

Make sure you have the 'last word'

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tenancy" with another person so that such assets will pass by operation of law upon your death to the surviving joint tenant. A lawyer will be able to advise you whether or not a joint tenancy is appropriate in your circumstances.

EFFECTS OF BRITISH COLUMBIA LEGISLATION ON ESTATES:

If you have no valid will, upon your death your assets will be distributed to certain of your relatives in the manner specified in the Estate Administration Act (British Columbia). This distribution may not resemble your wishes and could result in delays and difficulties for your family upon your death. If you have a spouse and/or children, they may apply under the Wills Variation Act (British Columbia) to vary your will after your death if you fail to make adequate provision for them.

The Wills Act (British Columbia)

governs the formalities of your Will and among other things, provides that your Will will automatically be revoked if you marry after the date of your Will (unless your Will is specifically made in contemplation of such marriage.) A lawyer will be able to assist in explaining how our legislation may impact your situation.

COSTS TO YOUR ESTATE:

Probate fees are levied by the Probate Registry of the Supreme Court based on a flat fee of \$200.00 for an estate of less than \$25,000.00, \$350.00 for an estate of between \$25,000 and \$50,000.00, and a fee of \$350.00 plus \$14.00 per \$1,000.00 of value over \$50,000.00.

For example, an estate of \$500,000.00 in assets would attract \$6,650.00 in probate fees and an estate of \$1,000,000.00 would attract \$13,650.00 in probate fees.

Transfer and registration fees are levied by the Land Title Office, Motor Vehicles, etc., when assets are transferred from you to your executor and from your executor to the named beneficiary. There are currently no British Columbia succession duties or federal estate

taxes in force, however the Income Tax Act (Canada) provides that you will be deemed to have disposed of your certain types of capital assets for fair market value at the date of your death, thereby triggering capital gains and losses. 50% of your net capital gains must be included in your date of death income tax return and accordingly, you will likely want to consider income tax reduction and income tax deferral strategies.

POWER OF ATTORNEY/ REPRESENTATION AGREEMENT:

You may consider signing a Power of Attorney now to enable a person of your choosing to manage your financial affairs if you become incompetent. Legislation in British Columbia now also provides for a "representation agreement" whereby you may appoint a "representative" to manage your health related decisions as well as financial decisions.

LIVING WILL:

You may wish to express your desire not to have your life artificially extended if a minimum quality of life ceases to exist for you. In Canada, it is presently against the law to take a life but a "Living Will" or "Advanced Medical Directive" may ease your family's burden in deciding whether to

take heroic measures to extend your life.

CONCLUSION: This article is meant only to be a general introduction to estate planning ideas and there are many other considerations including planning the succession of a family business, shareholders' agreements, insurance trusts, the use of spousal rollovers, and other income tax planning techniques. You should consult a professional to explain your situation and help you in achieving your estate planning objectives.



Carolyn Coleclough is a Vancouver lawyer with Webster Hudson & Akerly practising in Wills and Estate Planning. If you are interested in speaking with Carolyn, you may reach her at (604) 443-3651.

ESTATE PLANNING CHECKLIST

1. Keep your will up to date
2. Confirm beneficiary designations
3. Explore the use of Trusts
4. Sign a Power of Attorney, Representation Agreement and Living Will
5. Reduce and/or defer capital gains tax
6. Reduce probate fees

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CLIENT QUARTERLY

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When an insured annuity is your best choice



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One of the best investments for Canadians seeking to guarantee a regular income after retirement can be an annuity.

Various forms of annuities are available but for many seniors who hold non-registered investments, we recommend considering a "prescribed and insured annuity" program that provides secure capital and guaranteed income for life. Because of tax advantages, income is maximized and capital is fully protected under this program.

Many clients have found a prescribed annuity to be an excellent choice for the bond, GIC, or term deposit portion of their investment portfolio. A lifetime guaranteed return, ranging from 7.5 percent to more than 10 percent, can be realized before tax, depending on age and the marginal tax rate.

GUARANTEE A HIGH REGULAR RETIREMENT INCOME AND PRESERVE CAPITAL FOR YOUR ESTATE

With the higher return available from such an annuity, funds can be made available to actually insure the annuity so that the capital can be protected for the estate after the death of the annuitant. In effect, this means clients can enjoy the benefits of a higher rate of return than other investments while ensuring that their estate is protected for their heirs.

A "prescribed annuity" is only one of several different kinds of annuities available on the market today. Essentially, it differs from other forms of annuities by spreading out taxable income over one's lifetime, thus reducing taxes in the early years of the annuity.

The amount of capital you receive per year will depend upon your life expectancy. The older you are, the more you will receive in capital per year. And, as capital paid back is non-taxable, you will pay less in taxes. Only the interest paid to you is taxable.

While we do not recommend this strategy for all clients, a prescribed and insured annuity can be a remedy for seniors wanting to improve their monthly cash flow, particularly if their former non-registered GICs mature and roll over to renew at a

significantly lower rate.

