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ESTATES AND INCOME TAXES IN ONTARIO

Introduction

You've never undertaken the duties of an executor before so you fail to understand all the sources of income required in the deceased's final personal tax return, regardless of whether or not the financial institution issued the T-slip. To ensure that all sources of income are included in the final personal tax return, we follow the assets until final disbursement to the beneficiaries.

For the release of tax information required for the deceased's final tax return, we can be your representative with financial institutions and lawyers. You'll have peace of mind knowing that the estate will be distributed accurately and completely and in accordance with the deceased's wishes.

If you've been asked to be the executor of an estate; if you're already an executor of an estate; if you're considering the transfer of property into joint names; contributing to Canada Pension Plan; or contributing to Employment Insurance, this guide is for you.

Most references in the Income Tax Act refer to a "spouse or common-law partner." For the sake of brevity, we have used the word "spouse" to refer to either a spouse or common-law partner.

This guide deals with complex matters and may not apply to particular facts and circumstances. As well, the information reflects laws and practices that are subject to change. This guide should not be relied on as a substitute for professional advice.

Duties and Responsibilities

As an executor of an estate, you have many duties and responsibilities. To assist you, this guide outlines these duties and responsibilities. It is an outline only, and is not intended to document all the responsibilities required by law. It would be best to consult a lawyer for specific situations.

Your responsibility as the executor is to file the income tax returns for the final year of the deceased and, if required, the estate. When a taxpayer dies not only do the tax rules that are in effect during a taxpayer's lifetime apply in the year of death, but also there is an additional set of tax considerations. This section of the guide is not meant to contain a comprehensive list of all tax considerations, but outlines areas that we have found are common to final tax returns.

As an executor you are required to administer the estate according to the will and according to provincial law. The information provided in this Guide is according to Ontario law. Quebec law is very different from Ontario law; for example, wills in Quebec if notarized are not required to be probated, there is no right of survivorship, etc. If you live in Quebec, you should consult a lawyer knowledgeable in Quebec estate law.

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Transferring Property

In the course of assisting clients with estate planning we are often asked about transferring property into joint names. Please see the Joint Ownership of Property: Pros and Cons section.

Canada or Quebec Pension Plan

Most people in Canada have contributed to the Canada or Quebec Pension Plan. Benefits available include receiving the Canada Pension Plan before the age of 65 and splitting pension credits with spouses. Please see the Canada Pension Plan section for more information. We have also addressed some of the 2009 federal budget proposed changes to the Canada Pension Plan, certain questions regarding survivor benefits, children's benefits and death benefits.

Employment Insurance

As of January 24, 2004, Employment Insurance provides compassionate care benefits to a person who has to be absent from work to provide care or support to a gravely ill family member. Please see the section Employment Insurance Compassionate Care Benefits for more information.

Selecting an Executor

In selecting an executor for your will you probably have chosen someone who is responsible, knowledgeable, objective and fair; someone you trust. It is in your best interest and your beneficiaries to let the executor know where to locate certain documents. For example:

- Where the original will is located.
- Where (if any) the safety deposit boxes and keys are located.
- Where previous tax returns and notices of assessment are located.
- Where they can find an up-to-date list of the bank accounts, investments, properties and debts including the original purchase price of assets.

The time and money you spend on gathering the assets and determining tax values would otherwise fall on the beneficiaries. In particular, the valuation of stocks, rental properties, cottages and situations where the deceased has lent money in the form of loans or mortgages.

If you are asked to be an Executor

A friend, relative or business associate may ask you to be executor of their will. The office of executor comes with many responsibilities that must be performed with an even hand among beneficiaries. You may want to ask to see the will before agreeing to be named as executor to find out if there is remuneration, or if there are limits on what your remuneration will be.

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If you choose to accept the office of executor you may be inheriting the executorship of more than one estate. If the person you are executor for dies "in office" (was executor for another estate), then you would inherit the executorship for the other estate.

You can decline the appointment. If you do, you must sign a formal renunciation. If you intend to turn down the appointment, you must be careful not to take on any responsibilities of the office. If you start conducting yourself as the executor you may find yourself with the responsibility until you are relieved by a court.

You may decide to decline the appointment for such reasons as failing health, you were not told about a limitation in the will on your entitlement to executor's compensation, or a conflict of interest.

