ESTATE PLANNING FOR BABY BOOMER NEWLYWEDS

There are financial matters to be considered by baby boomers getting remarried that younger couples do not typically face. Estate planning is one of those matters.

It is frequently the case that estates are bequeathed first to the surviving spouse (especially for first marriages), and then subsequently to any children of the marriage. This is a routine and tax-efficient plan. However, if there are children to consider from a previous relationship then such decisions can become complex. In these scenarios, it is necessary to move beyond a "standard" tax-efficient plan. In a second marriage, a possible dispute may arise if an estate is left entirely to the spouse (thus allowing for a tax deferral), and he/she chooses not to provide for the children from a previous marriage (or to their bequests) causing the children to be left out of the estate entirely.

To avoid this, you can opt for creating a joint-partner trust which would allow you and your new spouse to enjoy the benefits and income of your assets while you live. In the meantime, you can name your children as the eventual capital beneficiaries upon the death of both spouses. If enacted properly, this structure is better than specific bequests to your children in your will because it adds the benefit of deferring taxes until the passing of both spouses and avoids probate fees (on the assets placed within the trust). Keep in mind though, that this structure is only available if the person who is transferring the assets is 65 years of age or older.

Upon the death of a spouse, the surviving spouse may opt to receive their entitlement under the existing will, or they may elect in favour of equalization of net family property under the Family Law Act (FLA).

When opting for the FLA election the entitlement of the surviving spouse is similar to what they would have received had the spouses separated. Stated simply, equalization allows for a surviving spouse to receive half the combined net worth of both spouses with some possible adjustments. These adjustments would allow the estate and the surviving spouse to deduct the assets that each spouse had contributed to the marriage. These include the equivalent worth of what each had on the first day of marriage with the possible exception of the family 'matrimonial' home and excludes any gifts/inheritances received during the marriage (provided that they have been kept separate and are identifiable).

Notwithstanding a long and happy marriage, (and an otherwise well-thought-out estate plan), the surviving spouse could circumvent the planning and potentially receive a larger share of the estate than was contemplated under the will. The FLA election (which can be made up to six months after death) prevents any interim distributions from the estate of the deceased spouse without the surviving spouses' consent (or as authorized by the court).

In order to avoid the possible complications that may arise with a FLA election, a couple may want to enter into a domestic contract (often called a prenuptial agreement). This contract can set out what the specific entitlements of each spouse will be upon separation (or death of the other spouse). As such, if the marriage contract is written in harmony with (to mirror) the estate planning, then it should be possible to prevent differences in entitlements between the estate plan and the FLA election.

Proper planning can allow you to minimize and defer tax, streamline the resolution of your estate, and ensure your final wishes are carried out.

About the Author
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Mitchell has contributed to publications and has been quoted in Investment Executive magazine. In additional he has lectured on subject of valuations at a graduate level at DeGroot School of Business - McMaster University, and designed his own valuations course in partnership with University of Toronto which has been accredited by the CBV Institute. Mitchell has also taught financial accounting courses at both the University of Toronto and the Schulich School of Business - York University. He is also a past-Chair of the Board of Collaborative Divorce Toronto and regularly volunteers through CPA Ontario to provide free income tax preparation services for low-income seniors.