survive a marriage, you must state it was prepared in contemplation of imminent marriage.

## Families

- 11 **Designate your spouse as your RRSP beneficiary** - ensure that your spouse is designated as the beneficiary of your RRSP/RRIF so its proceeds can be rolled over to him or her, tax-free.
- 12 **Or your common-law partner** - If you have no spouse, including common-law, avoid a substantial income tax liability on your death by designating a financially dependent child or grandchild as beneficiary of your RRSP's or RRIF's. If you have no dependent children or grand-children, leave the RRSP or RRIF to your estate.
- 13 **Life insurance policies** - ensure your spouse or other family member is named the beneficiary of your life insurance policy(ies) so its proceeds will pass directly to the person instead of the estate. This saves probate fees. In addition, if your liabilities exceed your assets, the life insurance may also ensure at least some estate for your beneficiary.
- 14 **Hold bank accounts jointly** - and certain property on joint account. The survivor then obtains title to these assets automatically, without any provisions needed in your will.
- 15 **Consider the impact of divorce** - think about the effect of a separation or divorce in your will. The Wills Act revokes any gift, appointment or power granted in the will to a spouse if the couple becomes separated or divorced, or the marriage is otherwise terminated, after the will is made but before the testator dies. Unless a contrary intention appears in the will, the effect is as if the spouse died before you.
- 16 **Consider the Wills Variation Act** - it allows a judge to reapportion your estate if your will does not, in the Court's opinion, make adequate provision for the proper maintenance of the testator's wife, husband or children.
- 17 **Trace your beneficiaries** - trace what happens if a beneficiary named in your will, who is a child or sibling of the testator, predeceases you. The anti-lapse provisions of the Wills Act say that in these cases your gift does not lapse. Unless a contrary intention appears in your will, the gift takes effect as follows:
  - .1 if the predeceased person is survived by a child or children only, or by a spouse and a child or children, the gift goes to the child or children; and
  - .2 where the predeceased person is survived only by a spouse and no children, then the gift goes to the surviving spouse.

## Non-residents

- 18 **Non-resident executors** - we mentioned above that it is not a good idea for the executor to be a non-resident. But it may happen.

- .1 If you have a non-resident who dies, there is no clearance certificate required (T2062) on the transfer of the property to the estate at date of death. Of course the gain or loss on the disposition of the property is to be reported in the final tax return.
- .2 Whether or not you require a clearance certificate for the sale of the property by the estate depends on the residency of the estate. If it has a Canadian executor, the estate will be a Canadian resident and there will be no need to request a clearance certificate. If the estate has a US executor, the lawyer will have to hold funds in trust until she receives a clearance certificate. Then she can transfer the funds to the estate.
- .3 You may have a related problem paying bequests to non-resident beneficiaries. If you have an estate that is resident in Canada (it has a Canadian resident executor) and you have non-resident beneficiaries, you will need to obtain a clearance certificate before each distribution to each beneficiary.

## Estates

- 19 **More than one tax return** - investigate filing two or more tax returns at date of death. Depending on income sources, an executor could save significant income taxes by filing a regular return, one for "rights and things," one for non-calendar stub period (less than 12 months) business income and one for non-calendar stub period income from a testamentary trust.
- 20 **Record medical expenses** - the representative of a deceased taxpayer may claim a credit on the final tax return for medical expenses incurred in any 24-month period which includes the date of death. There is a similar provision for capital losses.
- 21 **Clearance certificates** - alert your executor to obtain a clearance certificate from Canada Revenue Agency. This frees an executor from liability for any future income tax assessments, although CRA can collect from the beneficiaries.
- 22 **Apply for Canada Pension** - make sure your family knows to apply for the death benefit as well as widow's and dependent's benefits from Canada Pension Plan.

## Bonus

- 23 **Final spouse RRSP contribution** - it can be made within 60 days of the date of death, or possibly as late as 60 days after December 31, in the year of death.

## Important filing dates

### Tax Returns

Deceased T1 - later of 6 months from date of death or April 30 of following year

Estate T3 - 90 days from end of trust's taxation year-end

T2062 for a non-resident to file for the sale of property – preferably before the sale so that the funds can be distributed to the estate without delay

T2062 for each distribution to a non-resident beneficiary – you cannot make the distribution before you have the clearance certificate

Estate T4 for Executors fee

- remittances for CPP and tax deductions from executor's fees are due by the 15<sup>th</sup> of the following month
- T4's are due by the February 28 following the year of payment.

CRA Clearance Certificate - as soon as final notice of assessment has been received and all taxes paid

Final Distribution of Net Assets - after receiving clearance certificate

## BC Probate Fees

In B.C., applicants for probate or letters of administration are required to pay a filing fee. If the gross value of the estate in B.C. exceeds \$10,000, the fee payable is \$208, plus:

\$6 for each \$1,000 or part of \$1,000 of estate value in excess of \$25,000, up to \$50,000, plus

\$14 for each \$1,000 or part of \$1,000 of estate value in excess of \$50,000.

Many of the assets of the deceased may not be counted for the purposes of the probate filing fee. For example, assets that do not pass through the estate will not be subject to this. Nor will assets situated outside B.C.

Succession Duties - none at present

This brochure does not purport to give any definitive financial and/or legal advice. Individuals should consult their legal and tax advisors.