

PERSPECTIVES

An excerpt from "Perspectives" - Volume 3 - Issue 10

Financial and estate planning

Alter ego and joint partner trusts

By Sylvia Ellis - Senior Estate Planning Advisor

Trusts can be an effective planning tool. There are various types of trusts that you can create with the results depending on your objectives. In general, these allow you to control, manage and distribute property over a period of time.

I've written in the past about testamentary trusts. This issue, I'll address *alter ego trusts* and *joint partner trusts*. Here are the benefits of these trusts, and whom they are meant for.

Both trusts are created by an individual (joint partner trusts are created with married, common-law or same-sex partners) and take effect while living. In order to qualify for establishing an alter ego trust, you must meet the following criteria:

- The trust must have been created after 1999.
- You must be 65 or older and be resident in Canada for income tax purposes.
- The trust must be resident in Canada.
- Under the terms of the trust, you must be the sole beneficiary of all income that arises before your death, and no person other than you can be entitled to receive any part of the income or capital prior to death.

When transferring assets to the trust, there are no immediate tax consequences. Any income tax payable on any gain of the assets will still be payable at your death, just as it would be normally.

What are the advantages? Let's assume that you have named yourself as your own trustee in order to maintain control of your assets.

Protect against claims on the estate

A child or spouse (including a common-law spouse) unhappy with their share of the estate can challenge your Will under the Wills Variation Act. They can ask the court to change the terms of the Will. If the court concludes that you did not adequately provide for the proper maintenance and support of the disgruntled claimant, it can vary your Will. The court can order whatever distribution it thinks is adequate, just and equitable.

Save on probate fees

At your death, an alternate trustee will be appointed to carry out the terms of the trust deed. The trust will now be the owner of the assets. This means the assets will not pass through the estate, thus avoiding probate fees, legal fees and time delays.

Help in the event of incapacity and alternative to your Will

Incapacity documentation can often contain only a brief description of the duties and powers of the representative. On the other hand, the trust agreement very clearly sets out the duties and powers of the trustee. Unlike some powers of attorney, the trustee's powers continue in the event of death and will help ensure your assets are handled according to your wishes. A Will is still necessary if you have assets that are not included in the trust.

Privacy

A growing concern relates to personal privacy. A Will becomes a public document once it is submitted to probate and is available to anyone who wishes to view it. A trust document, on the other hand, remains confidential and it need not be subject to public inspection.

Another advantage is creditor protection (aside from spousal claims or fraudulent conveyance issues).

As with many aspects of estate planning, these trusts are not necessarily the best option for everyone. There are some issues you should keep in mind, such as:

- The cost of setting up and administering a trust may not be worthwhile if your assets can be distributed efficiently through other planning methods.
- If you plan to include private company shares or qualified farm property, you need to keep in mind that the capital gains exemption is not available to the trust on the sale of the property.
- If you have an alter ego trust, any assets within it will not be eligible for a testamentary trust.

The establishment of this type of trust is more complex than the creation of a Will. It usually requires that you also obtain tax and legal advice. However, in many circumstances, the creation of an alter ego trust or a joint partner trust can prevent costly disputes and save estate fees and taxes over the long run.

If you would like more information on this topic, please let me know.



Sylvia Ellis is the Senior Estate Planning Advisor for the Stan Clark Financial Team at CIBC Wood Gundy. Sylvia provides support to the team in projecting and planning client financial affairs.



The Stan Clark Financial Team
Where planning, investing and behavioral finance meet

Phone: (604) 641-4361 Toll free: 1 (800) 661-9442 Fax: (604) 608-5211 Email: StanClarkFinancialTeam@cibc.ca www.stanclark.ca

Stan Clark is an Investment Advisor with CIBC Wood Gundy in Vancouver, BC. The views of Stan Clark do not necessarily reflect those of CIBC World Markets Inc. This information, including any opinion, is based on various sources believed to be reliable, but its accuracy cannot be guaranteed and is subject to change. Clients are advised to seek advice regarding their particular circumstances from their personal tax and legal advisors. Insurance services are available through CIBC Wood Gundy Financial Services Inc. In Quebec, insurance services are available through CIBC Wood Gundy Financial Services (Quebec) Inc. If you are currently a CIBC Wood Gundy client, please contact your Investment Advisor. CIBC Wood Gundy is a division of CIBC World Markets Inc., a subsidiary of CIBC and a Member of the Canadian Investor Protection Fund and Investment Industry Regulatory Organization of Canada.