Responsibilities of an Executor

Following are some of the responsibilities of an Executor:

Responsibility – Locate the Original Will

It is important that you locate the original will. A copy of the will is not considered the last will. The original will could be located at the deceased's residence, in a safe deposit box, with the lawyer who drew up the will, or with a central court depository. You may have been given a copy of the will after it was signed, but it may not be the last will. If a lawyer prepared the will, you should contact the lawyer to ensure that no subsequent will or codicil to the will was made.

Responsibility – Communicate with Beneficiaries

It is to the executor's benefit to maintain open lines of communication with the beneficiaries. You can avoid problems with the beneficiaries by making sure that they are kept informed about the administration of the estate. This does not mean that you have to report to the beneficiaries on every decision that is being made, just let the beneficiaries know in general terms what is going on.

Responsibility – Funeral and Burial

The executor has control over the disposition of the body. The executor does not have to follow the instructions of the deceased as to funeral or burial arrangements, even if they are written in the will. The duty of the executor is to ensure that funeral and burial costs are reasonable.

You will need several original copies of the proof of death, which the funeral director can provide. You will have to give these to the deceased's bank, insurance companies, investment companies, and the Canada Revenue Agency (CRA).

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Responsibility – Probate the Will

The executor has to decide whether or not to probate the will. When you probate a will you receive letters of probate where the court declares that this is the final will of the deceased and confirms you as the executor. In this process, the executor has to swear to the value of the assets and pay probate fees on those assets.

Your authority as executor comes from the will itself and there may be no need to obtain letters of probate. If you want to avoid probate, pass as many assets as possible to your beneficiaries by naming them beneficiary (see the Death and Taxes and RRSPs and Registered Retirement Income Funds sections) or by joint ownership (see Joint Ownership of Property: Pros and Cons section).

Most financial institutions require probate before they release the deceased's assets. This provides them with assurance that they are handing the assets over to the person who is, by law, entitled to receive them. In the case of small estates, a financial institution may release the estate's assets without probate; thereby avoiding probate fees and legal fees.

Responsibility – Locate the Assets

The executor must identify and locate the assets owned by the deceased and identify any liabilities. The different locations or sources could include, but are not limited to, a safe deposit box; the individual's home; personal accountant; floater on a home insurance policy; bank and investment statements; and the most recent income tax return.

Life insurance policies are a type of asset. There is either a named beneficiary on the policy or the estate may be named as the beneficiary. In the case of a named beneficiary, the proceeds from the policy are paid, usually within a short period of time, directly to the named beneficiary. If the estate is the beneficiary, the proceeds are paid after the appropriate estate documentation is received. If you cannot locate the life insurance policy, the Canadian Life and Health Insurance Association might be able to assist you.

The deceased may also have been covered through a work group insurance plan or a professional association insurance plan. If the deceased was involved in an accident, he or she may be covered by an automobile association or a credit card. If the accident occurred while on the job, there may be eligibility for payments through the Workplace Safety and Insurance Board (WSIB).

The deceased may be entitled to benefits through employment—salary, vacation pay, bonuses, severance pay, company pension, etc.

There are also government pension plans and other benefits to be considered. These are covered under the Death and Taxes section.

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Responsibility – Protect the Assets

As executor you are responsible for protecting and preserving the estate. All assets must be adequately insured against loss including real estate, vehicles and personal possessions.

Vacant property – You must inform the insurer if property is vacant. With some insurers the insurance policy is invalid if the residence is left vacant for a specified period of time and they were not notified. The property must be checked on a regular basis.

Businesses – The executor must ensure that there are competent people in place to run the company until it is sold or wound up.

Cancellations and payments – The executor will need to terminate leases, cancel newspaper and magazine subscriptions, reroute mail, cancel telephone/cell phone/cable/Internet services, pay house and car insurance, property taxes and utilities, etc.

Banks and other financial institutions – As executor you are responsible for notifying the deceased's bank(s) and other financial institutions. You will have to identify yourself as executor and provide proof of death. If the bank accounts are frozen the bank will allow you to pay for certain expenses. Allowable expenses vary between financial institutions.

Debit and credit cards – Return all debit and credit cards to the issuer and have them stop any further use of the cards. If the cards are in joint names, let them know they must stop using the card.

Government issued documents – Photocopy all documents such as passports, social insurance cards, health cards and driver's license in case you need to make a claim to the government; then return them to the issuers.

