Lara Austin's

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MindingMoney

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For the friends and clients of Lara Austin of RBC Dominion Securities

Summer is coming to a close...

And based on my summer calls with clients and contacts, many have a attended a wedding or two for a niece, nephew, grown child or friend. I fondly recall the grand events I attended in my mid and late 20s.

In this edition of **MindingMoney**, I have included a reprint of a recently posted online article from the Globe and Mail. While it is likely the last thing on the 'To Do' list leading up to the 'I Do,' newlyweds want to consider the impact of their marriage on their estate plan, particularly if it is a second marriage.

When I come across a couple without current and legal estate papers (Will, Power of Attorney and if needed Representation Agreement for health care) I often explain it this way. A well-written set of estate documents (with no extra bells and whistles) should run between $400 to $700 per couple and should last about 20 years (or until material change in circumstances). Based on average cost of $550 that works out to $27/year per couple. Now consider that about a third of what BC residents pay in home insurance every year is to cover the rare chance of an earthquake! I think the Estate package is more than a fair deal! (And I've said that with no compensation or threat from lawyer friends!)

I reflect on the first few years of my 20-year relationship. As many new couples do, arguments over how to re-deploy our meagre financial resources in light of children, housing and entertainment seemed to pop up more often than it does now. I was reading up on some recent contributions to The Journal of Financial Therapy, a fairly undeveloped area in the world of clinical psychology. The article is titled 'The Determinants of Money Arguments between Spouses,' which of course caught my eye. Essentially money arguments are related to both financial and relational factors. The authors of the report suggested that an increased understanding of the predictors of money arguments can help practitioners quickly identify and focus on potential problem areas before unwanted outcomes (such as divorce) can occur.

I have observed that my clients who have been married for 'a few decades' or more have a very smooth and clear communication flow between them and tend to 'check in' with one another through the conversation. If I may pose an INTERACTIVE Question…**What hints or advice do you have for young or new couples who may be experiencing the 'growing pains' of communicating about money?** Short stories and numbered instructions are welcome. They will be posted in my October/November issue of **MindingMoney**.

Cheers,

Lara D. Austin

Marriage and Wills
Reprinted from Global And Mail ONLINE

Perhaps one of the last things on the minds of soon-to-be married couples is the effect their marriage may have on their pre-existing Wills. But, because of a recent court decision, that effect is something that should not be ignored.

Up until the end of 2011, statutory law in Canada relating to Wills was uniform across most provinces (an exception being Quebec) and stated that pre-existing valid Wills were generally revoked upon a couple's marriage. In other words, pre-2012 law provided that when you get married, your Will generally becomes invalid. So, when a person died after their marriage without creating a new Will, they would die "intestate" (without a Will) and their surviving spouse would typically be the primary beneficiary of the deceased spouse's estate.

However, this uniform approach changed in February of this year when the province of Alberta changed its laws. In Alberta, the bulk of its Wills and Succession Act came into force on February 1, 2012. Under this new legislation, marriage no longer revokes a prior Will. British Columbia will follow suit with its new Wills, Estates and Succession Act once it comes into force.

What makes things interesting is that other provinces (such as Ontario) continue to have the rule that marriage generally revokes a prior valid Will. Because of this new lack of uniformity in provincial laws, there are all sorts of implications Canadians need to take into account regarding their estate planning, and personal representatives need to consider when administering estates. For example, what happens if a testator marries in Alberta under its new legislative regime, but subsequently dies in Ontario? Which jurisdiction's law governs?

The answer to these questions requires the application of what lawyers refer to as "conflict of laws" rules.

Taking into account the relative ease that individuals can cross not only provincial boundaries, but international ones as well, the issue of the validity of pre-existing Wills takes on a whole new and more complicated significance. A recent case in Nova Scotia illustrates just how important the issue is where one or more foreign elements are present.

