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*ESTATE*PLANNING

Your Estate Plan

Take Control

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Major problems often start in small and unexpected ways. For example, instead of calling the plumber for the inexpensive repair of a minor leak, some people learn the hard way that a long-ignored small drip can grow into a flood that leads to substantial renovations.

It's much the same when it comes to wills and estate planning. Preparing a will with the help of an experienced legal professional can efficiently and cost-effectively organize your estate. Procrastinators who prefer to hit the snooze button usually leave their family and business with a financial quagmire.

'Control' is the single best word to describe why you must get your will prepared or updated now.

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A proper will puts you in charge of what eventually happens to your assets. You can direct who gets what and when. In many provinces, if you die without a will the courts alone will decide how to divide your assets. Your spouse and children will have no say in those decisions.

Unexpected Beneficiaries

Putting off your estate planning can inadvertently make the Canada Revenue Agency your beneficiary. Many recent examples illustrate the need for proper planning while the sun is shining.

The artist formerly known as Prince didn't leave a will, so his estate (estimated at U.S. $300 million) will lose more than half its value to estate taxes. James Gandolfini, aka Tony Soprano, died with a will said to have been so poorly constructed in terms of tax savings it was dubbed "a case study on what not to do."

Knowing that your family and favourite charities will benefit from your planning efforts will give you peace of mind. Under your control, you can maximize the value of your estate and be certain that everyone will be looked after exactly as you want, not the way a judge decides.

Timing Matters

A woman in her 50s recently sought our advice on behalf of her siblings and elderly parents. Mom and Dad, 90 and 85, personally own a portfolio of commercial real estate worth $50 million but are too old and unhealthy to qualify for life insurance. The family could have used inexpensive life insurance, at a cost of pennies per dollar, to pay the $10 million tax liability that will be due when the parents die.

It is now too late to do the comprehensive tax planning that should have been completed years ago, when the parents were younger and insurable. They will be forced to sell valuable income-producing assets just to pay the tax bill when the parents die.

Seven Defensive Strategies

Hopefully, you will be proactive in your own estate planning, and decide to get started sooner than later. Here are some defensive strategies to consider now:

1. Your will: This is the must-do cornerstone of your estate planning. Most wealthy Canadians say they have a will, but research

shows they are often not current and up-to-date. Getting a will prepared by an experienced specialist can ensure a bigger legacy for future generations and prevent the accidental exclusion of loved ones, like a child from a second marriage.

You may need two wills: a primary will for personal assets, and a secondary one for business, which can eliminate probate taxes. In Ontario, probate taxes stand at 1.5 per cent. That simple step of proper planning can save a lot of money as probate taxes of $15,000 are levied on every $1 million of assets.

2. Proper estate planning: A recent study of wealthy Canadians revealed that only one in four had a full strategy in place for transferring their wealth to subsequent generations. One in three said they hadn't done anything in that regard. Developing an estate plan while you are alive will preserve and protect your assets and direct how they get distributed upon death. Most importantly, your plan will maximize the size of your estate by incorporating strategies to minimize the taxes that can quickly erode your financial legacy.

3. Joint ownership of assets: Using this strategy, ownership of assets -- whether a home, a cottage or an investment account -- passes to the second owner without probate taxes. You need to be mindful that if children are made joint owners, their share is subject to creditors' claims, marital breakdowns, litigation and possible strife with other children. We have seen many situations where a sibling who had joint ownership with the parent refused to share the estate with brothers and sisters, insisting that the parents intended that just the one sibling have all the assets.

4. Estate freeze: The family above with $50 million in personal real estate could have instituted an estate freeze, a tax planning strategy in which owner/parents give their children shares in a family business. This technique allows families to cap their own tax liability when transferring their shares to someone else. That way, the future growth of their business would have accrued to the children, who could do their own planning.

5. Family Trusts: This mechanism allows people to dictate exactly how and when their money is to be passed on, including 'who' gets it, in a tax-friendly manner that can eliminate costly probate taxes. A common goal of many trusts is the ability to extend timelines, such as when a young heir is to receive an inheritance. A trust, under the auspices of a custodian, guarantees ongoing income while protecting selected assets against claims and creditors, such as protecting a family home from the potential failure of a business venture. Unlike a will, a trust does not become public upon death. It thus allows your wishes to remain confidential forever and less likely to attract legal claims from people who would otherwise contest a will.

6. Personal Pension Plans (PPP): This highly attractive investment vehicle is a better alternative to a Registered Retirement Savings Plan (RRSP) and is mainly available to business owners and incorporated professionals. Highly paid key executives can also be provided with a PPP as part of their overall compensation package. The PPP offers a defined-benefit option that allows you to contribute far more tax-deferred contributions than you can with a RRSP. A PPP is creditor-proof and provides the certainty and security of knowing exactly how much you will receive every year after you retire.

PPPs have a built-in safety mechanism, so if your investment returns fail to deliver the promised 7.5 per cent return (averaged over three years) you can make additional tax-deductible contributions to ensure the return. It also allows you the flexibility to switch from this traditional option to a defined-contribution option every year, depending on the cash flow needs of your business.

If you have only an RRSP or a Registered Retirement Income Fund (RRIF) when the second spouse in a married couple dies, more than half (up to 53.53 per cent) of the remaining funds will end up going to the government in the form of taxes. But with an PPP, if your children are employed in your business and earning a salary, they are eligible to become members of the PPP, ensuring assets pass to the next generation with no taxes or probate fees.

7. Life Insurance: Canada's Income Tax Act treats life insurance in a unique way. In contrast to other financial instruments, life insurance benefits are tax-free. There are very few ways to shelter your money for the next generation: your home, TFSAs and life insurance. The proceeds of tax-free life insur-

ance can be used to pay taxes and other costs, avoiding the need to borrow money (with non-deductible interest) or sell assets to pay off taxes. If you own a corporation, the premiums can be paid by the company, so your family will have the funds to pay the tax bill.

When is the best time to buy life insurance? When you are young and healthy.

A Process

Estate planning is a process, not a one-off event. Review your planning at regular intervals, at least every five years, as your personal, family and business situations evolve. Along the way, milestone events like marriage and divorce, family births, deaths and changes in business interests usually require modifications in your planning.

Insurance product and premium changes provide additional reasons to review your planning. Insurance policies purchased years ago may no longer be appropriate and you may be able to replace old policies with better coverage and better pricing.

Get Professional Help

Proper estate planning is not a do-it-yourself project. Get help from an experienced estate-planning professional. If you have already done estate planning, contact us to obtain a no-obligation second opinion. There are only two possible outcomes: it will confirm that your planning is in order, or reveal defects that need to be remedied. You can avoid the misfortunes that struck the Prince and Gandolfini families.

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