Responsibility – Value the Assets

The executor is required to determine the market value of each asset at the date of the deceased's death. You might receive pressure from the beneficiaries to provide low values for probate and income tax purposes. Don't comply; low values will lead to problems when the assets are eventually distributed to the beneficiaries.

You will need the tax cost to calculate capital gains or losses for the final tax return. In the case of an asset such as real estate, the costs of certain renovations are added to the original purchase price. For marketable securities such as stocks, you will need to determine the adjusted cost base of the asset—the original purchase price, stock dividends, stock splits, etc., must all be taken into account.

If a beneficiary has been named, or if an asset was held jointly with rights of survivorship, these assets would not be considered as part of the estate.

To decide if you need to sell the assets and pay the proceeds to the estate, refer to the will to determine which assets are to be transferred to a beneficiary or to be sold.

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Responsibility – Manage the Assets

In managing the investments of an estate, the executor has the investment authority of a "prudent investor." You may wish to invest any surplus cash until the estate is settled. The types of investments available for estate assets are governed by the terms of the will and by provincial legislation.

Responsibility – Pay the Debt

The executor is responsible for making sure all proper debts and obligations of the deceased are paid before distributing the assets of the estate. These might include loans, mortgages, lines of credit, credit cards and income taxes. Income taxes are discussed below.

Responsibility – Income Taxes

The executor is responsible for filing the income tax returns for the final year of the deceased and, if required, the estate. Any taxes owing have to be paid and if not paid by the due date, interest will be added to the final tax bill. If the return is filed late, penalties will be charged. Trust (estate) returns have particularly punitive charges for late filing and non-payment of taxes.

An estate tax return is required if the estate earns income after the deceased dies and before the assets are distributed to the beneficiaries.

If the deceased was a Canadian resident living part-time in the United States or was a U.S. citizen, you may need to file a U.S. income tax return.

If the deceased owned U.S. assets or was a U.S. citizen, you may need to file a U.S. estate return.

Before final distribution of the estate to the beneficiaries, you need to obtain Clearance Certificates from CRA. The Clearance Certificate covers the year of death and all prior years. You can only request a Clearance Certificate after all taxes owing have been paid and you have received the Notice of Assessment. If a Clearance Certificate is not obtained and if there are insufficient funds left in the estate to cover the liability, the executor is personally liable for any taxes owing.

Details regarding final income tax return preparation can be found in the Death and Taxes section.

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Responsibility – Special Claims

The executor must be aware of any special claims against the estate. There could be a potential property claim by a surviving spouse or a claim by a dependent. The Family Law Act of Ontario prohibits the executor from making any distributions out of an estate during the first six-month period after death without consent of the surviving spouse or the court's approval. Under the Ontario Succession Law Reform Act, once a claim is made by a person who professes to be a dependent of the deceased, there can be no further distribution of assets out of the estate.

Responsibility – Distribute the Assets

Once all bequests, legacies, expenses, fees, taxes and debts have been paid, the proper Clearance Certificates have been received, and there is money left in the estate, the remaining amount can be distributed to the beneficiaries according to the will.

If the deceased owned a home in joint tenancy, the property passes to the surviving joint owner and is not part of the estate. If the deceased was the sole owner and left the home to the beneficiaries named in the will, it may be possible to either transfer title to the beneficiaries or sell the home and distribute the proceeds to the beneficiaries as set out by the will.

In the case of stocks or bonds, a Declaration of Transmission is required with the certificates to transfer the securities to either the estate or the beneficiaries, depending on the will and the wishes of the beneficiaries.

Where one or more trusts are to be set up under the will, the executor will have to set up individual accounts to keep the respective trust funds separate and to track the receipts and disbursements for each of them. If the executor has absolute discretion on allocating assets among the funds, care should be taken to make sure that they are, if not equal, then at least equitable. Be careful when you are establishing trusts for disabled beneficiaries as you do not want to disqualify them from receiving government assistance.

Responsibility – Keep Proper Accounts

The executor must keep proper accounts from the beginning. These should cover the assets the deceased owned at death; the expenses and debts that were paid; and how the remaining assets were distributed. The Ontario government has rules on what must be included in the accounts. When the executor has finished the work on behalf of the estate and if all the beneficiaries are of legal age, they may approve the estate accounts by signing a release form that releases the executor from any further responsibility in the administration of the estate and any liability from the beneficiaries. Otherwise, the executor must submit the accounts to a court for audit.

