Estate Planning & Trusts: Not Just for the Ultra Wealthy

As you review your estate plan, have you considered the use of a trust? Trusts are often seen as a tool used by the ultra wealthy. Yet, there may be benefits for individuals with more modest wealth positions that justify the associated costs, which can generally run in the thousands of dollars for legal fees in order to set up, as well as additional costs for maintenance.[1]

While trusts can be created during an individual's lifetime (known as inter-vivos trusts) and can offer many benefits for wealth planning, the focus of this discussion is on estate planning using testamentary trusts, which are generally established under your will. After death, certain assets would be transferred to the testamentary trust according to the directions specified within your will, to be managed by a trustee on behalf of a beneficiary.

Here are three common situations for which a testamentary trust may act as a valuable estate planning tool:

1. Blended families. If you have remarried, but wish to provide for children from a previous relationship, a spousal trust may help to direct your assets as intended. Without a spousal trust, assets inherited by your spouse upon your death would be distributed in the future to the beneficiaries determined by your spouse's will. A spousal trust is commonly set up for the duration of the surviving spouse's lifetime, with assets held in the trust for use by the surviving spouse as directed by the terms of the trust. Once the surviving spouse passes away, remaining assets can be distributed according to the terms specified, such as to children from a previous marriage.

2. Beneficiaries who need support. A trust may help to provide ongoing support to dependent beneficiaries or those who may not be financially responsible or may need support. Trusts are frequently used for minor children to appoint someone who can manage funds on their behalf until the child reaches the age of majority or later. However, there may be other situations in which controlling distributions may be beneficial — such as with a spouse who may not have strong financial acumen, or dependents who are disabled or incapacitated. A trustee can maintain control

over the timing and amount of distributions. As well, in certain provinces, it may be possible to set up a trust for those with a disability without compromising government disability benefits.

3. A vehicle to protect inherited assets from a potential marriage breakdown of a beneficiary. A testamentary trust may be one way to pass down important family assets, such as a cottage or family business, while protecting children from having their share subject to a division in the event of matrimonial claims or claims from other potential creditors. With property prices skyrocketing for many cottages and cabins, or given the value of a family business, there may be concerns about passing along family assets to the next generation in the event of a potential marital breakdown of a beneficiary.

In these circumstances, and others, having the protection of a trust can provide estate planning benefits. Establishing a trust, and the associated tax implications, may be complex and the benefits depend on individual circumstances. As such, we recommend seeking the advice of legal and tax specialists as you plan ahead.

1. Additional costs may include ongoing accounting and trust administration fees, as well as probate taxes during the settlement of the estate if assets are now passing through the estate. Note: most Canadian trusts will be subject to increased reporting as of the 2022 tax year, including filing a tax return, even if they have no taxable income.

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