ESTATE PLANNING

A conversation you should have…

Assumption Life

DID YOU KNOW?

66%

of adult children fire their parents' advisor after receiving their parents' inheritance

Source: Investment News. 7/13/15 whole family advising

DID YOU KNOW?

95%

of next-generation heirs will leave their current advisor following the loss of both parents

Source: Vanguard, Generational Planning, Retaining Inherited Assets

DID YOU KNOW?

ONLY

4%

hold regular family meetings to discuss wealth matters

Source: Roadmap for a New Landscape, State Street Global Advisors', Survey – "Money in Motion", 2015

WHAT WILL THIS SESSION DO FOR YOU?

- An opportunity to revisit existing clients.
- Establish greater credibility with prospects.
- Better understanding of beneficiary designations and will planning.
- Case studies

- Illustrate a need for regular follow-up with clients.
- Beneficiary designations can be complex.

SEGREGATED FUNDS, REGISTERED AND NON-REGISTERED

- Are annuity contracts and as such are considered life insurance contracts.
- Designated Beneficiaries:

- Under life insurance contracts, you are entitled to designate a beneficiary.
- Possibility of bypassing the estate and thereby avoid probate.
- May provide creditor protection both during life and after death.
- Ensures privacy for individuals who wish to keep their estate planning private.

IMPACT OF WILLS AND …

- Minor and disabled beneficiaries
- Succession Law Reform Act (SLRA)
- Power of Attorney

WHAT HAPPENS TO **RRSPS/RRIFS** AT DEATH

- Beneficiary designations allow for RRSPs and RRIFs to go directly to designated beneficiaries.
- Under the Income Tax Act, they may pass to a spouse on a rollover basis tax free.
- The same applies to dependents and minor children.

DEPENDENTS AND MINORS

- Tax-free rollovers to minor children and dependent/disabled children of any age.

- A term certain annuity must be purchased for minor children:

- The annuity term is the difference between the child's current age at time of the death of the planholder and age 18.
    - Example:
    - Child is 8 years old at the date of the RRSP planholder's death.
    - The difference between age 8 and age 18 = 10 years.
    - A term certain annuity would be purchased for 10 years.

  - The exception: disabled/dependent beneficiaries.
  - Life annuities may be purchased for dependent/disabled beneficiaries.

RRSP BENEFICIARY DESIGNATIONS AND MINORS

CASE STUDY

- Jean has 3 children.
- At the time of her death they are 23, 12 and 9.
- Her will divides the estate among her children equally.
- The RRSP designation divides the RRSP equally.
- Her oldest daughter is the executor.

RRSP BENEFICIARY DESIGNATIONS AND MINORS

THE PROBLEM…

- Paying unnecessary income tax.
- Probate tax versus income tax.
- Equalizing beneficiaries.

RRSP BENEFICIARY DESIGNATIONS AND MINORS

THE CASE…

- Jean has a home valued at $210,000.
- Non-registered assets total $30,000:
  - ACB: $18,000
- RRSPs total $90,000

THE TAX ILLUSTRATION

Total Estate value: **$300,000**

- Principal residence valued at $210,000: tax owing - $0.
- Non-registered investments:

- $30,000 - $18,000 (ACB) = $12,000 capital gain
- $6,000 taxable gain x 50% = Tax owing $3,000.

THE TAX ILLUSTRATION

Total Estate value: $300,000

- RRSPs: $90,000
- rollover to 2 minor children: $60,000.
- Taxable RRSP (oldest daughter aged 23): $30,000.
- Tax owing on $30,000 x 50% = $15,000.
- Total tax owed by the estate: $18,000.

BYPASS OF PROBATE

Beneficiary designation for Registered and Non-Registered Segregated funds

- Beneficiaries receive the funds directly.
- They may apply for the funds immediately.
- They avoid probate tax.

HOWEVER THE ESTATE IS LIABLE FOR THE TAX.

