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Estate planning

Stakes rising as boomers deal with historic wealth transfer

Longer life expectancy, growing wealth, multiple marriages and blended families are only some of complexities that make estate planning a challenge. As the first baby boomers reach retirement, many feel comfortable that everything is taken care of. But is it?

John Askin, founder of the Wealth Strategy Group and author of the upcoming estate planning book, *For Love not Money*, says that many people are making fundamental planning errors. "Everybody should have a will – but it is important to remember that a will doesn't have any legal validity until you're in a hole in the ground. If mistakes are made, you can't come back to fix things. Most people would prefer to get the planning done when they're alive, healthy and in control."

The stakes are higher than ever before. Mr. Askin, an estate planning specialist, says, "A great deal of feuding takes place when significant property transfers take place under the terms of a will, and we're now in the midst of the largest transfer of wealth in history. Planning has become an important issue for almost everybody."

Wills are regularly challenged, says Mr. Askin, on the basis of technical validity, ambiguity of wording, lack of mental capacity and undue duress. "Wherever there is a will, there's a relative. There are a lot of ways a skillful lawyer can attack a will, and all the problems arise from the fact that you're not there to clarify or insist that these are, in fact, your wishes. And in almost every province in Canada and state in the U.S., legislation exists that empowers judges to discretionarily override the terms of a will if it does not make adequate provision for the proper maintenance and support of a claimant."

The process, he says, can tear families apart. "It may start out to be about the money or the property, but latent family feuds get played out. With the best of intentions, that's what many people are setting themselves up for."

Most people are aware of probate fees – but they may have missed the recent increases of 130 per cent in British Columbia and 300 per cent in Ontario. The fact that there are no offsets (such as cost-base adjustments, principle residence exemption, etc.) may make probate fees more onerous than income taxes at the time of death.

"If you borrow a million dollars, for example, and invest it in stock that is still worth a million dollars at your death, there are no income tax consequences. For probate fee purposes, however, the debt could be ignored, and the fee levied on a million dollars worth of shares. If you left the shares to your spouse who died six months later, his or her estate would also be charged probate fees on a million dollars worth of shares," says Mr. Askin.

The key to overcoming these issues, he says, is to view the will as just one tool in the planning process, and to get comprehensive advice, particularly when a lot is at stake. Options to complement a will include gifting of property while alive, joint tenancy arrangements, and the creation of trusts which allow assets to be controlled by their owner during their lifetime and distributed according the owner's wishes after death.

"No one solution is right for everyone. There are significant tax aspects to these strategies, but there are lots of professionals around to help mitigate or avoid tax impacts if you do this when you're alive and healthy. It's vital to work with professionals who not only design the estate plan, but take responsibility for implementing it (with other professional advisors as required) and for updating it as life situations and tax law changes," says Mr. Askin.

While it's important to be aware that a will may not be answer to every estate planning question, it's still important to begin there. Colleen Gibb, a partner at Gibb Widdis, says that baby boomers tend to fall into two camps – those who made a will when their children were young and haven't looked at it since, and those who never got around to it at all. "They may need to pull out their will and see what needs to be changed. And if they haven't made a will, it's time to think about documenting what they want to have happen."

Longer life presents more milestones. "Once your kids are grown, when you've had a friend or business partner die, when you reach 65 and your insurance policies become too expensive to carry, your spouse passes away – these are all times to revisit what you have and where you want it to go," says Ms. Gibb. ■

PHOTO: LYNN FALCONER

Wealth Strategy Group founder John Askin, author of the upcoming book *For Love not Money*, says estate planning has become an important issue for almost everybody as Canada enters a period of the greatest wealth transfer in its history.

Protecting your home's tax-free status

It's a Canadian treasure - gains on our primary residence are tax free. But for people who rent out their home when they move into a retirement home, for example, or even rent a basement suite to supplement income, there are many tax rules that should be considered.

"If you change the use of your personal residence, says Colleen Gibb, a chartered accountant and partner at Gibb Widdis, "it's important to seek professional advice.

If you rent (your home) and don't claim depreciation, you can still claim it as your personal residence, but that is only possible for a limited number of years. Any gain from that point on is subject to tax, and there is a rather complicated formula that applies."

Further, she says if you ever claim depreciation of your home - even if you're renting out the basement to students - it will no longer qualify as a personal residence.

Designating an RRSP beneficiary? Think it through

It's common advice: Wherever possible, designate a beneficiary on RRSP to avoid probate fees. But particularly when there isn't a living spouse, doing so can have unintended results.

In one such case, says Colleen Gibb, a partner at Gibb Widdis, a woman who owned a cottage, her home and an RRSP designated her grandchildren as the beneficiaries of her RRSP. "In her will, she left her home to one of her two daughters and her cottage to the other. Because the cottage had significantly increased in value, taxes were triggered by her death, and the RRSP was also taxed at the top rate."

As the balance of the RRSP belonged to the underage grandchildren there was no money left in the estate. In the end, both the cottage and the home had to be sold to cover the tax liability. "Neither of her daughters ended up with the properties she wanted them to have," says Ms. Gibb. "It's a tragic story that could have been easily prevented."

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