Estate Planning: Pay Me Now or Pay Me Later

By Gordon Clarke, CFP, CIM, O.L.S. (Retired)

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I like to change the oil and filter in my car about every six months or so. There are two benefits to this practice: frequent oil changes are good for my vehicle and I am regularly reminded of the importance of estate planning. I am sure you are trying to figure out that second benefit, the connection between one's estate and an oil change. Do you remember that ad for an oil filter company that states, "You can pay me now or pay me later."? The oil filter company wanted you to believe that by buying their brand of filter, you would save a lot of money on future costly engine repairs. While it is debatable whether a specific brand can make any difference to your car engine, there is no doubt that spending a little time and money now on an estate plan can potentially save many thousands of dollars and a lot of headaches in the future. Let me illustrate with a straightforward example.

Mr. A and his business partner jointly own a small company. Mr. A is married and has two teenage children attending university. Life and business are good but then the unexpected happens, Mr. A dies suddenly and his family discovers that he did not have a will or any kind of plan in place to prepare his family for this eventuality. Dying without a will (intestate) meant that the process of transferring assets to Mr. A's heirs did not go quickly and smoothly. Here are just a few of the things that could go wrong.

- Without a will to name an executor, an administrator had to be appointed by the Province triggering extra costs and time delays.

- The business was sold to Mr. A's partner at less than market value with payments to be made over time.

- The family assets had to be split according to intestacy laws, which was not the way Mr. A would have liked, leaving some close relatives with no share of the estate.

- The teenage children, who were both over 18 years of age, were eventually given sizeable liquid assets, which they did not spend wisely.

- Mrs. A received a valuable estate but it was mostly non-liquid and the funds from the sale of the business were to be received over a period of years. This left her with a cash flow problem that would not have been envisioned by her husband.

With even a minimal estate plan, Mrs. A and the children should have been able to eliminate many of these problems. For example, here are a few basic estate planning steps that Mr. A could have put in place.

- An insurance funded buy/sell agreement between Mr. A and his partner could have ensured that the full value of the business would have been received by Mrs. A at the time of Mr. A's death.

- Joint ownership could have helped to save probate taxes by rolling over assets such as equity investments and the cottage to Mrs. A.

- Trusts could have been created to bequeath other assets to the children in a controlled manner until they were prepared to handle the sudden wealth.

Mr. A's family situation is not uncommon and points out the importance of an estate plan. Every situation needs to be looked at individually and there are many other considerations beyond this simple case. Although it is a cornerstone of proper planning, an estate plan is not simply about making a will. There may also be issues surrounding probate taxes, deemed disposition, capital gains, guardians for children, creditor protection, providing for children from a previous marriage, charitable giving, disability protection, powers of attorney, trusts, etc. Simply put, an estate plan allows for the orderly distribution of your assets in an efficient and effective manner while providing for the needs of your family.

If your eyes glazed over when you read that list of issues, you might be a candidate to seek some assistance in this area. The problem with estate planning is that the exact cost of inaction will never be analyzed or fully known. If your estate pays too much in the way of taxes or if assets get tied up unnecessarily or if your business is sold at less than true value, no one is likely to go back and analyze what should have been done and put a price tag on it. Indeed, it would be impossible to assign a cost to the grief and aggravation that can result from a poor or non-existent estate plan.

Estate planning is not a topic that can be covered comprehensively in a short article so let me touch briefly upon a few areas that might be of inter-

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est. The system under which we operate is such that the government almost appears to be waiting for people to die so it can collect taxes. We do not have death taxes but the deemed disposition rules can trigger capital gains upon death. In fact the expression "Live rich. Die poor." originates from the concept of disposing of your assets before death so that the government does not have anything to tax. Reducing the amount of money you send to Ottawa is an idea that many people find very appealing. However, it has to be balanced against the potential for the application of attribution rules, the loss of control and the triggering of capital gains.

It is possible on the death of one spouse to roll over assets to the remaining spouse without immediate tax implications. It is worthwhile to note that this is an optional move and there may be situations where it may be more tax efficient to pay taxes now rather than wait. The spousal rollover provides a tax deferral but can build up significant tax liabilities that must be paid upon the death of the second spouse but again, proper planning can help to alleviate these.

At first glance, trusts are intimidating to people as they are thought of as tools for the very rich but they do have a number of useful functions for anyone. They are a way to split income as well as directing assets to solve specific needs. Testamentary trusts can be created in a will and used to provide income for a spouse or children. The trust files a separate tax return so it has the potential to reduce the overall tax bill as well as help your beneficiaries manage their money, which can be a very important consideration for young people or a spouse who has never been involved in the family finances.

It is incorrect to think that estate planning is just about preparing for death. It begins with building an estate and protecting it until you pass it on to your heirs (while disinheriting the C.C.R.A.) and includes planning for a serious disability or health problem. While you are still alive, critical illness and disability insurance provide protection for your earning power and should you become incapable of managing your own affairs, powers of attorney allow others to make decisions on your behalf. This applies to both financial matters and issues regarding personal care.

As you can see, an estate plan is not a cookie cutter formula that can be applied to everyone. Unique circumstances necessitate that an individual assessment be done and the proper tools and/or professional advisors be utilized as required. Those who do not take the time to prepare a plan ("pay me now") may never know the total cost of their inaction, but their families and others likely will ("pay me later").

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Calendar of Events

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November 20th, 2002
Worldwide GIS Day
www.gisday.com

November 28th/29th, 2002
AOLS Examinations
(Statutes & Professional Oral/ Professional Written)
Institute for Learning
Scarborough, Ontario
www.aols.org

February 19th to 22nd, 2003
AOLS Annual General Meeting
(Sheraton Fallsview Hotel)
Niagara Falls, Ontario
www.aols.org

March 2nd to 5th, 2003
GITA Conference 26
San Antonio, Texas
www.gita.org

March 16th to 19th, 2003
GEOTech Event
Vancouver, B.C.
www.GeoPlace.com/gt

March 29th to April 2nd, 2003
American Congress on Surveying and Mapping
Phoenix, Arizona
www.acsm.net

Room Reservations Reminder

111th AOLS Annual General Meeting – February 19th to 22nd, 2003

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The Sheraton Fallsview Hotel has offered a special room rate of $99/night (sgl/dbl) for Green View rooms and $119/night (sgl/dbl) for Falls View Rooms (limited number). Quote Group Code LANDSR. Rooms will be held until January 13, 2003 or until they are all reserved (whichever is first).