RRSP BENEFICIARY DESIGNATIONS AND MINORS

THE ISSUE…

- The daughter aged 23 receives the RRSPs ($30,000) directly through the beneficiary designation.
- However, the RRSP is subject to tax in the estate.
- As a result, the estate owes tax of $15,000 on the oldest daughter’s RRSPs *(assuming a tax rate of 50%).*
- The final distribution to the minor children is reduced by $10,000 because of the income tax on the RRSP.

RRSP BENEFICIARY DESIGNATIONS AND MINORS

A POSSIBLE SOLUTION…

- Include the RRSPs in the Will.
- The Will gives discretion to the executor for the distribution of assets (who receives what…).
- The executor distributes all the RRSPs to the minor children.

- The executor has the discretion to equalize the monetary value of what is received by the eldest daughter through other assets in the Estate.

- This would reduce the overall income tax liability in the estate by $15,000.
- The cost of probate tax on the RRSPs is ~$1,350.

EFFECTS FOR MINOR BENEFICIARIES….

The will should be reviewed periodically to make adjustments over time when minor beneficiaries become adult children beneficiaries.

- To be tax effective, the Will should direct RRSPs to beneficiaries who are eligible for rollover.

WHAT IF THIS CASE INVOLVED NON-REGISTERED SEGREGATED FUNDS?

- If the children are designated beneficiaries, the segregated funds would be payable to the adult child and the minor children’s trustee.
  - If there were no trustee, the segregated funds would be payable to the Court until the children reached the age of majority at 18.
  - In most cases, a family member will apply to the court to be appointed as the trustee.
- There would be no tax-free rollover to minor and dependent children.
- The whole amount would be taxable and the estate would pay the tax (the same as other non-registered assets).
- Each child would receive the same amount ***as per the will.***

WHAT SHOULD YOU KNOW ABOUT **SLRA**?

- Succession Law Reform Act (SLRA) can override beneficiary designations

- Applies upon the death of one of the spouses.

- If the spouse elects under SLRA, there is an equal division of the value of the family assets.

- However assets such as RRSPs, segregated funds, cash value life policies, pension plans, and so on, do not have to be wound up as long as there are other means of paying the equalization payment.

- In this way, any beneficiary designations are not disturbed.

WHAT SHOULD YOU KNOW ABOUT **SLRA**?

- When a spouse has died, the surviving spouse has six months from the date of death to exercise their rights of equal division under the Family Law Act or take a bequest under the Will.

- Until recently, common-law spouses did not have the same rights under SLRA.

- If no election is made, then they are subject to the terms of the will.

- Legal advice should be obtained to understand fully the rights of the spouse under the SLRA, the Family Law Act and under the will, and the consequences of making an election.

WHAT SHOULD YOU KNOW ABOUT **SLRA**?

- Courts will override beneficiary designations including RRSP, segregated funds and life insurance designations.

- The best interests of the child are paramount.

- Especially where children are involved.

- The system ensures that child support is paid.

NEXT CASE

- Succession Law Reform Act (SLRA).
- Family members who are incapacitated, and the effects of Powers of Attorney.

SLRA DEFINITION OF A SPOUSE

- Part V of the *SLRA*. The former definition of spouse:

- a “spouse” included two people who “were married to each other by a marriage that was terminated or declared a nullity”.

- The **revised definition** provided that “spouse” under Part V of the *SLRA* had the same meaning as section 29 of the *Family Law Act*.

- “spouse” was defined as including two people who were married to each other or who are not married to each other but cohabited continuously for a period of not less than three years (i.e. common-law spouses).

CASE…

- Desharnais v. TD Bank [2001] BCSC 1695.

- Mr. Desharnais had significant savings in his RRSPs at TD Bank.
- His common-law spouse was designated as a beneficiary of the RRSPs **and only the RRSPs.**
- His common-law spouse was his Power of Attorney.
- He became terminally ill and eventually was unable to act on his own behalf.