In this issue of Client Quarterly, we show how a successful building contractor used this strategy to replace the income from apartment rentals. And, as a bonus, estate lawyer Carolyn Coleclough discusses other critical issues that should be addressed in your estate planning.

SOUND ESTATE PLANNING PROTECTS BOTH YOU AND THOSE YOU LOVE

OBJECTIVES: Try to provide for:

- 1 A continued income stream during your lifetime
- 2 Preservation of your assets against creditors and other claims
- 3 Management of your affairs if you become incapable
- 4 Reduction of taxes and /or probate fees payable on death, and, finally
- 5 The orderly and desired transmission of your assets upon your death

YOUR WILL: Your will is one technique to accomplish the above objectives. However it is likely not the only estate planning technique which may apply to your circumstances.

Your will appoints an executor to deal

with your assets and liabilities upon your death, provides guardians for minor children and indicates which persons or charities will receive your assets upon your death.

TRUSTS: Creating a trust either during your lifetime (an Inter Vivos Trust) or upon your death under the terms of your will (a Testamentary Trust) may be important in order to split income among family members, protect monies from claims made by third parties or to provide for a minor child or a special needs person. It is important to ensure in such planning that government benefits will still be available to a special needs person even if they are a beneficiary under such a trust. Other benefits from creating either Inter Vivos or Testamentary Trusts could include deferral or reduction of capital gains tax, freezing the value of shares in a privately held company, allocating income and/or capital to specific beneficiaries, reducing or eliminating probate fees.

BENEFICIARY DESIGNATIONS AND JOINT TENANCIES: You may want to ensure that certain assets do not pass under your will by designating beneficiaries in life insurance policies or segregated funds, annuities, RRSPs and RRIAs. An additional way of avoiding assets passing into your estate is by owning assets in "joint

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After a lifetime of property development throughout Greater Vancouver, a successful contractor chose a prescribed and insured annuity for retirement income

THE DECISION MADE GOOD SENSE FOR A VARIETY OF REASONS, BOTH FINANCIAL AND PERSONAL, AND RESULTED IN A GUARANTEED INCOME FOR LIFE

Derek Hodgkins did not have much luck investing in financial securities or the stock market before he chose Frank Malinka as his financial counsellor.

In 1964, he invested \$80,000 in an RRSP plan that, eight years later, had not appreciated at all. Then, during the height of the stock market frenzy in the late 1990s, he took the amount remaining in the RRSP and some other money and invested about \$200,000 in a booming mutual fund.

"I made one good decision at that time," he laughed, during an interview. "I took out \$45,000 at the peak of the market and bought a 1998 Jaguar. Shortly after that, the market belly-flopped."

But if the financial markets were unkind to Derek, real estate was a much different story. And both Derek and his wife, Marlene, now acknowledge they had a lot of help from friends when times were hard.

The couple now owns about 35 acres of prime real estate, thanks to the interest they shared in horses and to Derek's shrewd eye for future property value. In 1970, they acquired about 40 acres of property in the Lower Mainland for \$40,000 where they could breed and enjoy Arabian horses. Today, after selling about five acres of the original parcel, their property holdings are worth approximately \$8 million. They still live on the property although they

sold the horses about 13 years ago.

Real estate also provided a comfortable income for the couple after Derek retired as a general contractor 12 years ago. In 1969, he and a partner built a 57-unit rental apartment building in Coquitlam at a cost of \$80,000, including property and construction. The building, which seldom had any rental vacancies, generated a steady and secure net rental income of about \$240,000 per year in 2000, shared by the two partners.

However, three years ago, after the 30-year mortgage was finally paid off on the apartment building, Derek's partner announced he wanted to sell the property and Derek agreed. Although the rental income had served him well during the earlier years of his retirement, Derek was feeling the need to slow down a little. The idea of a guaranteed income, without the administrative and management chores associated with rental housing, was very attractive.

The idea was made even more attractive because of the tax advantages inherent in the kind of prescribed and insured annuity strategy that Frank Malinka recommended for a couple in their situation. Derek could invest his entire share of the after-tax proceeds from the sale of the apartment building into a prescribed and insured annuity. If he did so, Malinka pointed out, their after-tax income per year from the annuity would actually be more than they would have received

from the apartment building.

But despite these advantages, it was also important for Derek and Marlene to retain some financial flexibility in the years to come. To purchase an annuity is to make a decision for life. Annuities cannot be cancelled. For this reason, Malinka advised the couple to retain a nearly equal sum in a more liquid portfolio.

In 2000, Derek and his partner sold the apartment building for about \$4.4 million, with each taking \$2.2 million before paying out a considerable chunk of capital gains tax on the property appreciation. From the remaining funds, Derek and Marlene decided to invest \$750,000 in a prescribed insured annuity and another \$740,000 in blue chip equities. They also gave \$40,000 to each of their two children, and deposited a small surplus amount in a bank savings account.

