

## **Estate Planning - 101**

What do they mean by an “Estate”? According to the dictionary, an Estate is the property or everything that you own. So what happens on death is that the decedent’s property is transferred to an ‘Estate’ until all the taxes have been paid and the requirements of the will have been fulfilled. Another name for this is a ‘Trust’ as a testamentary trust is created upon death.

There can be significant taxes when someone dies, so it is advisable for people who have assets to at least have a will and do some Estate planning to minimize taxes on death, or perhaps increase the taxes on death so that the taxes to the beneficiaries may be minimized. There are several other reasons to Estate plan such as reducing probate taxes, protect the assets from creditors and to simply organize the affairs before death.

Whatever the reason, to create an effective estate plan, an estate planning team is required. The team consists of an accountant, a lawyer, a tax advisor, an insurance advisor, an investment advisor or financial planner, a banker and possibly even a certified business valuator. The estate also needs an ‘Executor’ or ‘Executrix’ who has the responsibility to distribute the assets and file the various tax returns once the owner of the estate is deceased. One member of the team should be the ‘Estate Planner’ who’s responsibility will be to determine where the client is today, to reorganize the present into a better structure and to provide a plan and procedure to implement goals set for the future. This person could also become the Executor or Executrix due to their knowledge of the decedent’s affairs.

There are usually five steps in the estate planning process:

1. Gather information – List the assets that are owned currently or may be owned in the future either by way of purchase or by inheritance. Additional items to note on the list are the estimated current fair market value, the original cost, or adjusted cost, when and how the asset was acquired, any annual net income generated by the asset, if the asset is likely to appreciate in value and an estimate of how much, and finally, if shares are owned, the paid up capital value of the shares. List any present, future or possible creditors that may have claims against the assets that may stall the transfer of the assets to

beneficiaries. List the names, locations, ages, incomes, net worth, lifestyle, marital status, SINS, children of all heirs.

2. Goal setting and preliminary planning – Document realistic achievable goals that are fairly specific and balance any conflicting goals of the plan.
3. Identify potential obstacles and risks to the plan – Items such as creditors, marital separation, taxation, possibility of contesting will, are minor children involved, or are there any health issues that may lead to incapacity
4. Plan implementation – Depending on the complexity of the estate, the plan may have several implementation dates and phases. It is important that there is also a ‘back door’ to unwind the plan if things do not work out. There should be legal documentation for each phase. This documentation should indicate the location of the assets, financial records and the Will. If any changes are made to the plan, the Will must also be updated.  
**If the person has a small business, it is very important that the person also have a Will because upon death, all bank accounts will be frozen.**
5. Ongoing monitoring and fine tuning – The estate plan should be reviewed on a yearly basis to determine if the goals are still being met and in the case of any changes to the income tax act or other acts that might affect the plan.

The mechanics of the tax returns required when a person dies is quite complex. There is firstly the terminal return, the rights & things return (optional), and the business return (optional). If there is the requirement for probate or other issues with the estate, the estate’s assets will need to be transferred into a trust and a trust return will need to be prepared every year until the trust is dissolved which is what happens when the assets are distributed to the beneficiaries. If the trust was created upon death or through the terms of a will individual tax rates apply. There are a number of tax elections that can be made upon death that need to be taken into consideration when filing the final tax returns. Finally when all taxes have been paid and all assets have been distributed, the executor or executrix of an estate can file for a clearance certificate, on both the individual and the estate.

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