LEGAL NEWS & VIEWS

GUIDE TO OAKVILLE LEGAL PROFESSIONALS

Estate Planning . . . More than just a Will

A well-planned will can be critical for the future well-being of your loved ones. This is especially true if:
* you have minor children,
* you have children from a prior marriage,
* you are living in a common law relationship,
* you have a special needs child, or
* you want to minimize income taxes paid by your beneficiaries in the future.

Estate planning, however, involves more than the preparation of a will. Estate planning is a process that encompasses:
* the accumulation, management and preservation of assets during your lifetime, and
* a plan for the distribution of those assets at the time of your death.

While a will is the most common vehicle used to carry out estate planning, other planning tools and techniques include:
* Powers of Attorney (both for property and for personal care)
* Gifts during your lifetime
* Joint ownership of property
* Life insurance designations and declarations
* Beneficiary designations of registered plans
* Advance medical directives (living wills)
* Inter vivos (living) trusts, including alter ego trusts and joint partner trusts
* Estate freezes

Tax planning is also part of an estate plan.

Income Taxes
Because there are currently no succession duties in Ontario, there is often the false impression that no taxes are payable when a person dies. This may be true in some instances, but due to the deemed disposition property rules under the Income Tax Act, careful planning is necessary to accomplish your primary personal objectives while minimizing tax consequences.

Probate Taxes
Probate is the legal determination that a will is both authentic and the last will. Probate taxes (more properly known as Estate Administration Taxes) are paid to the provincial government on assets passing though the estate. These taxes (assessed at 0.5% on the first $50,000 and 1.5% on the excess over $50,000) can be avoided by, for example, holding property with an intended beneficiary in joint names with right of survivorship, and by making beneficiary designations for life insurance and registered plans.

Sometimes, however, arranging your assets to avoid probate taxes is penny-wise, but pound-foolish. Such planning could result in the payment of additional income taxes greatly exceeding the probate taxes saved.
When assets are not held in joint names, beneficiaries can enjoy the income splitting benefits of a testamentary trust, as described below.

Trusts
A trust exists when one person holds property or money for the benefit of another person. There are two general types of trusts. An inter vivos or living trust comes into effect during the lifetime of the creator. Such trusts are subject to complex income tax rules and are taxed at the top marginal rates.
A testamentary trust is set up in a will and takes effect only after death. These trusts are often used to protect the interests of minor or disabled children, other relatives or charities. Testamentary trusts are taxed at the same graduated rates of tax as individuals. A properly drafted testamentary trust can provide an opportunity for income splitting and substantial tax savings. This opportunity is lost if the deceased's entire estate passes by right of survivorship to a joint tenant.

Multiple Wills
If you own shares of a private corporation or other assets that do not require probate, you may want to consider using multiple wills. One will is prepared to deal with assets that require probate. A second will is prepared to deal with assets that do not require probate. Multiple wills can result in the legitimate avoidance of probate taxes.

Planning your estate requires careful consideration of a multitude of factors. I will be dealing in more depth with other estate planning tools and techniques in future articles.

This article provides general information applicable in Ontario. It is not intended to constitute legal advice.

THIS WEEK'S COLUMN COURTESY OF
Joanna J. Ringrose
(905) 844 5021
or at law@joannaringrose.com