



Estate Planning

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Agenda



- Overview of Estate Planning "Rest in Peace"
- Powers of Attorney for Property and Personal Care Wills
- Probate
- Income Tax
- Trusts



Overview of Estate Planning





What is Estate Planning?

Organizing your affairs with a multifaceted plan to pass on your wealth to your beneficiaries in a timely and tax efficient manner

LEAVE **YOUR** LEGACY, **YOUR** WAY!!

Estate Planning Considerations



- Determine estate objectives
- Appoint executors and powers of attorney
- Identify guardians for minor children
- Arrange for the transfer of wealth to beneficiaries
- Provide for special beneficiaries (e.g. disabled beneficiaries, spendthrift beneficiaries)
- Select trustees for inter-vivos and testamentary trusts
- Plan to have sufficient liquid assets to pay taxes and other liabilities.

Estate Planning Considerations (Cont'd)



- Minimize potential delays in estate settlement
- Minimize taxes and other costs at death
- Address potential family disharmony
- Donate to charities/philanthropy

Reviewing your Estate



- Review periodically or when circumstances change significantly
- Changes in family circumstances/ financial circumstances
- Ensure it reflects any changes in tax legislation, succession law and or family law



Powers of Attorney for Property and Powers of Attorney for Personal Care





Power of Attorney

- A legal document to appoint another individual, professional or trust company to act on your behalf during your lifetime

- Two types of Power of Attorney
 - Property
 - Personal Care

- Choice of Attorney
 - Trustworthy, reliable, available, willing and able
 - Elder abuse/Power of Attorney abuse

- Alternate Attorney

- Attorneys and Joint Accounts – beware!



Wills



What is a Will?



- A legal document to:
 - Appoint an Executor to manage your estate
 - Distribute your estate as per your wishes and specify restrictions or conditions on inheritance and entitlement
 - Lay out parameters for trusts to be set up
 - State your wishes for guardianship of minor children

Dying Intestate



- Assets may not be distributed in accordance with your wishes
- No opportunity to select a guardian for your minor children
- The person who settles your estate may not be the person you would have chosen
- It may take longer and be more costly to settle your estate
- Increased chance of litigation



Responsibilities of an Executor

- Determine/make funeral arrangements
- Locate and review Will
- Locate, safeguard and itemize assets
- Apply to court for probate
- Determine/pay debts and funeral expenses
- Deal with Service Canada and Canada Revenue Agency, file final tax return(s) and obtain clearance certificate
- Keep records and provide full accounting for the estate
- Manage assets in the interim period
- Make interim and final distributions of assets to beneficiaries



Challenges for an Executor

- Lack of expertise or time
- Conflict of interest
 - No self-dealing
 - Even hand principle
- Managing conflict amongst estate beneficiaries
- Making decisions
- Geographical distance
- Grieving
- Personal liability



Your Executor

- Alternate executor / Co-executor

- A competent adult or trust company who is:
 - Experienced
 - Knowledgeable
 - Trustworthy
 - Impartial
 - Reliable
 - Available, willing and able
 - Resident in the same jurisdiction as you

- You can name as Executor:
 - Family member or friend
 - Professional: lawyer, accountant
 - Corporate executor: The Canada Trust Company

Benefits of a Corporate Executor



- An objective and impartial party who may be able to preserve family harmony
- Take burden and liability for damages off family members
- Provide continuity and permanence for testamentary trusts of long duration
- Can be appointed as Executor or Co-executor with a family member or friend
- Generally lower fees than court approved rates (5% of estate value)



Probate





What is Probate?

- Process of applying to Court to confirm:
 - Validity of the Will
 - Appointment of Executor
- Probate fees vary by province and may depend on the value of the estate
- Ontario-Executors can be audited for up to 4 years after Probate issued (new rules)
- Probate fee planning should not be done in isolation
- Assets which pass outside of the Will do not attract probate
- Consider before distributing wealth during lifetime:
 - Loss of control over assets
 - Potential income tax implications
 - Unequal estate distribution
 - Underestimating income and capital needs

Strategies to Minimize Probate Fees



- Outright gifting during lifetime
- Beneficiary designation
- Joint tenancy with right of survivorship (except Quebec)
- Inter-Vivos trust
- Multiple Wills (permitted in certain provinces)
 - Primary Will: assets subject to probate (e.g. bank/investment accounts, real estate)
 - Secondary Will: assets NOT subject to probate (e.g. privately held shares, personal effects)



Income Tax



Income Tax



- Deemed disposition of capital property at fair market value upon death unless certain tax-deferred spousal rollovers
- Income inclusion of RSPs and RIFs at fair market value upon death unless certain tax-deferred qualifying transfers
- Significant income and capital gain taxes may result
- Consider life insurance to fund death taxes and other estate expenses



