The Estate Preserver Plan

BMO Insurance

Introduction to the **Estate Preserver Plan**

The Estate Preserver Plan from BMO Insurance is a financial concept using life insurance as a wealth preservation vehicle for your client's estate. The ideas presented in this guide are simple yet effective, and when combined with a BMO Insurance permanent life insurance policy, can help your clients benefit from flexible life insurance that is backed by one of Canada's leading financial services organizations.

To help support your understanding of the mechanics of the Estate Preserver Plan, we encourage you to read this guide and use the latest version of our Wave illustration software to prepare personalized proposals for your clients.

The Estate Preserver Plan is a solution that demonstrates how clients can preserve the value of an estate using cost-effective permanent life insurance.

Note: The ideas presented in this guide should be reviewed for suitability to individual circumstances. The information contained in this guide is general in nature and should not be construed as legal or tax advice. You and your clients are encouraged to seek the advice of other professionals such as legal and tax experts to ensure that the ideas presented are appropriate for the circumstances of the individual(s) for whom this plan is being considered.

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The Opportunity

Many individuals who are completing the asset accumulation phase of their lives may have significant wealth (such as investment portfolios, RRSPs, properties and businesses) that they would like to pass on to their heirs. However, these assets can also create a mounting tax liability.

When an individual passes away, there is a deemed disposition of all their property for income tax purposes unless certain rollover provisions apply (rollover to a spouse, dependent child, etc.). Untaxed income for the year of death, realization of registered accounts, and deferred gains, all become taxable. As an insurance advisor, you can demonstrate to these clients the value that life insurance can play in preserving their estate from these taxes and costs.

The idea is simple: Use life insurance to cover off the projected tax liability due when assets are passed on to your client's heirs as part of their estate.

Target market

Ideally, the Estate Preserver Plan is targeted at individuals and couples:

- age 50 – 70
- own significant non-registered investments with deferred gains
- in good health
- own property (such as a cottage) or a business
- own significant registered assets such as RRSPs/RRIFs
- have paid off non-taxable debt (such as mortgages and other loans)
- would like to preserve the value of their assets and pass them on to their heirs

There are many options available to cover the tax liability at an individual's death:

1. Sell off assets
Often, when no other plan has been made, this is the option used to pay off taxes. The large tax bill can lead to distress sale of items that have great sentimental value which is typically not the best option available.

2. Borrow the money
If the estate does not have enough liquid assets to cover the tax due, then the heirs will often have to borrow money to cover what is owed. This can be a very expensive solution.

3. Convince heirs to start saving now
This is not an easy task. More than likely, your client's heirs are putting most of their savings into RRSPs, TFSAs or RESPs. Non-registered alternatives grow on an after-tax basis, and it can never be certain that the funds will be there to invest each year. Poor returns or market volatility will also affect the amount available when it is needed.

4. The Estate Preserver Plan from BMO Insurance
This is typically the most economical way to pay for the estate charges due when assets pass on to your client's heirs. The tax-free amount of the policy means that funds will be available when taxes become due from the estate.

With BMO Insurance, you have the tools and accompanying plans to help create personalized, cost-effective proposals for your clients.

TIPS

Sales tip

An illustration from the Wave software can help clients understand the advantage of the Estate Preserver Plan. Use it to provide your clients with a graphical comparison of the alternatives to protect the value of their estate.

The Solution

The Estate Preserver Plan	
Step 1	Gather the client's financial details regarding assets and debts, including current values and tax basis. You can use the Estate Preserver concept within the Wave illustration software for this task or the Estimate of Taxes and Changes worksheet (468E). If using form 468E, populate the Asset/Debts tab in the Estate Preserver concept with the information gathered.
Step 2	Enter values and assumptions on the Assets/Debts tab in the Estate Preserver concept to project future values.
Step 3	Enter percentage estimates for probate fees, and executor and other administrative fees, that will be applicable to the estate on the Taxes/Fees/Debts tab of the Estate Preserver concept.
Step 4	Enter the basic insurance details, including an appropriate premium schedule for their individual circumstances, on the Coverage tab of the Estate Preserver concept.
Step 5	For universal life plans, have the client select an appropriate investment portfolio for their policy that is best suited to their long-term objectives and risk tolerance.
Step 6	To compare the Estate Preserver solution to an alternative scenario, update the fields in the Alternative Investments tab on the Estate Preserver concept.

