Saving Probate Taxes: Other Effective Strategies

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This is the third article in a series about saving probate taxes – see my previous articles, *Saving Probate Taxes: Two Wills* and *Saving Probate Taxes: Two Wills – Shares in a Private Corporation*, where I discuss the tax benefits of having a Primary Will and Secondary Will, especially where a person intends on transferring privately held shares of significant value. This article discusses some other well-known strategies for minimizing probate taxes, including:

1. joint ownership of assets with a right of survivorship;
2. naming beneficiaries;
3. transferring assets out of the estate; and
4. trusts.

Joint Ownership With A Right Of Survivorship

Co-owners of real property and certain types of personal property, such as bank accounts, can own such property as "joint tenants". Joint tenants benefit from the "right of survivorship" which means that the survivor of the joint owners automatically inherits the entire and sole ownership of the property in question. Property afforded the "right of survivorship" will pass to the surviving joint tenant outside of the terms of your Last Will and Testament and outside the reach of Ontario's intestacy laws. The advantage to owning property as "joint tenants" is it reduces the probate tax. However, joint tenancy is not always appropriate and has its drawbacks so understanding its limitations, tax consequences and risks is important.

Beneficiary Designations

Beneficiary designations are generally seen on financial products such as RSPs or TFSAs or insurance policies. Having a beneficiary designation means that the asset will be distributed outside of your estate directly to the named beneficiary and not included in the value submitted on a probate application thereby reducing the probate tax. In addition, depending on who the beneficiary is, the beneficiary may qualify for a tax-free "rollover", saving further taxes.

Transferring Assets Out Of The Estate

You can save probate taxes by transferring assets out of the estate, i.e. gifting them to your heirs prior to death. However, gifting prior to death requires adequate consideration because it has its drawbacks. For example, if you gift an income producing asset such as stocks to someone other

than a spouse it is treated as a sale and may have tax consequences. Another drawback to gifting is that you relinquish all control over the asset, which may not be an acceptable outcome.

Trusts

In simple terms, a trust provides an intermediary between yourself and your intended heirs. By using a trust you can transfer ownership of an asset out of your hands, allowing your heirs to benefit from the asset and at the same time allowing you to retain control. An *inter vivos* trust (living trust) is a relationship that is created during your lifetime. A testamentary trust is created on and as a consequence of death. The use of a trust in estate planning represents a more complex method of estate transfer with its own set of advantages and disadvantages.

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