

Special

ESTATE PLANNING

EXPERTISE

Qualified advice can help avoid family law fiascos



Christine Van Cauwenberghe is assistant vice-president of tax and estate planning at Investors Group, and chair of STEP Canada's education committee. As part of the STEP Canada 15th National Conference on June 10 and 11, she will speak on "avoiding family law fiascos in estate freezes."

What purpose does an estate freeze serve in tax and estate planning?

An estate freeze is a mechanism used by business owners to transfer an incorporated

business to their children in a tax-effective, controlled fashion. The parents take back fixed-value preferred shares to freeze their financial interest in the company; common shares with potentially unlimited growth are issued to the children or a trust. Insurance is often purchased to cover the parents' estate tax liability.

If the business owners were to instead transfer the value of their shares directly to their children, they would trigger an immediate tax liability. And in most cases, parents don't want to transfer all their shares to their children, because they're not ready to give up control. But they may be concerned that if the shares go from \$2 million today to \$4 million by the time they pass on, for example, their

estate will be liable for such a massive tax liability that the company will have to be sold, and they won't actually be able to pass the business on to the next generation.

What are some of the risks, and how can they best be minimized?

One of the things we'll be talking about at the conference is whether it makes sense to issue the shares directly to the children. Many people don't consider that there could be a family law claim in the future. You might not even know your child's future spouse or partner yet, but he or she may have a future claim on your adult child's assets, who may then have to sell their interest in the company to satisfy the claim.



Advisers with the TEP designation, such as accountant Peter Weissman, above, have demonstrated the trust and estate knowledge and experience required in today's complex environment. SUPPLIED

A family trust provides more flexibility. You can roll out the shares to one child, versus the other, if one decides not to take

over the business. You could thaw the freeze, by rolling out all the shares to yourself, if it turns out that none of your children is capable of taking over the business. It buys you about 20 years of time in which to make those decisions. It may also limit the type of family property claim an ex-spouse may have against a child, although in many cases it will not completely eliminate it. A marriage contract is still the best protection, if the parties are willing to enter into one.

Is it essential to have expert advice when implementing this type of advanced strategy?

Having expert advice is the key to ensuring that your plan will be implemented in the most effective manner. The whole wills and estates realm is becoming very complicated. You first have to be familiar with both tax and family law legislation. Families are dispersing into different jurisdictions, and the rules across Canada have become less consistent over time. The Canadian family has also evolved. We're now dealing with clients who are in their second or third relationship, living in common-law or blended families; they may have children from various relationships.

It's so unusual these days to find a simple situation. And when things go wrong, the people who end up paying the price are your loved ones - you don't want to leave that kind of legacy.

ABOUT STEP CANADA

In a complex field, designation provides assurance

STEP Canada members are the most experienced and senior trust and estate practitioners in the field, including lawyers, accountants, financial planners, insurance advisers and trust professionals.

There are a number of routes to membership, all with stringent qualification requirements, says the organization's education committee chair, Christine Van Cauwenberghe. "The Trust and Estate Professional, or TEP, designation means that Canadians can be confident that an adviser has the knowledge and experience required," she says.

"STEP is multidisciplinary and multijurisdictional," adds Pamela Cross, a partner with Borden Ladner Gervais LLP and chair of STEP Canada's tax technical committee. "Working with advisers who are members of STEP means that they have a network of qualified professionals they can go to with questions outside their area of expertise."

Trust and estate planning is significantly more complicated today than even a generation ago, says Ms. Cross, especially as many families are now international, something that was true of only the wealthiest families until quite recently.

"If you overlay that with all the different legal regimes that can apply, as well as family dynamics, you have a lot of middle-class families with complex estate issues," she points out. "It's important they understand the long-range implications of their planning decisions."

For more information, visit step.ca.

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15th NATIONAL / 2013

CRYSTAL ANNIVERSARY CONFERENCE

STEP Canada (The Society of Trust and Estate Practitioners Canada), founded in 1998, will celebrate its crystal anniversary at its 15th national conference, June 10-11, 2013 in Toronto. With top speakers from Canada, the United States, and around the world, this conference will bring together many practitioners from various disciplines who will learn, share, and discuss information that is timely and relevant to their practices.

STEP Canada gratefully acknowledges the following corporate sponsors of our conference for their support and generosity. Their sponsorship allows STEP Canada to continue to provide high-quality educational and professional development programs in Canada. Our members, designated as TEPs (trust and estate practitioners), deliver trust, estate-planning, and advisory services to millions of Canadians every year.

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STEP is the leading international organization for trust and estate professionals, with more than 20,000 members in 99 countries. STEP Canada, founded in 1998, has almost 2,000 members and branches in the Atlantic region, Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, and Vancouver.

For more information, visit www.step.ca