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## Alter Ego and Joint Partner Trusts: An estate planning strategy that is right for you?

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Alter ego trusts and joint partner trusts may be an attractive estate planning tool for seniors. These are *inter vivos* trusts that can be established by individuals age 65 or over. These trusts are useful for a number of reasons. They offer significant benefits for those who wish to avoid probate fees and ensure the confidentiality of the family's asset information, and can also provide effective solutions to complicated business succession and family law problems.

### How they work

Contributors to an alter ego or joint partner trust must be age 65 or over and must be solely entitled to receive the income or capital of the trust during their lifetime. The contributors have full control of the trust assets during his or her lifetime as they can appoint themselves as trustees.

For an alter ego trust, the contributor can designate in the trust document different beneficiaries who will receive the income and/or capital of the trust assets after his/her death, which essentially performs the same function as a will. For a joint partner trust, the trust assets will pass to other beneficiaries after the death of both spouses.

Unlike most other *inter vivos* trusts, the transfer of assets into these trusts is on a rollover (tax-free) basis. The tax on any accrued gains is deferred until the death of the contributor in an alter ego trust and until the death of the last surviving spouse in a joint partner trust.

### Benefits

#### *Probate fees*

The main benefit of an alter ego or joint partner trust is the avoidance of probate fees at death, as the trust assets do not form part of the contributor's estate. Probate is the legal process to distribute a deceased person's estate, regardless of whether the deceased has a will or not. In British Columbia, probate fees are essentially 1.4% of the gross estate (lower rate for the first \$ 50,000). For example, on a \$ 10 million estate, probate fees are approximately \$ 140,000.

#### *Privacy*

When a will is probated, the related information becomes public. Information such as the value of the assets owned as well as the beneficiaries under the will become accessible by all. With a trust, the assets held in the trust and the details of beneficiaries remain private.



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### *Wills Variation Act*

The *Wills Variation Act* allows the deceased's spouse and/or children to challenge the will and apply for a redistribution of the estate if the claimant can prove that adequate provision has not been made for their proper maintenance and support. Since assets in the alter ego or joint partner trust do not form part of the deceased's estate, the distribution of assets as set out in the trust will not be subject to challenges as long as the trust was properly set up.

### *Management of assets*

The alter ego trust is useful for individuals who are concerned about the possibility of losing their capacity to deal with their assets. The trust ensures that your own selected trustees take over management of the trust's assets in the event of incapacity. These trusts may therefore serve as an alternative to a power of attorney.

### *Estate administration*

As the assets held in the trust does not form part of the deceased's estate, the trustee will have continuous legal title to the property. Assets can be distributed to the beneficiaries according to the terms of the trust documents without going through probate, which can be a very lengthy process.

## **Limitations and other issues**

While there are the noted benefits, there are also potential issues and disadvantages to be addressed with alter ego trusts and joint partner trusts. Legal costs associated with preparing the trust documents will likely be higher than the fees associated with preparing a will. Professional fees associated with the filing of the trust's annual tax return should also be taken into consideration. When real estate is transferred into the trust, property transfer tax issues should also be considered. In the absence of a trust, the capital gains and losses of the deceased will be reported in his/her personal terminal tax return and taxed at the graduated tax rate, whereas in the case of an alter ego or joint partner trust, all capital gains will be taxed at the highest marginal tax rate. If the deceased is already at the highest personal rate, this will not be an issue. It should also be noted that allowable capital losses realized in the trust can only be used to offset capital gains realized in the trust and cannot be flowed-out to beneficiaries. Therefore, to maximize the amount of tax savings, consideration should be given to the annual income level of the individual and as to which assets should be placed in the trust.

With proper planning and depending on the particular circumstances, the use of the alter ego and joint partner trust may be a very attractive estate planning tool.

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