Desharnais vs TD Bank [2001] BCSC 1695

- Common-law spouse exercised Power of Attorney to manage RRSP assets.
- TD Bank encouraged her to move the investments to TD Evergreen.
- TD Evergreen required a new application and T2200.
- Common-law spouse contacted the stockbroker for advice on the beneficiary designation.
- The advisor recommended designating the estate.
- Mr. Desharnais died.

THE RESULT

- The deceased's family received all the assets, including the RRSPs, as per the will.

- The common-law spouse sued the advisor, TD and TD Evergreen, based on the following:

- A Power of Attorney does not have the authority to change beneficiary designations.
- The advisor should have recommended the beneficiary designation remain the same.
- She won.

POWER OF ATTORNEY

- As a rule of thumb, a family member will be appointed the power of attorney by the planholder.
- Most family members lack the knowledge to address questions surrounding beneficiary designations.
- "Attorneys are not allowed to make, change or revoke a beneficiary designation on behalf of an incapable grantor".
- Judge held that the use of the POA to transfer the RRSPs was invalid unless the original designation of the common-law spouse was maintained.
- The use of the POA to change the beneficiary was not encompassed by the power of attorney.

DEFINITION OF SPOUSE UNDER **SLRA**

- At the time of this case, the definition of spouse in a Will under SLRA was a married spouse and did not include a common-law spouse.
- The spouse was not mentioned in the will.
- The husband gave no indication that the common-law spouse was to benefit under the will.
- The RRSPs were not referred to in the will.

WERE THERE OTHER REMEDIES?

- Practicality would suggest it was easier and cheaper to sue the bank than to rectify the RRSP (put it back to where it was).

IF THE SAME CASE WERE TO ARISE TODAY...

- The common-law spouse could apply to have the assets divided under the SLRA.
- Hypothetically, under the SLRA/FLA, the other beneficiaries would have received 50% of the estate including the RRSPs, and the common-law spouse would have received the same.
- According to the SLRA, the common-law spouse's share could be equalized with specific assets – i.e. the RRSPs.
- The RRSPs would be received by the common-law spouse on a 'rollover basis' thereby reducing the tax in the estate.

HELPING YOUR CLIENTS AVOID PITFALLS

- Follow-up with clients regularly through annual reviews.
- Before making beneficiary changes ask for the following:

- Have there been any major changes in their circumstances? (New baby, marriage, separation, inheritance)
- Does the client have a will?
- Who are the beneficiaries?
- Who is the executor?

HELPING YOUR CLIENTS AVOID PITFALLS

- Does their will mention all of the Segregated Funds, RRSPs and Life Insurance policies that they own?
- Have they advised their legal professionals of all of their assets?
- If you don’t know or don’t have all the information, refer them to their legal professional.

WHY ASSUMPTION LIFE?

- Clients are taking longer and longer to address intergenerational wealth transfers and many other estate issues. Many haven't even completed the simple task of making a will!

- With this in mind, Assumption is a great solution because our contracts:

- Allow deposits up to age 105.
- Have no limitations on the type of funds or portfolios that are available for older clients, unlike many other carriers.
- Contain death benefit guarantees that are 100 percent until age 77, and will never be less than 80 percent after age 80, which is a great feature to help bypass probate issues.
- Feature great GIA options which can be held in the same accounts with the Segregated Funds.

HOW ASSUMPTION LIFE CAN HELP

- We offer great options and solutions for older clients.
- We partner with CI Funds, Fidelity and Louisburg, giving you and your clients access to such great funds as:

- Fidelity True North
- Ci Signature High Income Fund
- Louisburg Momentum Fund

WHO WANTS TO WORK FOR FREE?

- Great Compensation options:

- Receive the benefit of offering your clients Front End 0 while still receiving a full commission up front and trailers, as you would for a DSC version.
- No fees on collapsing portfolios, no SWPs are subject to early redemption fees for you or your client.

- Overall Assumption gives you the tools to help older clients plan for intergenerational wealth transfers and many other estate concerns, so contact your regional Business Development Manager today!

QUESTIONS ?