The Results:

By using the Estate Preserver Plan from BMO Insurance, your clients will benefit from the following:

- An immediate offset to the tax liability due at death, using the most economical solution.
- A preservation of the value of the assets they wish to pass on to their heirs.
- Tax-deferred growth within a permanent life insurance policy to cover future insurance needs.

Is the Estate Preserver Plan right for your clients?

When considering whether to suggest an Estate Preserver Plan to any of your clients, you may want to run through the following checklist to determine if the plan is appropriate for their individual needs:

- Has my client completed (or is nearing completion of) the asset accumulation phase of their life?
- Do they qualify for life insurance?
- Do they have significant assets that would be taxed at death (e.g. the family cottage)?
- Do they want to minimize the financial loss resulting from personal income taxes on their estate?
- Does my client want to preserve the value of these assets for heirs?
- Is my client looking for the most cost-effective way of preserving the value of their estate?

If your client answers "yes" to these questions, then an Estate Preserver Plan may be an ideal solution for them.

Note: This information is for advisor educational purposes only and is not intended to provide tax advice or to encourage advisors to provide tax advice to their clients.

Tax Considerations

To have a more complete understanding of the benefits and tax consequences of the Estate Preserver Plan, we encourage you to prepare a personalized projection of your client's assets and liabilities, using the most current version of the Wave illustration software. We also strongly advise that when you are working on structuring any Estate Preserver Plan and have complex personal estate planning issues to resolve, you consult with legal, tax and accounting experts. You can also use the following guide along with information in the Wealth Planning Facts & Figures document to help you determine the level of taxation for various types of income and corresponding asset classes:

Income Type	Individual Taxation
Interest income: GICs, bonds, segregated funds and annuities	Fully taxable
Dividends: Dividends from Canadian companies: from stocks, mutual funds, and segregated funds	Eligible dividends[1] • Grossed up by 38% then reduced by a dividend tax credit (combined tax credit varies by province) Ineligible dividends[2] • Grossed up by 15% then reduced by a dividend tax credit (combined credit varies by province)
Dividends from foreign companies	Fully taxable (may be eligible for foreign tax credit)
Realized capital gains: Result when a capital asset (such as a second residence) increases in value and is disposed of or; when mutual funds, segregated funds or stocks are traded, a component of the investment return may result from a capital gain	Subject to a 50% inclusion at the taxpayers marginal rate in the year that they are realized; capital losses (other than from personal use property)[3] may be used to offset capital gains
Deferred capital gains: Result when a capital asset (such as a second residence) increases in value over time, but tax is not paid until such time as it is disposed of (i.e. when they become realized)	Subject to a 50% inclusion in the year that they are realized at the taxpayer's marginal tax rate

[1] An eligible dividend is one paid from a corporation's "general rate income pool" (GRIP). GRIP is income that has been subject to the general corporate income tax rate.

[2] Non-eligible dividends are those paid out of surplus that is based on income subject to the passive investment tax rates or small business tax rates (i.e., not from the GRIP).

[3] Personal Use Properties (PUP) is defined as property owned primarily for personal enjoyment and includes secondary residents, vehicles, furniture, boats, etc. Capital losses are not allowed for PUP unless the property falls into the sub-category of Listed Personal Property (LPP). LPP includes various forms of art, jewelry, stamps, coins, or similar property. Losses from the disposition of LPP are permitted and can be offset against gains from similar property only.

