Creating a Legacy

Estate Preservation and Distribution

THIS PUBLICATION IS PART OF A SERIES THAT FOCUSES ON THE UNIQUE NEEDS OF INDIVIDUALS NEARING OR IN RETIREMENT

If you're in or near retirement, you've probably thought about how to preserve your estate for the next generation and how to distribute your assets once you've passed on. In fact, estate planning is an essential component of any well-developed financial plan. Without an estate plan, you waive the right to determine how your assets are distributed after your death. This may result in difficulties for those you leave behind. An estate plan can be designed to maximize the value of your estate, minimize taxes and other expenses for you and your beneficiaries, and pass your estate along according to your wishes.

Ensure that your Will is current

A Will is the written document containing your instructions to administer your estate after your death. Preparing a Will ensures that your wishes will be carried out and your beneficiaries (i.e. family members, friends, dependants or charities) will benefit from your estate in the manner you decide. Review your Will at least every three to five years. Changes that may warrant a new Will include separation, divorce, moving to a different province or country, retirement, a significant change in your wealth and the birth or death of family members. Furthermore, marriage creates a need for a new Will because it revokes any existing Will in every province except Quebec, British Columbia and Alberta. It's never too early to prepare a Will; don't leave the distribution of your assets to chance.

Think about the appropriate division and distribution of your estate

Carefully consider how you want your estate divided and distributed. How do you want children and grandchildren to benefit from your estate? Are you concerned about treating each child equally or do you wish to treat them equitably, instead? Is there a specific asset, such as a family cottage, destined for a particular beneficiary? Is it necessary to compensate other family members if one person receives a specific asset? Do you want all of your beneficiaries to receive their share of your estate immediately after your death, or will there be restrictions on the distribution, perhaps using Trusts in your Will to defer the distribution? If you do not have children or grandchildren, who do you want to benefit from your estate? Have you thought about the tax benefits of giving to charity through your estate plan?

Consider the whole picture

Not all assets under your control will pass through your estate according to the terms of your Will. Be sure your plan takes into account how other property will be distributed. For example, insurance and registered plans may be distributed separately under your valid beneficiary designations of named individuals. In considering the value of your estate to be distributed, estimate what expenses will be payable on death, including income and other taxes. For example, if no tax deferral is available, taxes on registered plans may have to be paid from the assets in your estate, and the beneficiary of the registered plan may receive the entire plan proceeds with no income taxes withheld.

Take steps to minimize tax and probate fees

Tax planning can significantly increase the value of your estate and the value of the inheritance received by your beneficiaries. A number of opportunities exist to reduce or defer the tax that would otherwise be payable on your death. If you have a spouse, for example, it's possible to defer liability for income tax on your RRSP/RRIF plans and unrealized capital gains on unregistered investments, business assets or real estate, using a spousal rollover. For capital property, the spousal rollover is available under your Will for a direct distribution to your spouse or to a Spousal Trust. Strategies are also available to reduce the income tax for your surviving beneficiaries. For example, a Spousal or Family Trust created in your Will can reduce the tax payable on investment income generated by the inheritance, and may also permit income splitting with multiple family members.

It may be necessary for your Executor to apply for probate after your death and pay the applicable probate taxes. Probate confirms the legal validity of your Will and gives your Executor court approved authority to administer the estate. It is generally required by financial institutions and other third parties to confirm your Executor's authority. Once probate has been obtained, your assets can be transferred to your Executor who can administer them as part of your estate under the terms of the probated Will. Probate taxes vary by province (Ontario, British Columbia and Nova Scotia having the highest rates), but the cost is generally a percentage of the value of the estate to be distributed under the Will.

A number of strategies – some of them very simple and cost-effective – may be appropriate to reduce the value of your estate subject to probate.

Using life insurance to preserve more of your estate for your beneficiaries

One of the more common strategies to manage taxes and preserve more of your estate for your heirs is to use life insurance. There are many advantages to using life insurance for estate preservation. For example, life insurance proceeds are generally not subject to income tax, and if there is a named beneficiary, the insurance procceds are not subject to probate taxes. If there are taxes owing on other assets in the estate – a family cottage, for example – the life insurance proceeds can be used to pay the taxes rather than having to sell assets to cover the tax liability. The result is more of your estate in the hands of your beneficiaries.

Consider US estate tax implications if you own US investments

Investing in foreign assets such as US securities provides an opportunity for diversification. However, US estate tax could be a concern if you own US real estate and/or invest in US securities. A Canadian resident's estate may be subject to estate tax if the total value of US taxable property owned on death is greater than $60,000 US, and the gross value of your worldwide estate exceeds the threshold amount. Tax credits may be available to reduce US estate tax and provide a Canadian foreign tax credit for US estate tax payable under the Canada/US Tax Treaty. Your estate plan can be designed to maximize the benefit of these credits and reduce or eliminate the potential exposure. Other planning strategies may include the use of a Canadian holding company to invest in US securities or making adjustments to your investment strategy.

What's next?

Your BMO Nesbitt Burns Investment Advisor is familiar with your financial circumstances and will help you identify the need for estate planning services. Working with one of our Estate and Insurance Advisors, he or she can help you achieve your estate planning objectives. Your BMO Nesbitt Burns Investment Advisor can also introduce you to an estate planning lawyer who can assist you in preparing or updating your Will or with any other aspects of your personal estate plan.

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