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TAX MATTERS

Think about your method and message when distributing your estate

SPECIAL TO THE GLOBE AND MAIL
PUBLISHED AUGUST 3, 2023

When American businesswoman Leona Helmsley died in 2007, she left about US\$12-million to her dog, Trouble. Eventually, a judge reduced the dog's inheritance and allocated more to the family.

When I shared this story with my kids, I also reminded them of how much their mother and I love our two dogs. Now, my kids are wondering exactly what the distribution of our estate will look like when we're gone.

For the past couple of weeks, I've been writing about the five "Ds" of estate planning: define, design, document, discuss and distribute. In this article, let's talk about distributing your estate.

The timing

When it comes down to it, you only have two choices when it comes to the timing of distributing your assets to your heirs: You can make these gifts during your lifetime, or upon your death. And you might do a little of both.

Folks who give away money during their lifetime usually do this because they want

to see their heirs enjoy the benefits of these gifts while they can. There can be something very satisfying about seeing the positive difference you can make in the lives of others through your gifts and generosity.

If you're going to take this approach, I'd encourage you to do the math on how much you'll need to live on for the rest of your life. If you can't do these calculations, you'd be wise to visit a trusted financial planner or accountant who can help you figure it out. After all, you don't want to give so much away that you become financially dependent on your heirs.

Also, make sure it's clear to your heirs whether gifts they receive from you during your lifetime are advances on their inheritance to be received when you die, or are over and above what's coming when you're gone.

Some people will call these advances loans and will prepare a promissory note each time funds are advanced to a child. The loans are then forgiven upon a parent's death (with no tax consequences). The amounts forgiven

are part of the inheritance received by an heir.

Still, if you're like most, you'll probably give away the lion's share of your estate after you (and your spouse if you have one) have died.

The methods

If you're going to give away most of your assets after you're gone, there are six ways this can happen:

1. Through intestacy laws. If you die without a will, the intestacy laws of your province will kick in and dictate who gets what. This may not be consistent with your wishes, and could cost much more in taxes and other costs than is necessary. This is the default approach to distributing your estate, but it's not a plan.

2. By naming beneficiaries. Make sure you've named beneficiaries on your life insurance policies, pension plans, RRSPs, RRIFs and TFSAs (naming a successor annuitant on your RRIF or TFSA can make sense; see my [article dated Mar. 1, 2023](#)). And if you've been through a marriage breakdown, don't forget to revisit these named beneficiaries.

3. Through joint ownership. If you own an asset jointly with right of survivorship, then the asset will pass to the surviving joint owner when the first joint owner dies. This can avoid probate fees, but can also come with other drawbacks, so speak to an estate lawyer about it.

4. By way of trusts. You can leave your assets to your heirs in a trust that is created during your lifetime (an "inter vivos" trust), or upon your death (a "testamentary" trust). A trust is a good vehicle if your heirs can't manage the assets on their own, or you want to add a measure of protection over the assets to help your heirs.

5. By a partnership or shareholder agreement. If you're a party to a partnership or shareholder agreement, your ownership interest in that partnership or corporation – and what happens upon your death – may be governed by those agreements.

6. By your will. Even if the majority of your estate will be distributed by way of the methods above, you should still have a will to deal with anything that is not distributed by these other methods.

When distributing an estate, some people take the view that "fair isn't always equal." And there can be valid reasons why one heir may receive a different amount than another.

But I would encourage you to avoid a situation where you completely leave a child out of your will – particularly if this is due to a strained relationship. There's no better time than now to try to mend those relationships. If this doesn't happen, it can be a healing gesture to remember that child in your will in a meaningful way.

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