Tax Considerations

Asset	Tax Treatment
Principal residence	Increase in value is exempt from capital gains tax.
Non-registered GICs/term deposits and other fixed income investments	Interest is taxed annually as regular income.
Non-registered capital assets, such as shares of privately held Canadian corporations, common stock and mutual funds	Increase in value is taxed annually. Any deferred capital gains tax is triggered at death. At death, the deemed disposition rule deems assets to be disposed of at their fair market value on the date of death and any capital gains or losses are included in the deceased's final income tax return. These assets can be transferred to a spouse at the deceased's original cost, thus deferring capital gains tax until the surviving spouse dies.
Non-registered segregated funds	Growth is taxed annually and is based on the type of income allocated (interest, dividends, capital gains/losses or return of capital). Unrealized capital gains are taxed at death unless a tax-free rollover is available.
Tax-Free Savings Account (TFSA)	The income earned on deposits and investments in a TFSA is not taxed. Clients can also withdraw their money at any time for any reason without being taxed. And they can put it back starting from the beginning of the following year. Re-contribution of money withdrawn from a TFSA may be subject to rules and annual limits. Depending on the province or territory, tax may be further deferred through a successor holder. See the Wealth Planning Facts & Figures for further details.
Qualifying small business corporation	The difference between Fair Market Value (FMV) and the Adjusted Cost Basis (ACB) of the property is subject to capital gains taxation upon disposition or death (rollovers may apply at time of death to defer the capital gain). A special lifetime capital gains exemption is available per person for any capital gains based on a defined set of qualifying rules. The amount of the exemption is indexed to inflation annually.
Real estate (such as a family cottage)	Your clients should consult with a tax expert as to how any real estate investment is taxed. However, in the case of a family cottage, capital gains tax may be triggered at death on the difference between FMV and the ACB of the property (a rollover to a spouse may be available to defer the capital gain recognition if the property is jointly owned).
RRSPs/RRIFs	Investment growth is tax-deferred but treated as regular income when withdrawn or at the time of death. Tax may be deferred at time of death through various rollovers available to a spouse or dependent children/grandchildren.
Life insurance	The death benefit from life insurance can be paid to a designated beneficiary tax-free (also free of probate where applicable [as long as the estate is not named as beneficiary] and executor fees).

TIPS

Sales tip

When developing an Estate Preserver Plan for your married clients, consider issuing the policy on a Joint Last to Die basis. This ensures the death benefit is paid when taxes are typically due – and since the charges are based on a single equivalent age, the cost of insurance is also lower than issuing two single life coverages.

Probate Fees

Probate fees may be charged by provincial or territorial courts as a fee or tax for probating the will or otherwise certifying the administrator of the estate. These costs include letters of administration and letters of probate or a certificate of administration, depending on the province or territory.

Fees are assessed on the total value of the assets including those held with a financial institution, real estate and shares in a company and generally range from 0.5% – 1.5%, depending on the province or territory and assets held.

See the [Wealth Planning Facts & Figures] for a schedule of probate fees by province or territory.

Executor Fees

Executor fees may be charged by an administrator of the estate and can range from 0 – 5% of the estate value (family members acting as executors may choose not to charge for their services). They are usually assessed based on the complexity, size and time required to do the following:

- arranging the funeral
- locating the will
- gathering, managing and distributing the deceased's assets
- paying the bills due from the estate
- filing income tax returns

Trust companies or even friends and relatives can act as executors of the estate and charge a reasonable fee to do so.

Case Study

Client details:

- Consider Bill and Janice Smith.
- Bill is 68 and Janice is 67.
- They will retire comfortably and aren't worried about retirement income.
- They have built up a sizable estate which includes the following, in its current value:

Principal residence	$1 million
RRSP	$350,000
GICs	$250,000
Stocks, bonds	$250,000 (Purchase price of $120,000)
Cottage	$500,000 (Purchase price of $120,000)
Total estate value	**$2,350,000**

They have no debt or outstanding mortgages on their properties.

In a discussion with their financial advisor, they mention that they would like to pass on their estate to their three daughters Gillian, Christina, and Melanie. Most importantly, they want to ensure that the family cottage remains a gathering place for the entire family, including their grandchildren and sons-in-law.

However, after completing an *Estimate of Taxes and Charges* (available within the software or as a worksheet) their advisor determines that their tax liability is $408,250 **today** – more than $17% of the value of their estate – **and this amount could grow over time!**

BMO Insurance

The Estate Preserver Plan
BMO Insurance Whole Life Estate Protector

Estate Summary

Asset	**Current Value (FMV)**	**Growth Rate**	**Original Investment (ACB)**	**Taxable**	
				Capital Gain	**Income**
Principal Residence	$1,000,000	3.00%			
Secondary Property	$500,000	3.00%	$120,000	$380,000	
Non-Registered Fixed Income, GIC, and Term Deposits	$250,000	3.00%			
Stock, Bonds, etc.	$250,000	6.00%	$120,000	$130,000	
Total non-registered assets	$2,000,000				
RRSP/RRIF - client 1	$350,000	3.00%			$193,607
Total assets / net capital gains	$2,350,000			$510,000	

Probate Fees*: 1.50%	Executor/Admin Fees*: 3.00%	Capital Gain Exemption: $0	CCA Rate: 3%
Current:	Estate Value $2,350,000	Taxes Problem $408,250 (17.37% of estate)	
Projected to year 21:	Estate Value $3,825,099	Taxes Problem $515,370 (13.47% of estate)	

Note: Probate Fees are not applicable in Quebec. Tax values are estimates only. Assume Balanced Portfolio for Stocks, Bonds (50% Interest, 30% Dividend, 10% Deferred Capital Gains, 10% Realized Capital Gains).