Trusts





What is a Trust

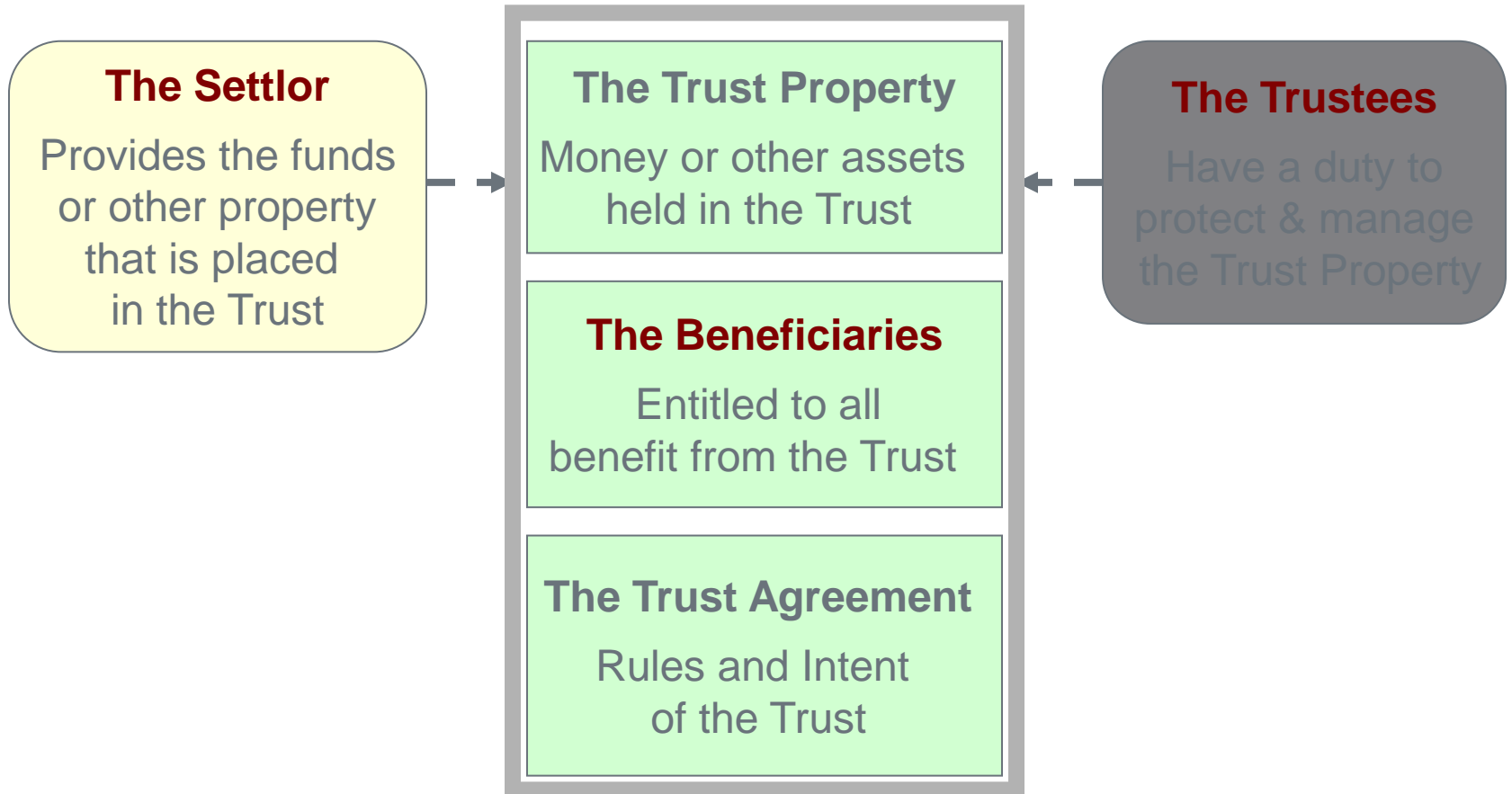
A Trust is a relationship often used where there is a need or desire to:

- segregate and preserve certain property
 - for a specific person or group of people
 - under specific rules or conditions
 - for a defined period of time
-



What is a Trust

Every Trust has certain key elements or “parts”.



Inter Vivos Trust vs. Testamentary Trust



- Inter vivos trust
 - Established during your lifetime
 - Subject to top marginal tax rates

- Testamentary trust
 - Established pursuant to your Will or testamentary document
 - Comes into existence after your death
 - Subject to top marginal tax rates unless certain graduated rate estates and qualified disability trusts



Thank you!

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