Alter Ego Trusts

A New Way to Provide Benefits

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In Brief
Use Alter Ego Trusts to help clients provide benefits for their own use and protect them later if they become incapacitated; but be careful if putting life policies or annuities into a Trust. Quebec law on trusts differs from that in other provinces (see Quebec Law on Trusts below).

Alter Ego Trusts

Self Benefit Trusts
A special form of inter-vivos Trust is known as an Alter Ego Trust. Introduced in June 2001 for taxpayers over age 65, these trusts are established for the sole lifetime benefit of the person setting up the Trust and are known as "self-benefit" trusts.

Joint Partner Trusts
"Joint Partner trusts" are similar to "self-benefit" trusts and are established for the joint lifetime benefit of two married/common law spouses or same sex partners.

Benefits of Alter Ego Trusts

Alter Ego Trusts Bypass Probate
Since the Trustee of an Alter Ego Trust is the new legal owner of the assets, the Settlor no longer personally owns the assets. As such, when the Settlor dies, the assets are not considered part of the probate estate.

Alter Ego trusts are often promoted as a means to bypass probate, particularly in provinces with high probate rates (Ontario and British Columbia). In fact, probate savings are usually incidental to most Inter-vivos trusts, which are established for other reasons.

Of Greater Benefit
More importantly, Alter Ego Trusts ensure confidentiality for clients and strict performance of duties created by the Trust.
Trust Relationship offers Greater Protection than Power of Attorney (PA)

While Powers of Attorney do owe “fiduciary” duties to the property owner, a PA does not make a trustee of the person appointed.

The trust relationship is the highest degree of obligation known in Canadian law and offers vulnerable persons the greatest degree of legal protection in the administration of their property.

Easy Transfer to Contingent Trustee

The usual first Trustee of an Alter Ego Trust, the Settlor has the ability to manage the Trust assets for their own sole benefit during their lifetime without owning the Trust. If the Settlor/trustee becomes unable to perform his or her duty, a contingent trustee is appointed under the terms of the Trust.

Upon the appointment of a contingent trustee, there is no need to move assets, establish new accounts or cause any major disruption in the administration of the Trust. A simple change in signing officer(s) is made.

Alter Ego Trusts and Life Policies

Policy Transfer Triggers Gains

Attempting to put an existing life policy under the care and control of an Alter Ego trustee can trigger a policy gain because life policies (including annuities and segregated funds) are not capital property benefiting from an allowable rollover.

Trustee Can Buy Life Policy

The terms of the Trust can authorize a trustee to buy and maintain a life policy and can offer advantages in the ongoing administration of life policies.

As owner, the trustee has privileges (ability to change beneficiaries) that do not exist with a Power of Attorney. A Trust can offer valuable benefits in administering existing life policies, but the taxable gains triggered by transfer make them unappealing for policies in a gain position.

Policies with no gain position can be transferred without problems.

Quebec Law on Trusts

In Quebec, the Civil Law Trust varies considerably from the Common Law Trust in many fundamental characteristics.

According to Quebec Civil Code, the legal ownership of the trust property is different. A Trust results from the transfer by the Settlor of a property from his or her own to a "patrimony by appropriation", which is autonomous and distinct from the Settlor, the trustee and the beneficiary.

The operation of the Trust is also very different and could create problems in the application of the federal tax law.

A more detailed description of the characteristics and operation of Quebec’s Civil Law will be detailed in a future edition of Advisor Notes.
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