The Solution

Their advisor creates an Estate Preserver Plan from BMO Insurance to offset the tax liability due on their estate. Using the Wave software, they determine that the client should purchase $297,035 of permanent, whole life coverage from BMO Insurance and fund it over 10 years.

Your Estate (Without Life Insurance)					The Estate Preserver Plan			Alternative Investment		
Before Tax Asset Value ($)	Taxes/Fees/ Debts At Death ($)	After Tax Net Estate Value ($)	Year	Age	Annual Premium ($)	Death Benefit Covering Taxes/Fees/ Debts At Death ($)	After Tax Total Estate Value ($)	After Tax Fund Value ($)	After Tax Total Estate Value ($)	Insurance Advantage ($)
2,418,100	420,690	1,997,411	1	69/68	21,507.81	297,125	2,294,535	22,019	2,019,429	275,106
2,488,235	433,504	2,054,731	2	70/69	21,507.81	297,424	2,352,155	44,560	2,099,291	252,864
2,560,466	446,704	2,113,761	3	71/70	21,507.81	298,069	2,411,831	67,637	2,181,398	230,432
2,614,057	459,367	2,154,691	4	72/71	21,507.81	299,128	2,453,819	91,262	2,245,953	207,866
2,669,297	461,701	2,207,596	5	73/72	21,507.81	300,819	2,508,415	115,448	2,323,044	185,371
2,972,084	474,931	2,497,154	10	78/77	21,507.81	324,843	2,821,997	245,273	2,742,426	79,571
3,324,563	491,111	2,833,453	15	83/82	0.00	388,869	3,222,322	275,816	3,109,269	113,054
3,735,155	510,902	3,224,253	20	88/87	0.00	492,114	3,716,367	310,162	3,534,415	181,952
3,825,099	515,370	3,309,728	21	89/88	0.00	515,370	3,825,099	317,528	3,627,257	197,842

The Result

- Using the Estate Preserver Plan, Bill and Janice's advisor shows them that the value of their estate can remain intact.
- This includes covering off the tax due on the cottage when it is transferred over into the names of the daughters.

Note: These examples are based on BMO Whole Life Guaranteed 10 pay Estate Protector (The Wave 56.0) policy and are merely a projection of future results, using a set of assumptions that will change over time. Actual results are not guaranteed and will vary. This projection is not complete unless it is accompanied by all the pages of a BMO Whole Life Estate Protector projection from The Wave illustration software.

Underwriting and Administration Considerations

When proposing an Estate Preserver Plan, you should consider the following:

- Check to ensure that the amount of insurance you are proposing on any life is reasonable and justifiable; this amount will need to be approved by a BMO Insurance underwriter.
- Refer to BMO Insurance's Underwriting Guidelines found under the Underwriting Guidelines menu of our Wave software for details on age, amount, and financial underwriting requirements. You can also read the guidelines here.
- Run a personalized illustration for your client, using the latest version of the Wave illustration software and include a signed copy with the application, including a copy of a completed Estimate of Taxes and Charges Worksheet (available in the software or as a PDF).
- When completing the worksheet, please use a reasonable growth rate for each asset; further supporting information for your assumptions may be required by the underwriter.
- To ensure that the underwriter reviewing the application for insurance understands the purpose of the insurance, include a cover letter with a summary of what is being proposed.

TIPS

Use Rovr AI, BMO Insurance's digital assistant designed to evolve field underwriting.

Visit bmorovrai.com to learn more, or log in to your advisor support account for access.

Frequently Asked Questions

Does probate relate to the province or territory the deceased resided in at death?
Probate, or estate administration certification, in Canada is based on the sites and type of asset being probated rather than the residence of the deceased or where they died. If the deceased had assets in multiple provinces or territories, probate rules, if any, for each province or territory where assets are located will apply.

The law typically identifies two classes of property in a will: movable property, and immovable property. Jewelry or artwork is movable property whereas land and buildings are examples of immovable property.

