

Case Study: Will Planning

Learning Objective: Assess the role of a Will as critical to true estate planning including achieving fulfillment of the testator's objectives regarding estate distribution or tax minimization.

The Facts

Carrie is a 58-year old recent widower with three adult children. Although his children are all in their 20s, Carrie does not feel they would be mature enough to handle their share of his \$1,500,000 estate if he were to die within the next decade. Roughly \$700,000 of his estate is tied up in the shares of his private company.

Carrie's eldest son is involved in the company. There is an unfunded shareholders' agreement that provides the son with the right to purchase, on an installment basis, all of the company shares in the event of Carrie's death, disability or retirement.

Carrie would like to provide for his youngest son who is semi-dependent on him and who has less promising life prospects than his two siblings.

This all raises a number of dilemmas for Carrie, and he has sought your input before sitting down with his lawyer to draft a new will. Carrie is pondering the following questions:

1. Should he set up his estate as an outright distribution or some form of testamentary trust?
2. Who should he name as his executor(s) and trustee(s)?
3. Assuming Carrie has decided to use a testamentary trust, how might that trust be structured with respect to the distribution and allocation of income and capital?
4. Carrie is wondering if he could preclude his eldest son from entering into a same-sex marriage or common-law relationship by putting restrictions on his inheritance?
5. How might Carrie's estate plan accommodate the shareholders' agreement that he has with his son?

Question

Briefly suggest comments/potential solutions that you might offer Carrie in respect of any four of his questions listed in the case study scenario Facts.

Reference

- *257 Advanced Estate Planning Study Guide (pp. 2-22 to 2-25)*
- *Wealth Planning Strategies for Canadians, 2019 Edition (Chapter 19)*
- *Estate Planning with Life Insurance, 6th Edition (Section 7.2)*

Solution

1. Given that Carrie's sons are currently not considered to be mature enough to handle the management of the business and the youngest son has health issues, it would be more appropriate for Carrie to establish a testamentary trust, rather than an outright distribution, in order to better protect the interests of all involved.
2. If the sons are not sufficiently mature enough to handle Carrie's assets just yet, they would also not be mature enough to manage the estate. The estate might be large enough to warrant a professional executor/trustee (a trust company) depending on how long the sons' trusts are expected to endure. Or, a trust company and one of the sons might be considered as co-executors. Alternatively, Carrie might consider a trusted advisor (such as a lawyer or accountant) perhaps with a family member (not the sons) as co-executor.
3. As noted, the estate could be set up a testamentary trust for the children. In order to provide an element of preference for Carrie's youngest son, the trust could have an "income sprinkling" clause, allowing for an unequal distribution of income in favour of that son, at the discretion of the trustee. The trust could then provide for a distribution of capital to the other sons at a predetermined age, or for capital encroachments in their favour, as required.
4. Any clause designed to exclude Carrie's oldest son should he enter into a same-sex marriage or common-law relationship would likely be voided by the courts as being contrary to public policy.

5. Since the private company represents nearly half of Carrie's net estate (\$700,000 of \$1,500,000) it may be difficult (or impractical) to purchase the shares over time on an installment basis. A possible alternative would be to allocate a portion of the shares to the one son as his share of the estate (if he is ready to handle it) and have the son purchase life insurance on Carrie sufficient to buy out the balance of the shares on a lump-sum basis.

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