

Taxes after death not so certain

CALGARY HERALD JANUARY 27, 2011

Presented By:



Keith Masterman, associate vice president of The Trust Businesses at TD Waterhouse, says there can be a huge emotional strain in being an executor. When putting an estate plan together, determining who is going to be in charge of handing down assets is as important as who will actually receive an inheritance.

Photograph by: Hugh Wesley, For Postmedia News

Paul Barker

For Postmedia News

Losing a parent is never easy, but pile on the added responsibility of being the executor of a will to a son or daughter, and a heart-wrenching situation can become unbearable.

With the registered retirement savings plan (RRSP) buying season now in full throttle and the first batch of baby boomers born in 1946 reaching retirement age this year, this is a good time to start doing some estate planning if you have not done so already — for the sake of your descendants.

Keith Masterman, associate vice-president of The Trust Businesses at TD Waterhouse, says there can be a huge emotional strain in being an executor:

“We see an awful lot of families where there are new retirees who are saying, ‘I am going to name my

children as the executor,' and meanwhile, you have a child who is part of the sandwich generation who is taking their children to ballet and hockey on Monday and Tuesday, they have a really important career going on and at the same time they are looking after elderly relatives.

“To put them under the burden and responsibility of now administering your estate, is that really fair?”

When putting an estate plan together, he adds, determining who is going to be in charge of handing down assets is as important as who will actually receive an inheritance, particularly if any capital is tied up in an RRSP.

“I always tell people that my job as a corporate executor is to make sure that your family can still have Thanksgiving dinner together after you pass away,” says Masterman.

“Personally, I have lost someone who was close to me and the grieving process is what was important to my family, not suddenly taking on the business and legal responsibility of administering the estate.”

Regardless of the route taken, an RRSP will conceivably play a huge role in any will, and with it comes some complex scenarios that a soon-to-be-retired individual may not be aware of.

There are certain nuances people need to know about, such as what is taxable and what is not.

Abby Kassar, financial advisory consultant with RBC Dominion Securities, says it is critical that when writing up a will, people need to factor in the tax liability on any RRSP assets.

She suggests the following scenario as an example: A lone surviving parent with a son and daughter intends to give each \$500,000. The son's portion will come from funds that are either in an RRSP, or if an individual is over the age of 72, from a registered retirement income fund (RRIF). The daughter, meanwhile, is named as the sole beneficiary of a life-insurance policy.

The parent may feel they have given equal sums to each, says Kassar, but in reality, the registered retirement assets will trigger a tax bill from the Canada Revenue Agency (CRA) that could be as much as \$200,000.

“When doing any planning, it is a good idea to work with a qualified professional who will be able to bring these points and others to your attention,” Kassar says. “You may have good intentions, but it could end up not being fair to a beneficiary named in the will.”

Lori Duffy, a lawyer with WeirFoulds LLP in Toronto, says people with substantial wealth who seek her advice are often looking to have a long-lasting influence on society and with their family.

“We start out by looking at what obligations they have in terms of dependents, spouses, children, disabled family members and figure out how creative we can be, given those obligations and expectations,” she says.

“We are always fearful of the disappointed beneficiary who is going to try to attack the will. Depending

on the size of the estate and these offsetting liabilities, most of our clients at some point will want to incorporate some type of charitable giving. We will often try and include family members in that gift giving.

“You get the next generation involved in philanthropy, it is the perfect picture. For some people, an RRSP is one of their largest assets. It is also going to trigger a potentially large tax payment upon death. We always look at how we can use the assets in the RRSP and who we have to benefit from them on a tax-free basis.”

Duffy, who also teaches estate planning at the University of Toronto Law School, points out that if a charity is named as a beneficiary, there is no estate administration tax.

“The charity gets the bulk of the money and the CRA gets less, which is my favourite scenario,” she says.

Meanwhile, Masterman predicts that a “tremendous” distribution of wealth is going to happen over the next few years.

“Surround yourself with good people and communicate with your family,” he says. “It is tremendously important they understand why a plan has been put in place.”

Power of attorney

An important part of any estate plan is the power of attorney.

It is important that you put someone in place who will understand the nature of your RRSPs, what you want to get out of them and other retirement-planning tools, and understands the burden and the responsibility placed on them, says Keith Masterman, associate vice-president of The Trust Businesses at TD Waterhouse.

“We see an awful lot of situations with powers of attorney where there has been one child named and it has created tremendous stress among family members,” he says.

As for how much it will cost to acquire outside help from a trust company or lawyer, fees vary from province to province. But a good rule of thumb is to set aside around five per cent of the value of the estate to cover various executor service fees.