Movable property is governed by the laws of the location the deceased resided in at death. Immovable property is dealt with under the laws of the province where the property is located.

Are certain assets exempt from probate?
Yes, assets owned jointly, or which allow for a beneficiary designation, may bypass the estate. For jointly owned assets, there needs to be a clear direction that those assets are to pass to the joint owner upon death and not that the joint ownership simply created a resulting trust (onus is on surviving joint owner to prove intent if challenged).

If then courts deem a resulting trust was the intention, the property will be included as part of the estate and subject to probate where applicable.

A beneficiary designation to a specific person other than the estate will also bypass probate where applicable. Where no beneficiary designation is made, the property will form part of the estate and thereby be subject to probate where applicable.

How are executor fees determined?
Executor fees reflect the amount of work and complexity associated with an estate, as well as the relationship of the executor to the deceased. They typically range from 0% to 5%.

Many family members acting as executors forgo any fees for their services as they are acting out of love and respect for the deceased. They may also be beneficiaries of the estate.

Third party executors will charge a fee as they are assuming a significant role that is time consuming. A fee for a simple estate may be in the 1% - 2% range. More complex estates with blended families, corporations, foreign assets, disabled beneficiaries, ongoing trust administration, etc. would typically be in the 3% - 5% range depending on how many of those complexities exist.

Clients should discuss with the intended executor what fee should be anticipated for their services and may want to reflect that in their will.

Does the death of a joint owner result in a disposition for tax purposes?
Yes, and the proportion of the property disposed of depends on type of joint ownership, tenants in common or joint tenancy. The legal and beneficial ownership rights of the joint parties also factor into the tax calculation at time of disposition. Where the ownership parties are spouses, a rollover may apply to defer any tax on disposition.

Where the other joint owner is not a spouse, taxes may arise on the death of one joint owner. Although joint ownership can bypass probate where applicable, it does not automatically bypass income taxes unless spouses are the parties involved.

Parties looking into setting up a joint ownership structure should get independent tax and legal advice to understand all the consequences of such an ownership structure.

Are all capital losses deductible?
There are three types of capital losses that one can incur, and each has its own tax attributes. Most capital property that generates losses can be claimed currently, carried back three years to offset past capital gains, or carried forward indefinitely to offset future capital gains.

A subset of capital property known as personal use property (PUP), often generates losses but those losses are not deductible. This is because if a property depreciates through personal use, the resulting loss on its disposition is a personal expense. Property that is included in PUP includes cars, personal computers, tools, etc. Finally, there is a subset of PUP called listed personal property (LPP). The principal difference between LPP and other personal-use properties is that LPP usually increases in value over time.

LPP includes all or any part of any interest in, or any right, to the following properties:

- prints, etchings, drawings, paintings, sculptures, or other similar works of art
- jewellery
- rare folios, rare manuscripts, or rare books
- stamps
- coins

An unfortunate omission from LPP is a secondary residence which also typically increases in value. They are classified as PUP and any losses on them are denied.

Does a capital property adjusted cost basis (ACB) equal costs expended over time to acquire the property?

Generally, that is the case if there are no specific capital adjustments such as those arising from reorganizations or non-arms-length transfers.

An exception relates to PUP. PUP disposed of for less than $1,000 is deemed to have both proceeds of disposition (PoD) and ACB of $1,000, thus not generating gains or losses. If such property is sold for PoD greater than $1,000 but an ACB less than $1,000, the ACB is bumped to $1,000 for purposes of determining any gain.

Are all Canadian controlled private corporation (CCPC) shares eligible for the lifetime capital gains exemption (LCGE)?[4]

An "eligible individual" is entitled to a cumulative on net gains realized LCGE on the disposition of "qualified property." For 2024, if clients dispose of qualified small business corporation shares (QSBCS) or qualified farm or fishing property (QFFP), they may be eligible for a maximum $1,016,836 LCGE (note that the 2024 federal Budget proposed increasing the LCGE limit to $1,250,000 for dispositions occurring on or after June 25, 2024). Because they only include one half of the capital gains from these properties as taxable income, their cumulative capital gains deduction is $508,418 (1/2 of a LCGE of $1,016,836; the Budget-proposed increased deduction would be $625,000). Only gains that exceed cumulative net investment loss (CNIL) are eligible for the exemption.

