PATRICK O'BRIEN'S

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For the clients and friends of
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Cow Comfort and Mom Comfort: an Estate Plan for an Elderly Widow

This article is about "comfort." Not cow comfort, but the comfort of the parents of the boomers, born prior to the dirty thirties and who lived through the Second World War. Many managed their affairs well, developed great businesses, and built much of the "Canada" since 1945 for which I am so thankful. It seems so strange in our current system of gender equality, but the woman featured in this article was born in 1927, and for the first two years of her life, she was a non person before the law. That didn't change until 1929, even though women received the vote (federally) 11 years earlier.

Meet Mrs. R.

She was raised in Ontario, but came to the west coast to go to UBC in the early 1950s where she met her husband. She successfully raised 5 children, and remade her career no less than 3 times until retiring in her 70s. She is now a 90 year old widow with significant assets, a loving family with grandkids, and family harmony. After her husband passed, she began seriously considering her own estate plan. She had several conversations with legal professionals and received many options (a bit overwhelming). The goals in estate planning are simple, but getting there sometimes isn't:

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Get the assets to the right beneficiaries, as quickly, and tax efficiently as possible, with the least trouble to the executor, and maintain family harmony.

The legal consultation was a process that she needed to go through in order to come to the decision that simplicity, reduction of the significant probate fees, and disposing of excess cash now, rather than later, mattered most.
This is how we did it:

Reducing beneficiaries to the will

Mrs. R. will send $10,000 to each of her children's spouses now rather than in the will as was her original plan. She has great love and appreciation for each of these people, but she is also a private person and wants only her children to get a copy of the will. By law in BC, every beneficiary must receive a copy of the will. Giving the money away now also allows her to express her feelings to these important people and vice versa and removes them as beneficiaries.
Mrs. R will send a final cheque for $20,000 to a nephew. She will include a note indicating that his aunt is putting her affairs in order and that this is the last cheque he will receive. Again, this simplifies the will and reduces the beneficiaries by one, and one who lives in the USA.

Dispersing Extra Assets Prior to Passing

Mrs. R will keep an amount in her RBC DS investment account to meet her living expenses and disperse the clear excess to the 5 siblings now. Two of the five children will be added as joint owners of the investment account with the right of survivorship for estate purposes only. This avoids probate and the rest of the estate process on a significant sum without triggering capital gains taxes in the present. On passing, Mrs. R will be removed from the account and the two siblings will be responsible for dispersing these funds to the group of 5 siblings equally after the taxes are paid and the estate has settled.

RIF and TFSA

The RIF and TFSA has the 5 siblings as beneficiaries. As a result, these two registered accounts go privately, outside the will, quickly, and probate free to the children. This does not mean that the taxes on the RIF don't have to be paid. In the year of a single person's passing, the RIF/RSP becomes the equivalent of earned income in that year and taxed as such. Most 90 year olds have fairly small RIFs and in this case, there is plenty of cash in non-registered accounts to pick up the taxes.

The Grandchildren

The grandchildren's money will be sent to the parents for safe keeping and eventual disbursement. This gets away from having to set up testamentary trusts for the underage grandchildren and less work for the executor.

Trust and Goodwill: Essential Ingredients

You have probably noticed that this whole simplified program is utterly dependent on trust. This family has it in spades. This would otherwise be a very risky program and I would not recommend it. Consider if the children couldn't be relied upon to return money if Mrs. R needed it? IF they have the bulk of their cash, they might abandon her as they live the "Paris Hilton" lifestyle? What if the two siblings put on the account as joint incurred a lawsuit and Mrs. R's investment account was targeted? What if those two same siblings decided that the money was theirs on Mrs. R's passing and didn't pay outstanding taxes or distribute the balance to their three brothers? Yikes, what a horrendous mess!

Many farm families have strong family connections of trust and love. Farmers will move mountains to fulfill obligations not to just family, but to anyone. Lucky you if you have that. Be sure to consult your trusted advisors and especially an estate lawyer before acting on anything in this article.

One final point:

This process was driven by Mrs. R not her children. It is unseemly to be looking for an inheritance generally, and especially distasteful to be managing an older person to get that inheritance early.

I wish you all the best for a great 2017 farming season!

Regards,

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