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Responsibility – Executor's Fees

An executor is entitled to be paid for his or her efforts on behalf of the estate. The will itself may set out what the executor is entitled to, or an agreement on compensation can be reached with the beneficiaries. Historically, a 2½% charge on account of capital receipts and disbursements and revenue receipts and disbursements has been considered appropriate as compensation for an executor. An executor can ask for more compensation if special services are required.

If an executor retains an accounting firm to complete the income tax returns, this work could be paid for by the estate. As long as this work does not lie within the executor's area of expertise, the executor's compensation would not be reduced.

The same principle would apply to the payment of investment counsel fees where, given the complexity of the portfolio, it would require a certain expertise. However, the executor is required to prepare an accounting of the estate and if the executor pays a professional to prepare this statement, the amount paid reduces the executor's fees.

Executor fees are taxable to the executor while inheritances are not taxable in Canada. Trustee or executor fees paid to a person who acts in the capacity of an executor in the course of a business are part of that individual's business income and the estate is required to report this income on a T4A slip. Otherwise, if the fees paid are $500 or more, the estate is required to prepare a T4 slip for that individual. The estate is required to deduct and remit withholdings as required by law, to keep records, and to report and file the information on the T4 or T5 information return by the last day of February following the calendar year to which the information return applies.

Death and Taxes

Coping with the death of a loved one is tough. If you are the executor of the estate, then following the death you have many responsibilities. From an income tax perspective, there are functions that you are required to perform when settling the deceased's affairs.

First, you should notify CRA and provide it with the deceased's date of death. This is particularly important if the deceased or the surviving spouse and the deceased were receiving GST/HST credit or Canada Child Tax Benefit (CCTB), or if the deceased was a child for whom the CCTB or GST credit payments were made. These payments need to be stopped and, if applicable, transferred to a survivor.

If the deceased paid tax by installments, no further installment payments have to be paid after death. The only installments required are those that were due, but not paid, before the date of death.

GST/HST payments are issued on the fifth day of the month in July, October, January and April. The payments are an advance on purchases for the current year. If the deceased was receiving GST/HST credit payments, CRA may send out a payment after the date of death because they are not aware of the death. If this happens, CRA requires that you return the payment to them.

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If a single person dies in a month before CRA sends out the quarterly GST/HST credit payment, CRA requires that you return the payment to them. If a single person dies during or after a month in which CRA sends out a quarterly payment, the person's estate is entitled to that payment. Return the cheque to CRA and they will make the cheque payable to the estate.

If the deceased had a spouse, that person may be eligible to receive the GST/HST credit payments based on his or her net income alone. CRA should be contacted and a request made that the person be eligible to receive the GST/ HST credit payments based on his or her net income alone.

If the deceased person was receiving CCTB payments for a child and the surviving spouse is the child's parent, that person should contact CRA and provide them with the date of death. The CCTB payments are usually transferred to the surviving spouse.

Funeral expenses, probate fees or fees to administer the estate are considered personal expenses and are not deductible. You have at least six months before the deceased's final income tax return is due to be filed. The final return and any balance owing are due on or before the following dates:

Period when death occurred	Due date for the return
January 1 to October 31	April 30th of the following year
November 1 to December 31	Six months after the date of death

If the deceased or the deceased's spouse was carrying on a business during the year the death occurred, special rules apply, unless business expenditures are primarily in connection with a tax shelter.

If you file a return late and there is a balance owing, CRA will charge a late filing penalty. If you do not pay any balance owing from the final return in full by the due date, CRA will charge interest on the unpaid amount. The interest will start to accumulate from the day after the return is due to be filed to the date you pay the amount owing.

Regarding a previous year's return, if a person dies after December 31, but on or before the filing due date for his or her return (usually April 30), and that person has not yet filed that return, the due date for filing as well as the payment of the balance owing is six months after the date of death.

When a taxpayer dies, not only do the tax rules which apply during a taxpayer's lifetime apply in the year of death, there is also an additional distinct set of tax considerations.

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Those additional tax considerations arise for a number of reasons including:

- Deemed disposition of certain properties owned by the taxpayer at the time of death.
- Special treatment of registered retirement savings plans and registered retirement income funds.
- Pension income splitting.
- Special filing rules.
- Possible taxation of testamentary trusts arising on death.
- U.S. estate taxes.

