



## Agenda

- Introduction
- Keeping Assets in the Family
  - Marriage Contracts/Cohabitation Agreements
  - Shareholders' Agreements
- Use of Trusts
- Joint Assets

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## Introduction

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## Common objectives

Common objectives:

- Provide for surviving spouse whether first spouse or spouse of a second marriage
- Reduce, defer or eliminate income tax
- Avoid probate tax
- Preserve assets for next generation
- Avoid strife

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## Factors to Consider

What to leave: consider the assets

- registered assets
- shares of family business
- insurance
- matrimonial home/cottage

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## Factors to Consider cont

How to leave it: outright or in trust

- Remarriage concern
- Ensure assets go to next generation
- Asset protection (against creditors of Spouse, to protect from lawsuits)

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## Issues to Consider

Shares of Family business

- Source of income
- Constraints on transfer (shareholder agreements)
- Conflicts of interest depending on various rules: trustee, director, life tenant, residuary beneficiary

RRSPs/Insurance: Tax considerations

*Inter Vivos* agreements/arrangements

- Marriage contracts
- Shareholder agreements
- Jointly owned assets

Homes/vacation properties

- challenges with shared use and enjoyment

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## Estate Planning: The Challenges

- Financial issues
- Emotional issues
- Competing interests

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## Marriage Contracts/Cohabitation Agreements

- Marriage Contracts/Cohabitation Agreements
- Shareholders' Agreements

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## Marriage Contract or Cohabitation Agreement

- Contract has many purposes:
  - Financial operations of relationship
  - Clarify property ownership rights
  - Protecting gifts and inheritances
  - Providing for support obligations in certain circumstances
- Need to ensure contract does not conflict with overall estate plan

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## Beneficiary Designations

- Critical to review them – registered plans and insurance
- Generally no automatic right to registered plans and insurance proceeds, unless named as a beneficiary
- Exception is registered pension plans where spouse has priority for certain benefits
- Named beneficiary remains the beneficiary until the relevant designation is amended

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## Shareholders' Agreements

- Restrictions on issuance and transfer of shares
- May restrict manner in which shares can be transferred on death: permitted transferees could include transfer to a spousal trust
- Agreement may also identify who can or cannot act as a trustee

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## Planning Options – Shareholders' Agreements

- Require any potential transferee to be bound by the terms of the shareholders' agreement (which could provide buyout, drag-along and tag-along provisions)
- No entitlement to payments for transferee spouses
- Provide the opportunity to purchase the shares held by any family member shareholder who may be subject to family law proceedings or in the event the shares may be the subject of transfer to a spouse

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# Use of Trusts

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## Testamentary Trusts

### Qualifying Spousal/Common Law Partner Trusts

- Competing interests
  - Provide for surviving spouse
  - Preserve for next generation
- Effective tool in re-marriage situation for clients who want to specify how wealth is shared between surviving spouse and children from a previous marriage
- Efficient from an income tax perspective because a rollover available – defers deemed disposition until death of surviving spouse

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## Testamentary Trusts cont

- Possible to restrict access to capital without jeopardizing rollover
- Choice of trustees important, especially if surviving spouse/children at odds
- Consider potential equalization claims

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## Challenges with Using a Spousal Trust

- New spouse and biological children are close in age
- New spouse and biological children do not get along
- Insufficient assets
- Income considerations/lack of liquidity
- Potential issues regarding use of principal residence/cottage

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## Challenges with Using a Spousal Trust cont

- Issues if shares of a deceased's corporation comprise main asset of trust - consider providing guidelines, separate class of shares or providing separately for spouse
- Selection of trustees
- Income/capital of trust?
- FLA elections if no marriage contract

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## *Inter Vivos* Trusts

- Will substitute
- No estate administration tax
- Potentially, some protection against will challenges
- Tax consequences differ depending on type of trust
  - Spousal/common law partner trusts
  - Alter ego/joint partner trusts
  - Discretionary trusts

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## Joint Assets

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## Joint Assets

- Some clients believe that holding property in joint names (spouse, adult child, common law partner) such that property passes to the survivor by operation of law is simple solution to probate tax issues and dealing with transfers to children of first marriage

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## Joint Assets cont

- Raises a number of issues if joint ownership with one or more children
  - Taxation
  - Presumption of resulting trust

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## Strategies for Blended Families

- Communication
- Preparation
- Identify who you wish to benefit
  - His/hers/ours?
  - Treat equally/unequally?
  - Consider how spouses hold property (joint, tenant in common or alone)
  - Whether to leave outright or in trust for surviving spouse
  - Implication for who inherits after second death

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## Strategies for Blended Families cont

- Divide wealth among different families by parts
- Provide for fixed amounts for some and parts or remainder for rest
- Remember surviving spouse/common law partner can change will
- Use trusts and adjustment clauses to protect plan
- Insurance opportunities to fund

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## Strategies for Blended Families cont

- Beneficiary designations
- Marriage contract or cohabitation agreement
- Consider adding guidelines in will/ trust re level of income for spouse
- If possible make separate provision for spouse through insurance or separate assets


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M. Elena Hoffstein  
Lawyer | Toronto  
416.595.2965  
ehoffstein@millerthomson.com



**Thank you**



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