BMO NESBITT BURNS

Managing Family Wealth

Estate planning is an essential component of a successful wealth management plan. Consider the following strategies to protect your family's wealth and your estate.

The Importance of Having a Will

A good estate plan will provide you with the peace of mind that comes from knowing that your family and financial affairs will be taken care of according to your wishes. One key element of an estate plan is a Will.

A Will is a written document that directs how your assets are to be distributed at the time of your death. It should appoint an Executor, and provide instructions regarding all your assets, including your business holdings and personal effects.

A Will gives you the comfort of knowing that your wishes will be respected after your death. If you have family members, dependants or charities that you wish to support, a clear Will is the best way to ensure that this occurs. With a properly drafted Will (by an estates lawyer), you will have done your best to minimize income taxes and probate fees payable out of your estate.

It is estimated that one third of Canadians do not have a Will. Many other Canadians have out-of-date or inadequate Wills because the ownership of their assets or family dynamics or structure has changed since the Will was drawn up. Without a Will, you are said to die intestate and provincial law dictates who will receive the assets of your estate.

If your Will has not been reviewed with a professional within the last five years, it may be time for a review. One potential problem with an older Will is that the executor choice may no longer be appropriate. A Will may also need to be changed to accommodate new family members, separation or divorce, or a significant increase or decrease in wealth since the old Will was made.

Joint Ownership of Property with Right of Survivorship: Pros & Cons

Married couples commonly hold property jointly with right of survivorship. In certain circumstances, there are several benefits to this ownership structure. For example:

- Each spouse has the ability to manage the property without written consent of the other.
- Upon the first death, the surviving spouse automatically owns 100% of the property.
- Probate tax is minimized because it is payable on the value of the property only once (i.e. at the time of the second death).

However, joint ownership for couples may not be appropriate if one of the spouses wishes to benefit children of a previous relationship, or other family members, friends, charities or other beneficiaries.

In addition, conflicts can arise during the administration of the estate of an individual who had transferred property into joint names (with a right of survivorship) with another person who is not a spouse or where the spouses do not have common children.

Disgruntled beneficiaries, heirs at law or creditors, may try to claim that the property held jointly should form part of the deceased's estate to be distributed in accordance with the terms of his or her Will, or be subject to estate liabilities.

Where a parent transfers property into joint names with only some of the children, there is potential for conflict among the children and other beneficiaries as to whether an immediate gift was intended at the time of transfer, or whether the surviving joint owners hold the property as a Resulting Trust for the parent's estate.

A host of other problems may also be associated with the transfer of assets to joint tenancy with right of survivorship. If you are contemplating joint tenancy with right of survivorship, professional advice is recommended. If you are a joint owner or are considering becoming one, talk to your tax and legal advisors about the benefits and risks.

The Importance of Having a Continuing Power of Attorney for Property

While a Will ensures that your assets are dealt with according to your wishes at death, only a Continuing Power of Attorney for Property (often referred to as a POA) can provide for the proper management of your property and financial affairs during your lifetime, should you become mentally incapable or have to be absent for an extended period of time.

When planning for incapacity, granting a POA to a spouse, adult child, family member, friend or a corporate trustee, can provide you with peace of mind knowing that in the event of your incapacity to make decisions and manage your financial affairs, there will be a trusted substitute decision maker (attorney) who is authorized to manage your financial affairs on your behalf.

Regardless of your age and health, a loss of mental capacity can occur suddenly, so it is important to make arrangements for a POA while you are able.

Please note: This discussion on Power of Attorney for Property only applies to common law provinces and not to the province of Quebec.

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Irit has extensive experience as a trusts and estates lawyer at major Toronto law firms, focusing on estate planning, estate administration and estate litigation. Her areas of expertise include Wills, trusts, powers of attorney, joint tenancy and other structures of property ownership used as tools in the implementation of a variety of estate planning strategies.

Irit has published numerous articles on trusts and estates law and was an assistant editor of the Ontario Bar Association's Trusts and Estates Section newsletter Deadbeat, as well as a past contributor to Advising the Family-Owned Business, a publication by Canada Law Book. Irit is a participating member of the Statutory Review sub-committee of the Ontario Bar Association and is a member of the Canadian Bar Association and the Law Society of Upper Canada.

For more information contact a BMO Nesbitt Burns Investment Advisor at a branch near you. Or, to have an Investment Advisor contact you, complete this form.

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