

## Behind the Counter

### Estate Planning

Estate planning happens for a number of reasons. Some of the most common are to minimize taxes on death, defer current taxes, to fund future taxes, minimize probate fees, to protect assets from creditors and from business risk, to fairly distribute assets to beneficiaries and to avoid conflict between beneficiaries, to provide for the family in the future and to organize and simplify financial affairs to avoid leaving heirs with a mess.

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 (which may be the accountant or lawyer), an insurance advisor, an investment advisor or financial planner, a banker and possibly even a certified business valuator. The estate also needs an 'Executor' 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 designated the 'Estate Planner'. The role of the Estate Planner is 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 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

List the names, locations, ages, incomes, net worth, lifestyle, marital status, 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.** Another alternative would be to have a continuation agreement with another person or firm and give that person or firm access to your bank account by putting that person on as a signing authority.
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.

Estate planning usually involves the use of trusts. A trust is created when a person (settlor) transfers property into the trust for the benefit of other persons (beneficiaries). The trust is administrated by trustees. The trustee holds legal title to the property, administers assets, follows the terms of the trust and files the yearly tax returns. The settlor places the property in the trust, establishes the rules for the operation of the trust, determines who the beneficiaries and trustees are and should not be a trustee or a beneficiary of the trust. The beneficiaries have either an income or capital interest in the property held by the trust, but no legal title.

Although a trust is not a legal entity, it is considered an individual for tax purposes in Canada. If the trust resides in Canada, it is taxed on it’s world wide income. The residence of a trust is determined by the residence of the majority of the trustees.

There are two main types of trusts. A testamentary trust is created upon the death of a person or through the terms of a will. This type of trust uses the same tax rates applicable to an individual. An inter vivos trust is established during a person’s lifetime and is any other trust. Examples are alter ego trusts, joint spousal trusts, family trusts and other

business and personal trusts. This type of trust is taxed at the highest marginal tax rate on every dollar of income regardless of level or type.

Space does not allow further explanation into the kinds of trusts. If you are considering an estate plan, design your estate team who will be able to explain, analyze and guide you along the way.

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