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Estate Planning for Second Marriages

Written by Janine Purves, Updated May 2011

Most of us who choose to get married a second time, are thrilled to have found a partner, but often enter the marriage cautiously when it comes to assets. This is because we've often been through a lot after the first marriage and want to preserve what's rightfully ours. In many cases we also feel a first obligation to the children (usually from the first marriage).

This is often a very difficult subject, but one that must be discussed up front to ensure you understand what options you have, and set up appropriate estate documents to best manage your wishes. Meet Joe & Barb, happily married for 10 years both for the second time, both have 2 children from the first marriage who are adults, but still building their assets. They're happy, but also believe that they want the assets they brought into the marriage to go to his or her own children upon death. How can they accomplish this, yet still treat the spouse fairly?

First, it's important that you openly discuss what should happen. Ideally, doing this with a third party who can provide some factual items to ensure you know various repercussions no matter what you set up.

Second, keep an open discussion with your spouse. You are allowed to think differently about how you wish to manage this, but you must respect each other's opinion about this and honour that.

Third, consider what is needed to help your spouse continue to enjoy the same lifestyle after you're gone.

Joe & Barb moved into Barb's family home. Joe owned a cottage that had been in the family for many years. Barb has few investments, and they have primarily lived off income from Joe's RRIF & investment portfolio. Joe has 2 priorities; ensuring the cottage eventually goes to his children and some additional assets to assist with the maintenance & providing for Barb so she can continue to live in her house while she's able. To accommodate Barb's needs, he set up a testamentary trust in his will. The will ensured that a portion of the investment assets moved to a trust that enabled his spouse to live off the income, and tap into the capital as necessary. In fact, he chose a professional trustee to ensure this was managed diligently and appropriately and kept emotional issues separate to avoid too much "family debate".

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By doing this, Barb can continue to live comfortably in her house and protect that asset for her children. She remains in a lower tax bracket as she still owns few taxable assets. She pays tax on income that flows through to her, but can also choose to have some items remain in the trust and be taxed there.

If Barb passes away 5 yrs later, still in her house, her will directs any assets in her name, such as the house and any investments. The trust and will of Joe would direct the assets in the trust, therefore protecting them to be transferred to Joe's children.

The real benefits of a testamentary trust are

- it is a separate tax entity, and thereby can create a new opportunity for income splitting
- it allows the original owner to control assets after his death.

The trust details are laid out in the will which an experienced lawyer can cover off with a reasonable process that ensures it is set up properly and efficiently. It's important to ensure you determine what assets are to be included in the trust, how it's to be managed (choose an investment manager or trustee, and outline investment options), and what events would trigger the cessation of the trust, and the direction of the assets at that time.

Once in place, after your death, the primary cost is the management of the assets and the cost of preparing the extra tax return each year. This means that the trust can claim additional income, and pay tax. It can also pass income through to beneficiaries.

Second marriages can cause additional complications for estate planning. But, by taking the time to consider what you truly want in the end, a good professional team can assist you in setting this up in an efficient and effective way of meeting all your objectives.

Look forward to reading more about how to use testamentary trusts to pass along assets to adult children as well.

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