EXECUTOR DUTIES

In Ontario, executors are officially referred to as estate trustees and in Quebec, they are called liquidators. However, you may be more likely to hear the term executors, and you should note that this is generally used interchangeably with the term trustees. An executor named in the Will obtains his or her authority from the Will itself and the authority starts with the death of the testator (although that authority might not be recognized by third parties until probate or court approval is granted). The executor is the person(s) or institution charged with the responsibility of carrying out the provisions of the Will. It should always be kept in mind that being an executor is a major undertaking and once the job is accepted, the executor must fulfill his or her obligations or risk exposure to personal liability.

This summary is not intended to replace the advice of a tax, legal and other professionals. (It merely aims to give a basic overview of some of the issues involved.) An executor has an extensive list of responsibilities requiring the services of professionals in most cases. Professional advice is strongly recommended given the complexities involved, to deal with any family law implications and to ensure all tasks are properly completed.

PROBATE

Probate affirms that the Will has been duly approved through court process and confirms the authority of the estate representative. This provides comfort to third parties dealing with the executor (such as financial institutions) that neither the Will nor the executors' authority is under attack by competing claims. (A similar process is followed in situations where there is no Will whereby an estate trustee without a Will or an administrator is appointed.)

PROFESSIONAL INVESTMENT SERVICES

In addition to the duties above, the investment powers of the executor may or may not be outlined in the Will. If not, the executor is likely subject to the Prudent Investor Rule or investment restrictions and duties under trust law (i.e., a relatively limited list of conservative investments and guidelines.) Executor obligations are considered to include a reasonable level of investment planning. This generally requires a clear investment policy that is suffi cient to ensure long-term capital growth, as well as income for benefi ciaries of the estate. Given the complexities of today's marketplace, it is generally prudent to enlist the assistance of a professional investment consultant. *Your CIBC Wood Gundy Investment Advisor is well-equipped to help review estate objectives and design appropriate investment guidelines*.

FINAL TAX RETURNS

A final income-tax return or terminal-year return must be filed reporting all income earned from January 1st of the year of death until the date of death. Income from businesses, trusts or "rights or things" may be reported on separate tax returns if it is advantageous to do so. Where there has been professional, partnership or self-employment income, the estate may be exposed to a tax liability on income representing a period of greater than 12 months because of a deferred year-end. Given the complexities involved and possible exposure to personal liability, the executor should seek professional tax advice in order to file these tax returns properly and efficiently before the deadlines, and to obtain the appropriate clearance certificate from Canada Revenue Agency (CRA) indicating taxes have been paid.

SOME DUTIES OF AN EXECUTOR

- Gather information to determine the nature, location and value of the deceased's assets and debts
- Apply to court for appointment as executor
- Advertise for creditors
- Collect any money or benefi ts owing to the estate
- Liquidate all the assets and dispose of personal effects
- Pay debts, including funeral and other expenses
- Initiate or defend legal proceedings on behalf of the estate
- Establish who the lawful heirs are and locate them
- Account to the heirs and distribute the money
- Administer trusts set out in the Will

CAPITAL GAINS AT DEATH

At death, you are deemed to have sold all of your assets at fair market value and this deemed disposition could trigger a capital gains tax obligation. (Fifty percent of capital gains are included in your taxable income.) When property is left to your spouse, the gain may be delayed until your spouse's death, at which point the entire capital gain will be taxed in your spouse's hands. (In many cases, tax-free rollovers can be used by the surviving spouse to defer tax liabilities until the second death.)

SPECIAL TAX CONSIDERATIONS AT DEATH

Professional tax advice required:

- Spousal RRSP contribution by the executor where there is a surviving eligible spouse: Subject to any unused RRSP contribution room of the deceased, this contribution can be made up to 60 days after the end of the calendar year in which the death occurred and the Will should grant authority for this to be done.
- Charitable donations at death: All charitable donations (including unused donations carried forward) receive the charitable donation tax credit for donations up to 100 percent of net income with any excess carried back to the immediately preceding year, again up to 100 percent of net income.
- Medical expenses at death: For the year of death, the executor may claim medical expenses paid within any 24-month period inclusive of the date of death. (Limitations apply and expenses can only be claimed once.)
- Net capital losses at death: Subject to complex ordering rules as well as special rules in connection with the capital gains exemption, eligible net capital losses may be deducted when determining taxable income in the year of death and the immediately preceding year.

RRSPS/RRIFS AT DEATH

- Beneficiary designations* should avoid probate.
- RRSP/RRIF rollover is available for the following beneficiaries: Spouses, common-law partners or physically/mentally challenged children or grandchildren (who are dependants of the deceased).
- RRSP/RRIF proceeds paid to a beneficiary who is a child or grandchild dependant on deceased (not due to any physical or mental infirmity) is taxable, or can be used to buy fixed-term annuity to age 18.
- Non-dependent children or others named as beneficiaries receive full value of RRSP/RRIF proceeds as of the date of death tax-free, but the estate pays tax on that value. (If estate comes up short, CRA will collect remaining unpaid taxes from RRSP/RRIF beneficiaries.) If non-dependent children or others are left RRSP/RRIF assets under the provisions of the Will and are not specifically named as RRSP/RRIF beneficiaries, the full value will be taxed as income in the final tax return of the deceased, and then they will receive their share of the estate after taxes and potentially other expenses are deducted.
- In the case of a RRIF, a spouse or common-law partner should be designated as a successor annuitant rather than beneficiary of the RRIF** (this will allow the surviving spouse or common-law partner to receive the remaining RRIF payments as the new annuitant). The designation as a successor annuitant can be made in the RRIF contract or in the Will but if the deceased did not make this election, the spouse or common-law partner can become the new annuitant if the estate representatives and the RRIF carrier consent to the surviving spouse becoming the annuitant.
- Please note that not all financial institutions have uniform policies on beneficiary designations and other estate settlement issues.

* Rules differ in the province of Quebec where beneficiary designations are not recognized and assets should be distributed through your Will. Yukon residents cannot make RRIF designations.

** Rules differ in Quebec and Yukon where, in the case of a RRIF, a spouse should be named as "successor annuitant" in the Will.

LIRAS/LIFS/LRIFS AT DEATH

Please note that for locked-in plans, provincial pension laws require that the surviving spouse must receive any remaining value and the funds may or may not become unlocked.

Death Benefits

Any qualifying death benefit paid by an employer is taxable to the estate or recipient subject to a $10,000 exemption.
If applicable, apply for any CPP/QPP Death Benefit (a one-time payment of $2,500 maximum) as well as any CPP/QPP survivor benefits for spouse and children.

TAX FREE SAVINGS ACCOUNTS

Provincial legislation allows for a successor holder or beneficiary designation on a Tax-Free Savings Account in all provinces except Quebec. TFSAs are passed tax-free to the estate at the date of death. Any income and gains earned on assets held in the TFSA after death are generally taxed to the person entitled to the TFSA proceeds. However, exemptions may apply depending on the designation on the account. You may designate your spouse or common-law partner as a successor holder, or name your spouse/common-law partner or appoint your estate as beneficiary, provided your province of residence supports such designations.

For more information on executor duties, Wills and estate planning, contact your CIBC Wood Gundy Investment Advisor.