Deemed Disposition on Death

Upon death, a taxpayer is deemed to have disposed of all the capital property owned immediately before death and to realize all the accrued gains and losses on those capital properties. “Deemed disposition” is used when you are considered to have disposed of property even though you did not actually sell it. Some common types of capital properties include:

- Cottages
- Securities, such as stocks, bonds, mutual fund units
- Land, buildings and equipment used in a business or rental operation
- Listed, personal property; for example, prints, paintings, jewelry, stamps, coins
- Personal use property

Upon death, a taxpayer is deemed to have disposed of all the capital property owned immediately before death for deemed proceeds of disposition. “Deemed proceeds of disposition” is used when you are considered to have received an amount for the disposition of the property, even though you did not actually receive the amount. The proceeds of disposition are usually equal to the fair market value of the property immediately before death. For example, the fair market value of a stock at the date of death would be the number of shares the deceased held at that time, multiplied by the market share price on that date.

Capital cost allowance may not be claimed in the terminal period, January 1st of the year of death and ending on the date of death, since the property was deemed to have been disposed of immediately prior to death and therefore was not owned at the end of that period.

There are provisions that allow the capital property to be transferred to a spouse. It is deemed to have been disposed of immediately before death and subsequently acquired at the deceased taxpayer’s tax cost. This provision applies to both depreciable and non-depreciable property.

There are special rules for eligible capital property, resource properties, land inventory, interest in a foreign investment entity, farm property and qualifying small business corporation shares.

In certain cases, you can elect to pay the tax resulting from certain deemed realizations over 10 years.

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RRSPs and Registered Retirement Income Funds

Generally, the value of property in the plan (matured or unmatured) owned by the deceased will be included in the income of the deceased in the year of death. This general rule is subject to a number of exclusions. For example, transfers to a beneficiary who is a surviving spouse and transfers to a beneficiary who is a financially dependent child or grandchild to purchase an annuity are not included in the deceased's final income tax return.

The rules for the tax treatment of registered retirement income funds on the death of a taxpayer parallel the rules respecting RRSPs.

With regard to an RRSP, any income taxes payable for amounts included in the deceased's final income tax return are paid by the executor through the estate. Remember, this when you are asked if you want to name a beneficiary on your RRSP contract. The beneficiary will receive the full proceeds of the RRSP without any withholdings. The taxes owed on this amount are paid by the executor through the estate. This may cause problems if there is not enough money in the estate to pay the income taxes.

When an RRSP or RRIF is included in the deceased's income tax return in the year of death it is the fair market value of the investments in the RRSP/RRIF that is reported.

Pension Income Splitting

You require a joint election to split eligible pension income. In the year of death, eligible pension income for pension income splitting is pro-rated by the number of months up to and including the month of death.

Special Filing Rules

You can elect to file one or more optional returns to reduce or eliminate tax for the deceased. This is considered as the return of a separate person who is entitled to claim certain personal tax credits to which the deceased was entitled for the year. This means you can claim certain personal tax credits a second time.

You can choose to file up to three optional returns:
- Return for rights or things
- A business as a partner or proprietor
- A testamentary trust

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Rights or things are amounts that were not paid at the time of death and that, had the person not died, would have been included in his or her income when received. Employment rights or things include salary, commissions and vacation pay as long as the employer owed them to the deceased on the date of death and they are for a pay period that ended before the date of death. Other rights or things include OAS; uncashed matured bond coupons; bond interest earned to a payment date before death, but not paid or reported in previous years; unpaid dividends declared before the date of death; and other special provisions relating to farmers, fishermen, sole proprietors and professionals. The filing of this return is time sensitive.

A deceased person may have been a partner in, or the sole proprietor of, a business. The business may have a fiscal year that does not start or end on the same dates as the calendar year. If the person died after the end of the business's fiscal period, but before the end of the calendar year in which the fiscal year ended, you can file an options return for the deceased.

For a deceased person who receives income from a testamentary trust, you can file an options return.

You can exclude from income up to $10,000 of the gross amount of death benefits attributable to a deceased taxpayer's service from an office or employment. The amount must be paid in recognition for the employee's service in an office or employment. Payments out of a superannuation or pension fund, a salary deferral arrangement, retirement compensation arrangement, or accumulated vacation leave do not qualify; nor do death benefits paid out under the Canada Pension Plan or Quebec Pension Plan.