The investment yields about \$3,000 in income per month. Derek's prescribed annuity pays about \$7,300 per month and, of that, he pays about \$3,000 per month for the insurance to cover the annuity. Combined with other sources of income, he and his wife now receive about \$10,000 per month.

"That's enough for us now," he says. "We have enough money to live comfortably as we live now and to pay the taxes on our property, which amount to about \$8,500 per year. The value of our acreage also makes us feel very secure."

It's no coincidence that Derek has done so well in land and property investment. He spent a lifetime in property development,

both in the United Kingdom and in the Lower Mainland.

After the war, Derek and Marlene immigrated to British Columbia. It wasn't easy at the beginning. The couple had little money, after paying the fare to Canada. And, for the first two years, he followed his old carpentry trade, building mainly single-family homes. In the years between 1948 and 1952 he built about 12 homes, climbing a steep learning curve for a man who first learned his trade in Britain.

Both are thankful to have had good friends who helped them at crucial times in their early life together when times were particularly hard. Marlene suffered then, as she does now, from a serious kidney ailment. When she was confined for three months to bed and required considerable medical care, her doctor did not bill the couple for two years, when they could finally afford to pay.

That same doctor, who was serving on a school board in a Lower Mainland municipality, persuaded Derek to bid on a school construction project. His bid was successful and Derek shared a profit of about \$5,000 with a partner on the project, a small school. It was the beginning of a new direction in his life.

Still, success was not instant. During the next few years, Derek continued working as a carpenter between stints as a general contractor. Eventually, though, he was able to leave home construction and carpentry behind. During the next 40 years, he established a solid reputation as a general contractor and his projects grew in size,

complexity and cost. His company built large townhouse projects, schools, shopping centres, hospitals, a Safeway store, and a medical building, among many other developments.

Despite his long experience in property development, though, Derek will not develop the 35 acres. The future of that property remains somewhat in limbo, as the couple considers various estate planning options.

Should they distribute portions of the property to their children when they need it, rather than all at once, when they have both passed on? If so, how much of the property would it make sense to give to their children? What are the tax and probate considerations, depending on their choices?

So, as Derek says, they are now working on a "rough draft" of their will, consulting with a lawyer, accountant and Frank Malinka as they move through the issues.

"Basically, though, we'd like to stay here as long as we are able to do so," said Marlene. "We love it here. We always have. It's quiet and peaceful. We love to sit out on our patio in the evenings and look around at the mountains and the sky. It's gorgeous."

This is a true story about a client of Malinka Financial. However, the client's name and some of the details of the story have been changed to protect our client's confidentiality.

WOULD IT MAKE SENSE FOR YOU?

A prescribed and insured annuity can make good sense if you're in good health and between 65 and 85 years of age.

"I believe that an insured annuity can provide the best combination of retirement and estate planning benefits," says Chartered Accountant Chris Thurgood.

"The annuity insures an individual a high after-tax monthly income during their lifetime, and the insurance component protects the capital, thereby ensuring an estate benefit to your surviving beneficiaries. It is also possible to leave the insurance legacy to a favourite charity and obtain a larger tax deduction each year," he adds.

"A good broker is crucial in this strategy. He or she should be able to find you the best value for BOTH your annuity AND the insurance to protect it. I think Frank is very good at both."

Essentially, you obtain a prescribed annuity by purchasing it from an insurance company for a certain amount of money. The insurance company then pays you back, in interest and capital, over time. The amount of capital you receive per year will depend upon your life expectancy.

The older you are, the more you will receive in capital per year. And, as capital paid back is non-taxable, you will pay less in taxes. Only the interest paid to you is taxable.

Should you then postpone your annuity decision until as late as possible in life? That's up to you. If you postpone your annuity income until later in life, you do not benefit from the higher return you will receive while you are waiting. Also, you can take advantage of your good health today and qualify for the insurance.

Our clients have repeatedly told us how much they appreciate the regular income from an annuity as well as knowing that their original deposit is guaranteed to keep its value.

However, this is a "Once-in-a-Lifetime" decision. Once you have made your investment decision, you will not be able to change it. For this reason, some of our clients have arranged to invest smaller amounts in several annuities over time.

A prescribed and insured annuity is just one piece of your financial and estate plan and should be considered in that light. If you are considering this strategy, count on Malinka Financial, as an independent broker, to obtain the best results for you in putting your plan together.

WHAT'S THE BOTTOM LINE?

A Term Deposit simply would not provide the same retirement income for Derek as a Prescribed and Insured Annuity:

	TERM DEPOSIT	PRESCRIBED & INSURED ANNUITY
Investment	\$750,000	\$750,000
Net Spendable Income	\$21,113	\$41,427
Equivalent Pre-Tax Yield	5.00%	9.81%
Additional income		\$20,314

PRESCRIBED AND INSURED ANNUITY

WHAT IT IS NOT ABOUT: WHAT IT IS ABOUT:

- Fee structures
- Projected returns
- Timing the Market
- Watching the market
- Market volatility
- Guaranteed income
- Guaranteed capital
- Guaranteed rates of return
- No probate fees
- Worry-free