To be an "eligible Individual," clients have to be a resident of Canada throughout the tax year, or they were a resident of Canada for at least part of the tax year and were resident for the full tax year proceeding or following the current tax year.

A "qualified property" includes either qualified small business corporation shares (QSBC), or qualified farm or fishing property (QFFP).

A share of a corporation will be a QSBC share if all the following conditions are met:

- At the time of sale, it was a share of the capital stock of a small business corporation (see below), and it was owned by the client, their spouse or common-law partner, or a partnership of which they were a member;
- Throughout the 24 months immediately before the share was disposed of, while the share was owned by the client, a partnership of which they were a member, or a person related to the client, it was a share of a Canadian-controlled private corporation (see above) and more than 50% of the fair market value of the assets of the corporation were:
  - Used mainly in an active business carried on primarily in Canada by the Canadian-controlled private corporation, or by a related corporation;
  - Certain shares or debts of connected corporations;
  - A combination of these two types of assets;

[4] Source: Government of Canada

Frequently Asked Questions

- Throughout the 24 months immediately before the share was disposed of, no one owned the share other than the client, a partnership of which the client was a member or a person related to the client.

Small business corporation
This is a Canadian-controlled private corporation in which all or most (90% or more) of the fair market value of its assets:

- Are used mainly in an active business carried on primarily in Canada by the corporation or by a related corporation;
- Are shares or debts of connected corporations that were small business corporations; or
- Are a combination of these two types of assets.

Qualified farm or fishing property (QFFP)
QFFP includes certain property a client or their spouse or common-law partner owns. It is also certain property owned by a family-farm or fishing partnership in which the client or client's spouse or common-law partner holds an interest. QFFP includes:

- A share of the capital stock of a family-farm or fishing corporation that the client or client's spouse or common-law partner owns;
- An interest in a family-farm or fishing partnership that the client or client's or common-law partner owns;
- Real property, such as land, buildings, and fishing vessels; and
- Property included in capital cost allowance Class 14.1, such as milk and egg quotas, or fishing licenses.

Can depreciable assets generate capital gains?
Depreciable assets can generate capital gains as well as recapture or terminal losses. Depreciable assets are grouped into classes and each class has an undepreciated capital cost (UCC) balance associated with it as well as an adjusted cost basis (ACB).

The ACB simply records costs of additions and dispositions related to the assets in the class.

The UCC is the ACB reduced by depreciation; referred to as capital cost allowance (CCA) that is claimed as a tax-deductible expense (CCA does not need to be claimed each year).

The CCA rates vary depending on the asset class and are prescribed in the Income Tax Act (ITA).

When the last depreciable asset in a class is disposed of for proceeds that are less than the UCC at the time of disposal, the client has a terminal loss (a UCC balance with no corresponding assets left in the class). A terminal loss is deductible for tax purposes. If the client disposes of the last asset in a class for proceeds exceeding the UCC, the excess amount up to the ACB of the class is called recapture (depreciated the asset by more than the actual economic loss). Recapture is included in taxable income.

Any proceeds in excess of the ACB generate a capital gain. There are no capital losses for depreciable assets.

Why do you use present value (PV) to compare different estate cost funding alternatives?
The four funding alternatives for estate costs take place over different time periods. To do an accurate comparison at a common point in time we use the present value of cash flows to compare alternative costs.

For the insurance solution, we present value all future premiums back to a single cost today. Similarly, for the saving type option, we "present value" the deposit stream generating the saving accumulation.

The sell asset option looks at the tax cost at projected mortality and discounts the cost back using a present value rate to determine the value of assets needed today. Finally, the loan figure is based on the cash flows required to repay the loan after death, discounted back to a current cost using the assumed present value rate.

Frequently Asked Questions

How does the principal residence capital gains exemption work?

The formula for the principal residence exemption is capital gain resulting from the disposition, times the eligible number of years designated as a principal residence plus one year, divided by the number of years owned.

The "plus 1" rule allows a taxpayer to treat two properties as eligible for the principal residence exemption for a year where one residence is sold and another is purchased in the same year (overlap ownership situation where only one of the properties may be designated for that year).

For a property to qualify for designation as the taxpayer's principal residence, the taxpayer must own the property either solely, or jointly with another person, for at least 12 months. The housing unit generally must be inhabited by the taxpayer or by his or her spouse, common-law partner, former spouse or common-law partner, or child.