The case of Davies v. Collins involved Dr. Davies who had married Ms. Davies in the early 1970s in the U.K.. They moved to Nova Scotia and became Canadian citizens, and Dr. Davies executed a Will naming Ms. Davies as his executrix and sole beneficiary. However, in the early 90s they separated and later divorced in 2001.

Dr. Davies began a relationship with a Ms. Collins in Trinidad and Tobago. In 2007, he was admitted to a hospital in Trinidad and Tobago, and while there, married Ms. Collins. Two days later, Dr. Davies died. Although Trinidad and Tobago's laws also generally revoke a Will upon marriage, there is an exception if the marriage is considered to be "in extremis" (such as was the case here with the "death bed" marriage of Dr. Davies to Ms. Collins). However, not knowing that Dr. Davies had a prior valid Will, Ms. Collins obtained a Grant of Administration and was appointed Administratrix of Dr. Davies' estate (presumably because Dr. Davies was thought to have died intestate).

Ms. Davies attempted to revoke the grant, but after her application was dismissed, she attempted to probate the Will in Nova Scotia, which was also declined due to the prior grant. She then began the process of trying to validate Dr. Davies' Will in Nova Scotia. At that time, despite her divorce from Dr. Davies, the law of Nova Scotia would have resulted in her being entitled, pursuant to the Will, to all of Dr. Davies' property if the Will was considered valid. She argued that since Trinidad and Tobago did not revoke Wills in these situations, the Will should be considered valid in Nova Scotia. The court disagreed.

It was decided that the law of the testator's domicile at the time of marriage was the appropriate conflict of laws rule to apply to resolve the issue. Since Dr. Davies' domicile at marriage was Nova Scotia, and the law in Nova Scotia provided for the revocation of a Will upon marriage (and the court found the marriage in extremis to be a valid one), Dr. Davies' pre-existing Will was considered to be revoked. The result was that Ms. Davies was not entitled to the benefits that that prior Will provided. The Nova Scotia Court of Appeal dismissed Ms. Davies' appeal.

What's the lesson here? Prospective spouses considering marriage need to carefully determine whether their pre-existing Wills will continue to remain valid after their marriage. Similarly, personal representatives need to determine whether a deceased's marriage revoked a prior Will or not to ensure that the estate is distributed to the rightful beneficiaries. Careful consideration of applicable laws and jurisdictional issues need to be part of this process.

Whether marriage revokes a pre-existing valid Will necessitates ever greater vigilance not only for prospective spouses, but also estate lawyers advising as to the validity of prior Wills as well as personal representatives administering estates.

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Income from Joint Accounts

If you are the joint owner of a non-registered investment, you should be aware of the income tax rules that the Canada Revenue Agency (CRA) imposes on reporting the income from jointly held investments. This article is for information only and is not legal or tax advice. Be sure to speak with a qualified professional before taking any action.

Proportionate Tax Reporting

Each owner of a joint account is required to report their individual portion of the total income (e.g., interest, dividends, capital gains, return of capital) according to the same ratio as their proportionate contribution of funds to the joint account.

Joint Account Tax Slip Reporting

Although a single T5 or T3 tax slip may be issued for your joint account in your name with your Social Insurance Number (SIN), it does not automatically imply that CRA is expecting you to report all the income for tax purposes. The CRA only requires one SIN to be included on the tax slip. Therefore, only the primary account holder's SIN number is displayed on your tax slip.

For example, the tax slip may be issued to you even though you only contributed a portion of the funds or never contributed any capital to the joint account. The other joint account holder(s) who contributed the capital would be required to report their proportionate share or all of the income even though a tax slip was not issued in their name and SIN. If this happens,

1. Attach the original tax slips issued in your name to your individual income tax return, but do not report the income.

2. Provide the CRA with a brief explanation for the reason why you are only reporting your proportionate share of this income. If you didn't contribute to the account, your proportionate share would be zero.

