

Case Study: Incapacity Planning

Learning Objective:

- Identify how trusts can be used to achieve non-tax objectives
- Identify the need for planning for incapacity
- Compare the advantages and disadvantages of selecting particular substitute decision-makers and explain the alternatives to the clients

The Facts

Jennifer is 67 years old and in excellent physical and mental health. A retiree, she and her spouse live off her employer's and government pensions, plus a \$220,000 RRIF and \$110,000 of non-registered investments. In the event of her death, Jennifer's assets will pass first to her spouse via a spouse trust, and then to their children.

Her greatest concern is for her registered and non-registered investment portfolios, which are tied up in fairly volatile stock holdings and are self-administered. Jennifer's spouse has no knowledge of investment matters, and she fears what might happen to the money if her spouse has control of it.

Jennifer is concerned about the management of her family's assets should she become incapacitated. Both of her parents suffered from dementia when they were in their early 70s, and Jennifer fears that the same fate might await her. In the event of Jennifer's death, her fear would not be a problem because she has named a highly competent executor (estate administrator) under her will.

Question

Suggest two possible solutions that could alleviate Jennifer's concerns, and state one advantage and one disadvantage of each proposed solution.

Reference

- *257 Advanced Estate Planning Study Guide (Section 2.4)*
- *Wealth Planning Strategies for Canadians, 2019 Edition (Chapter 18)*

Solution

Jennifer could establish an alter ego trust to handle her non-registered investments. Because Jennifer believes her executor is competent, this person may be a good option as a contingent trustee on the alter ego trust and could make decisions on Jennifer's behalf during any period of incapacity. The trust would, however, incur expenses and it may not be practical for only a \$110,000 asset.

Because Jennifer believes her executor is competent, she could name this person as her attorney under a power of attorney for property. This would address the management of her RRSP and non-registered money. The drawback is that this type of document provides extensive powers that remain in effect from the date of signing and may be more liberal than Jennifer would want. Note that the attorney could be any person of Jennifer's choosing.

Another option is for Jennifer to execute a springing power of attorney for property, in favour of a qualified administrator, to handle her investments in the event of her incapacity. There would be little expense involved; however, this requires the attorney to demonstrate the person's incapacity by gathering justifiable medical opinions, which can create difficult circumstances.

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