

# ESTATE PLANNING

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# OBJECTIVES OF ESTATE PLANNING

- To shelter the Estate against the large cash burden of Transfer Tax and Stamp Duty payable on death.
- To eliminate the complication of the client's affairs from a practical standpoint.



## ESTATE TAXES

- TRANSFER TAX – 15% to 1.5% of net market value of land shares and debentures.
- STAMP DUTY – Previously 3% of Net Market Value of Estate but now ranges from \$5,000.00 to \$25,000.00 for Estates \$10 million or less or above \$40 million
- ATTORNEYS FEES – 3.5% to 7.5% of gross market value of estate.
- EXECUTOR/ADMINISTRATOR COMMISSION – 6% of monies passing through their hands.
- At least 15% to 20% of net value of estate.



## PRACTICAL CONSIDERATIONS

- What happens to my client's assets upon **DEATH, ILLNESS OR INCAPACITY**
- How **LONG** will it take to distribute estate to the beneficiaries
- How will loved ones be **PROTECTED**



## WAYS TO ORGANIZE & DISPOSE OF PROPERTY UPON DEATH

1. MAKE GIFT OF PERSONAL ASSETS BEFORE DEATH
2. PURCHASE LIFE INSURANCE
3. OPEN JOINT BANK ACCOUNTS
4. PURCHASE PROPERTY AS JOINT TENANTS
5. **PREPARE A WILL**
6. **ESTABLISH TRUST**



## PERSONAL ASSETS

- Assets that are not necessarily needed during one's lifetime and which will have significance to the beneficiary
  - e.g. Jewelry, Art Collection



## PURCHASE LIFE INSURANCE POLICY

- Protection to beneficiaries
  - Cover death taxes and funeral expenses
  - Loss of income
- **Reminder: NAME A BENEFICIARY**
- Policy contract is premised on the fact that the proceeds are only payable **upon death/incapacity or illness**





## INSURANCE POLICY – cont'd

- NAME A BENEFICIARY
  - PRE-1995
  - POST-1995
  - NEW ACT - 2001
- DISADVANTAGE OF NO BENEFICIARY
  - Stamp Duty - \$5,000.00 to \$25,000.00 for Estates \$10 million or less or above \$40 million.
  - Limited access to proceeds pending grant of probate or letters of administration
- Establish Trust – Proceeds paid to Trustee





# JOINT BANK ACCOUNT

- Open account in joint names
- Important to have cash which is easily accessible for:
  - Funeral expenses
  - Payment of death duties



# PURCHASE PROPERTY AS JOINT TENANTS

- Two Types of Ownership of Real Estate/Land
  - Joint Tenancy
  - Tenancy In Common



## JOINT TENANCY

- RIGHT OF SURVIVORSHIP OCCURS:
  - Where there are two Joint Tenants, upon death of one, the property falls to the other absolutely
- APPLICATION TO NOTE DEATH
- TRANSFER TAX MAY BE APPLICABLE (if not principle place of residence)



## TENANCY IN COMMON

- NO RIGHTS OF SURVIVORSHIP
  - Tenants in common holds undivided shares
  - Each tenant has a distinct fixed share in the property (e.g. one-half, one-third)
  - Upon death, tenant's share devolves to his estate



# INTESTACY

What happens if there is no plan  
and client dies?



# INTESTACY

- Estate determined by court in accordance with provisions of INTESTATE'S ESTATES AND PROPERTY CHARGES ACT
- Administrator appointed by Court
- Administrator General may act where estate of small value (under 100,000.00) or where young children involved or where Executor/Administrator has died.



# INTESTACY CONT'D

## Table of Distribution

- The surviving spouse (personal chattels)
- 10,000.00 or 10% of the net value of the estate (whichever is greater)
- The entire remainder of the estate if there is no child or parent. If one child, spouse only gets  $\frac{2}{3}$  of remainder and child gets  $\frac{1}{3}$





## TABLE OF DISTRIBUTION CONT'D

- If more than one child, spouse gets  $1/2$  , children get  $1/2$ .
- If no surviving spouse and there are children, the children take absolutely.
- If no children, but surviving spouse and parents, the spouse gets  $2/3$  and the parents get  $1/3$ .



## TABLE OF DISTRIBUTION CONT'D

- If no children, spouse, or parents, then to the following:
  - Brothers and sisters
  - Half brothers and sisters
  - Grandparents
  - Uncles and aunts
  - Half uncles and aunts
  - Bona Vacantia (crown)



## DRAWBACKS

- No choice in “who gets what”
- Act can’t account for all situations
- Lengthy process of administration (normally 2 – 4 years)

## RECOMMENDATION

# DO A WILL



# WHAT HAPPENS IF CLIENT DIES LEAVING A WILL

- Who is the Testator
- Appoint an Executor/s
- Who can be an Executor?



## FORMALITIES

- Testator – 18 years or older
- Must be in writing
- Must intend to give effect to will by signing
- Signature must be witnessed in the presence of two witnesses present at the same time. Use Attestation Clause



## FORMALITIES CONT'D

- Beneficiary/Beneficiary's Spouse cannot witness will – gift to him/them invalid
- Alterations and insertions to be signed by Testator and witnesses
- Will to be signed at foot or end of page



## EVENTS WHICH MAY AFFECT GIFTS UNDER A WILL

- Murder of the Testator by a beneficiary – *gift to that beneficiary will fail*
- If Beneficiary witnesses will
- Marriage – revokes all previous wills of parties – *rational to provide for new spouse*





# PROBATE

## Executor to carry out wishes of Testator

- Applies to the Court for Grant of Probate by lodging documents
- To enable Beneficiaries to receive their gifts
- To settle debt with Creditors
- Entitled to fee of 6% of monies passing through their hands



# PROBATE

## Executor Duties cont'd

- Obtain receipts for funeral expenses/bills
- Obtain Financial Statements (if private company)
- Execute Revenue Affidavit – sets out the net value of estate
- Time Period – Minimum of one year in non-contentious matters



## OTHER IMPORTANT STATUTES

- Inheritance (Family Provision) Act – Enables persons to whom no gift was left in will nor who would normally benefit under Intestates Estates and Property Charges Act, to benefit.

E.g. Common-Law Spouse cohabiting for five years immediately preceding death



## OTHER IMPORTANT STATUTES CONT'D

- The Family Property (Rights of Spouses) Act
- Division of property  $\frac{1}{2}$  on death
- Common-Law Spouse
- Pre-Nuptial Agreement



## QUESTIONS & ANSWERS



# END OF PRESENTATION