The legal representative of a deceased person is required to file income tax returns. An individual acting as a representative is required by the Income Tax Act to obtain a tax Clearance Certificate before distributing property which he or she controls. The Income Tax Act imposes a personal liability up to the value of the property distributed for unpaid taxes on the person who distributed property without first obtaining a Clearance Certificate. You do not need a Clearance Certificate before each distribution, as long as you keep sufficient properties to pay any liability to CRA.

Even though CRA issues a Clearance Certificate, the agency can reassess the taxation years covered by the certificate, unless the years are statute-barred from reassessment. However, the Clearance Certificate will protect the executor from any liability for taxes that cannot be recovered from the beneficiaries.

When dealing with the estate of a Goods and Services Tax (GST) registrant, the executor can apply for a GST Tax Clearance Certificate. It is the representative's obligation to obtain a Clearance Certificate before distributing any property or money under his or her control.

The Taxation of Trusts

A trust is not a legal entity. It is a relationship between one person (trustee) or group of persons (trustees) and another person (beneficiary) or persons (beneficiaries). Trusts that arise on and as a result of the death of an individual are called testamentary trusts.

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A common type of testamentary trust generated on the death of an individual is graduated rate estate (GRE). A graduated rate estate has the following benefits:

- The ability to use graduated tax rates.
- Exemption from remitting tax installments.
- Exemption from the alternative minimum tax.
- Ability to have a non-calendar year end.
- Increased flexibility in claiming tax credits associated with charitable donations on death.

To qualify as a graduated rate estate, the following must apply:

- An estate that arose as a consequence of the death of an individual.
- No more than 36 months have passed since the death.
- The estate is a testamentary trust under the Income Tax Act.
- The estate designates itself as a GRE in its first taxation year.
- No other estate designates itself as a GRE of the deceased individual.
- The deceased individual's social insurance number must be provided.

United States Estate Taxes

If the deceased was a Canadian resident living part time in the United States or was a U.S. citizen, you may need to file a U.S. income tax return.

If the deceased owned U.S. assets or was a U.S. citizen you may need to file a U.S. estate return.

For Canadians, U.S. estate tax is imposed on "U.S. Situs Assets" which include:

- U.S. real property
- Tangible personal property in the U.S.
- Shares of U.S. corporations
- Certain U.S. debt obligations, including U.S. T-bills with a term over 183 days

A Canada-U.S. treaty deals with taxes imposed on death. A new general rule states that Canadian residents who are not U.S. citizens will pay U.S. estate taxes on U.S. situs assets, subject to a calculated unified credit.

U.S. income taxes are complex and may require consultation with a U.S. tax expert. It is important that the executor be aware of this requirement and take the appropriate action.

Joint Ownership of Property: Pros and Cons

In Ontario spouses usually hold property jointly. This is named "rights of survivorship." Rights of survivorship is designed as a way for couples to pass property to the surviving spouse and to avoid income taxes and probate fees.

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To avoid probate fees a parent may wish to transfer property into joint names with one or more children. Conflicts can arise when administering an estate of a person who has transferred property into joint names with a right of survivorship.

If you are considering transferring property into joint names with one or more of your children, here are some issues to consider:

- All owners have immediate access to the property.
- The property may become subject to the claims of creditors of all joint owners.
- The transfer, unless to a spouse, triggers a "deemed disposition" for income tax purposes on the portion that is transferred to another joint owner. The death of a joint owner would also create another deemed disposition on that person's share.
- Assuming a "right of survivorship," the property would pass to the surviving owners on the death of one of the joint owners. That means that this property does not become part of the deceased's estate and may conflict with distribution plans that have been set up in the will.
- Family members may be disinherited if there is an "out of order death." If property is held jointly with a right of survivorship with children and one of the children dies before the parent, a grandchild will not receive a share of the property.
- A portion of the "principal residence exemption" will be lost if the other joint owners have their own residence on which they will claim the exemption.

All joint owners will have to declare their portion of any income and capital gains from the jointly held property. If you are considering transferring property into joint names or becoming a joint owner, talk to a legal advisor and accountant about the benefits and risks.

Canada Pension Plan

Survivor benefits include monthly survivor's benefit, monthly children's benefit, and a lump sum death benefit. You need to apply for Canada Pension Plan (CPP) benefits. If you do not, then you may lose any benefits that you are entitled to receive. Apply as soon as possible after the contributor's death.