3. Provide the other joint account holder(s) with a copy of your tax slips in order for them to report their proportionate income on their tax return. They would simply attach the copies of the tax slips originally issued in your name to their income tax return, explaining why they are reporting this income even though the tax slips were issued to you. If you contributed all the funds to the account, 100% of the income would be yours.

4. Finally, if you are receiving tax slips in your name but didn't contribute to the account, you can simplify your tax reporting in the future by asking your financial institution to switch your name from primary to secondary joint account holder which will ensure that you do not receive tax slips in the future.

5. If filing electronically, the above still applies. Simply retain your copy of the tax slip and your explanation in your own file in case you are asked for it.

CRA Illustration of Joint Account Tax Reporting

The CRA illustrates the proportionate tax reporting requirement in its General Income Tax and Benefit Guide (instructions for line 121) as follows:

Sally and Roger received a T5 slip from their joint bank account showing the $400 interest they earned in the last year. Sally had deposited $4,000 and Roger had deposited $1,000 into the account.

Roger reports $80 interest, calculated as follows:
$1,000 (his share) x $400 (total interest) = $80
$5,000 (total)

Sally reports $320 interest, calculated as follows:
$4,000 (her share) x $400 (total interest) = $320
$5,000 (total)

Capital Gains/Losses

If an asset is sold within a joint account, the joint account owners must report their portion of the gain/loss. The reason behind the sale does not affect reporting requirements.

For example:
Your spouse wishes to withdraw cash (or "pull out their share") from a joint account held by you and your spouse to which you contributed 80% of the capital. In order to fund their withdrawal, or to pull out their 20% of the joint account, an asset is sold and the sale triggers a capital gain. The resulting capital gain cannot be solely claimed by your spouse simply because they withdrew their proportionate share of the account. Instead, it must be split between you and your spouse according to the ratio of assets contributed to the joint account. In this example, 80% of the capital gain would be taxable in your hands while the remaining 20% of the gain would be taxable in your spouse's hands.

FUNNY MONEY is coming to the Comox Valley!

North America's #1 FUN-ancial Lecture for Students is coming to Mark R Isfeld and Vanier schools on October 15th.

For the last year I've been working to bring out a speaker that most of my clients will never hear! Financial Literacy happens daily in my office. As clients move through life changes, I am constantly working to help them understand their options and how they should be making adjustments. Many clients mention that they wished they learned the basics of saving, investing and managing debt at a much younger age.

It takes a lot to catch the attention of todays' youth!

Funny Money - The comedy troupe consists of Denis Grignon, Steven Levine and is lead by James Cunningham. James graduated from the University of Toronto and hit the road touring the world as a standup comedian. He has performed across Canada and the United States, as well as many other parts of the world. James is the founder and creator of the award-winning Funny Money program. It has twice been recognized by the Canadian Organization of Campus activities. Designed for High School and University and college students, the Funny Money program uses lots of visuals and straight talk to get through to students about budgeting their money, managing their debt and preparing for their futures. If you would like to see an interview with Funny Money please click **www.funnymoneyinc.com**.

I'd like to thank the principals of the local high schools for making time and prioritizing financial literacy within their already loaded schedules.

Funny Money for High Schools is sponsored exclusively in Canada by the Investor Education Fund and The Investment Industry Regulatory Organization of Canada (IIROC).

RBC has just developed Financial Literacy Kits!

These are packages for parents and grandparents who are looking for ideas of age appropriate discussion and projects to help children learn about financial concepts.

Starting from age 2 to age 25.

Clients may request these packages to be mailed to them FREE OF CHARGE.

Lara encourages Financial Literacy for free

Have you have noticed those great ads in the local papers where my head is popping out of a laptop? Every one includes a different topic. Articles are free to download and include valuable information related to financial planning and tax strategy. Articles are often too long to include in my newsletter. They don't 'sell' anything - they make good reference pieces to share! They can be mailed to you if you don't have computer access.