A taxpayer can designate only one property as his or her principal residence for a particular tax year. Furthermore, for a tax year that is after the 1981, only one property per family unit can be designated as a principal residence.

Effective 2016 and subsequent taxation years, the CRA will only allow the principal residence exemption if you report the disposition and designation of your principal residence on your income tax and benefit return.

A number of special rules may apply that are beyond the scope of this document including using the property to earn income, partial dispositions, non-resident considerations, etc. If the taxpayer is not a Canadian resident who owned and inhabited the property being designated throughout the ownership period, or if the property is being used to generate income for any of the years of ownership, the taxpayer should seek additional tax advice from a tax professional on this topic.

How does the "home flipping" tax impact principal residence status and capital gain treatment?

Effective January 1, 2023, a gain on a "flipped property" sale is deemed to be business income and fully taxable. No principal residence exemption is available to reduce the tax. A "flipped property" is defined as a housing unit that:

- Is located in Canada;
- Would not otherwise be inventory of the taxpayer; and
- Was owned by the taxpayer for less than 365 consecutive days prior to the disposition of the property.

A number of exclusions may be available to avoid hardship for unforeseen events that require the sale within the 365-day timeframe. They include dispositions due to:

- death of the taxpayer or a related person
- related person joining the household (birth of child, adoption, or care of elderly parent) or the taxpayer is joining a related person's household
- breakdown of marriage or common-law partnership of the taxpayer (if living apart for at least 90 days prior to the disposition)
- threat to the personal safety of inhabitants
- disability or serious illness of the taxpayer or a related person
- "eligible relocation" of the taxpayer or their spouse or common-law partner (e.g., a work relocation where the new home is at least 40 km closer to the new work location)
- involuntary termination of employment of the taxpayer or the taxpayer's spouse or common-law partner
- insolvency of the taxpayer
- destruction or expropriation of the property against the taxpayer's will (e.g., due to a natural or human-made disaster)

Frequently Asked Questions

However, even if one of the above exceptions applies, or if the property was held for 365 days or more, it remains a question of fact whether a gain on the sale of a residential property will be taxed as business income or a capital gain.

Why are segregated funds an attractive estate planning option?

One estate planning concept is to move a portion of your clients' non-registered assets into segregated funds as they get older. Segregated funds provide a maturity and death benefit guarantee. This allows the investor to select investments within the product that can generate higher returns without concerns about losses.

Often, as we age, our investment portfolios become more conservative as we have less time to recover from an adverse market situation. The returns on risk-free investments can be very low, particularly after considering inflation and taxes.

When one has the confidence that their capital is protected, one can go into a more balanced investment portfolio which may generate higher yields. Compounded over many years, this yield boost can have a significant impact on estate values.

Segregated funds may also bypass probate where applicable, can provide creditor protection, and are typically settled very quickly. Estate assets subject to probate could be tied up for a year or more whereas segregated funds are typically paid out in a matter of weeks after a death certificate is provide to the insurer.

What are the charitable gifting options at death?

There are two ways a donation can be made as a result of the death of the donor; direct designation, or bequest in one's will.

For deaths after 2015, such gifts are deemed to be made by the estate at the time the property is transferred and is therefore eligible for a tax credit in the estate, not in the deceased's terminal return (before this date such gifts were deemed to be made immediately before death and thereby in the hands of the deceased, not the estate).

Special rules exist for donations from a graduated rate estate (GRE). Donations made as a consequence of death after 2015 from a GRE have greater flexibility with respect to who may claim the credit. The tax credit for a GRE donation can be claimed by any entity or method listed below.

- Terminal tax return of the deceased in the year of death;
- The deceased in the year prior to death; or
- The GRE within 36 months.

Being able to claim a tax credit for a charitable donation is limited by one's net income for the year. The typical threshold is 75% of net income. In the year of death, and the year prior to death, the threshold is increased to 100% of net income. There is also a one-year carry back, as well as a five-year carry forward for unused charitable donations.

Gifts of insurance made by way of will result in the insurance benefits flowing through the estate which may expose them to probate, possible creditor claims, and estate litigation. Donor confidentiality is also lost as wills are public documents.

Resources

Estate Planning Fact Finder 846E

Business Owner Estate Planning Fact Finder 848E

Estate Preserver Plan client brochure 683E

Executor's Task List 847E

Estate Preserver Plan Estimate of Taxes and Charges Worksheet 468E

Wealth Planning Facts & Figures

Notes

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