The amount a surviving spouse receives depends upon whether or not the spouse is also receiving CPP; the amount; how long the contributor paid into CPP; and the surviving spouse's age when the contributor died. If the surviving spouse is 65 or older, 60% of the pension will go to the spouse, although subject to a maximum of 100% of the individual pension.

A child who has lost at least one parent who was a CPP contributor may qualify for children's benefits. The monthly children's benefit is a flat rate that is adjusted annually.

In addition, a death benefit of a one-time payment is made to the deceased contributor's estate. The death benefit amount depends on how much and how long contributions were made to CPP. The amount is calculated by CPP, which is the amount that the plan would have been if the person had been aged 65 when the death occurred. The death benefit is equal to six months' worth of this "calculated" retirement pension, up to a maximum amount.

If you are receiving a survivor's pension and remarry, your pension will continue regardless. If you previously lost a CPP survivor benefit because you remarried, you may now be eligible as the rules changed in 1987.

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The CPP office recommends that you should apply for survivor benefits as soon as possible after the contributor's death. The office that administers CPP will only make back payments for up to 12 months.

Employment Insurance Compassionate Care Benefits

Compassionate care benefits are Employment Insurance (EI) benefits paid to people who have to be away from work temporarily to provide care or support to a family member who is gravely ill and who has a significant risk of death within 26 weeks (6 months). A maximum of 26 weeks of compassionate care benefits may be paid to eligible people.

Charitable Donations

Charitable donations are considered to be made at the time when the property is actually transferred to the qualified donee (e.g. registered charity) by the estate. The donation value for tax purposes is the fair market value of the donated property at the date of the transfer.

Special rules apply to gifts made by estates that are Graduated Rate Estates (GRE) at the time of the donation. The credit can be claimed:

- In the deceased's terminal return for their last taxation year or for their taxation year preceding their death;
- To the graduated rate estate for the year in which the donation is made or for its prior taxation years;
- A five year carry forward should be available if the estate continues after the GRE status ceases;
- The exemption from capital gains for publicly traded securities will continue to apply to gifts made by GRE's, resulting in no deemed disposition immediately before death, provided the securities are subsequently donated to a qualified donee by the GRE.

Tax Free Savings Account

In provinces and territories that recognize TFSA beneficiary designations, an applicant may designate a spouse as a "successor holder" in the TFSA contract. Ontario allows for this designation in the TFSA contract. If named as a successor holder, the surviving spouse will become the new holder of the TFSA immediately upon the death of the original holder and keep the tax exempt status of the account. The TFSA continues to exist and both its value at the date of the original holder's death and any income earned after that date, continues to be sheltered from tax under the new successor holder.

The surviving spouse, after taking over ownership of the deceased holder's TFSA, can make tax-free withdrawals from that account and can also make new contributions to that account, subject to their own unused TFSA contribution room. If the surviving spouse already has a TFSA, he or she can transfer part or all of the value from one to the other (for example, to consolidate accounts). The tax benefits in the transfer of the TFSA to the surviving spouse are substantial.

In provinces and territories that recognize TFSA beneficiary designations, an applicant may designate a beneficiary other than a spouse. In this case the account will no longer be a TFSA. Beneficiaries (other than a surviving spouse) can contribute any of the amounts they receive to their own TFSA as long as they have available unused TFSA contribution room.

When there is no successor holder or beneficiary designated in the TFSA contract or the will, the TFSA becomes part of the deceased's estate and is distributed in accordance with the will. At the date of death, the TFSA ceases to exist and it is considered to have been disposed of for an amount equal to the fair market value of all the property held in the TFSA at the time of death.

Medical Expenses

In the year of death, medical expenses can be claimed for any 24-month period that includes the date of death, as long as no one has claimed them on any other return. This also applies if you are claiming medical expense paid for a dependent who died in the year. Eligible medical expenses to consider are premiums paid to private health services plans, travel expenses, attendant care expenses, and full-time care in a nursing home, etc.

Your Questions

You may have questions such as will it take a lot of time, will I be paid for my work and could I be sued? We can help. We have allocated a professional accountant to the Estates & Trusts team who focuses exclusively on this area and who will work closely with you and your lawyer. You'll have an expert who can answer your questions, ensure all accounting issues are taken care of and who can identify issues that might require legal intervention.

You do have the benefit of the "executor's year," a period of time following the death in which the executor may need to complete executor responsibilities and resist beneficiaries' demands to be paid.

If you have any questions or concerns please call us.

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