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No more guesswork allowed when valuing an estate, expert says

Telling the government exactly how much your assets are worth when you die has become even more important in Ontario.

Since January 1, 2015, all executors who apply for probate in Ontario must fill out a form detailing every single thing that passes through the estate, from houses to cars, stocks to bonds, and furniture to fine china. And next to each item on the form must be its exact value.

According to Susannah Roth, a lawyer at O’Sullivan Estate Lawyers in Toronto, it used to be enough to simply provide the estate’s total value when applying for probate. But the new Ontario rules brought in last year require executors to be ready to prove an asset’s value if the government decides to conduct an audit of the estate. The law sets no minimum, so paintings and silver cutlery, and even wide-screen high definition TVs, should be appraised to prove their value.

The penalty for getting it wrong, says Roth, is a fine payable by the executor, or up to two years in jail, or both, though she doubts the government would imprison an executor for this type of infraction.

Roth spoke at a seminar on June 16 organized by Foyston, Gordon & Payne Inc. (FGP) as part of our commitment to educate and inform our clients on various aspects of their broader wealth needs.

Roth shared some ideas on minimizing the estate administration tax, more popularly known as the probate fee, which is about 1.5% of an estate’s value.

- Prior to passing away, a parent could give an unlimited monetary gift to his or her children, or to anyone else, after paying any capital gains taxes. Such a gift would reduce the estate’s value and, consequently, the probate fee. The recipient wouldn’t pay any tax on the gift in Canada, but Roth said there may be gift taxes in the U.S. for people with connections to the U.S. Roth cautioned that once any gift is given, no matter in which country, the benefactor can’t get it back.

- An individual could divide an estate into two parts by preparing a primary and secondary will. Only the assets in the primary one would be subject to probate. Roth recommended that an estate lawyer be hired to properly create such a structure.
An individual could set up an alter ego trust starting at age 65, and move any asset into that trust without paying capital gains taxes. At death, the trust’s assets would automatically be outside the estate and would not be subject to probate. A sale of all assets is deemed to have occurred on the individual’s death, and any capital gains taxes would be due in the same way that would occur if the individual held the assets directly.

Things get very complicated when a Canadian has a connection to the U.S., Roth told FGP’s private clients. For example, RRSPs and life insurance policies with beneficiary designations aren’t considered part of an estate in Canada, but they are included in U.S. estates and subject to U.S. estate taxes.

More details on minimizing the estate administration tax are available in a client advisory on this subject at www.osullivanlaw.com.

About FGP

FGP manages $12 billion of Canadian equities, foreign equities, and Canadian bonds directly for private clients and institutions. The company’s sole focus is investment management excellence.

To find out more about FGP, please call 1-844-FOYSTON (that’s 1-844-369-7866) and ask to speak with Stephen Copeland, Mark Klinkow, or Douglas Easton.

The foregoing information should not be construed as advice or recommendations. Individuals should consult directly with their estate lawyer or tax advisor to review their specific circumstances and estate planning needs.