GLOBE ADVISOR WEEKLY NEWSLETTER

Trust not in memes when it comes to probate

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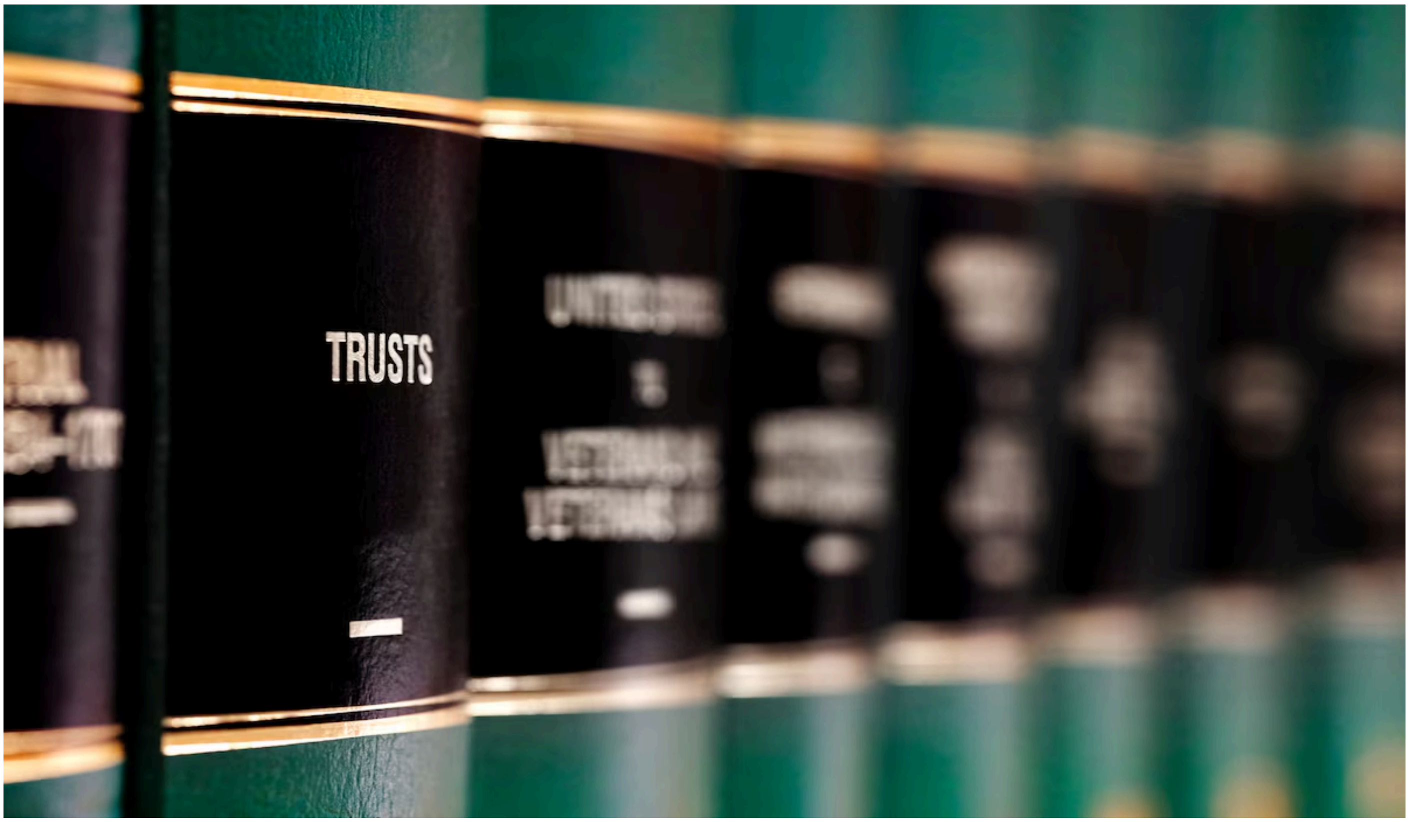

People want to avoid probate, but planning for a living trust has to match an individual's needs.

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Personal finance memes are common on social media. One from the U.S. making the rounds is about eschewing a will and placing all assets in a revocable trust (called a living trust in Canada) as the best way to eliminate probate on an estate.

But this strategy is far more complex than a meme lets on, says Errol Tenenbaum, partner at Robins Appleby LLP's tax, wills and estates group in Toronto.

Globe Advisor recently spoke with Mr. Tenenbaum.

Why do you think this meme about living trusts has sparked interest?

People want to avoid probate. In Ontario, on every million dollars of assets after the first $50,000, that means paying 1.5 per cent or $15,000 in estate administration taxes, and that can add up quickly. But ultimately, the planning for a living trust has to match the individual's needs. For the masses, it's just too expensive and cumbersome.

What makes a living trust so complicated?

You have to transfer all the ownership to the trust. When dealing with a stock portfolio, you have to deal with your advisor and the institution and go through a process of making the transfer. With a home, the title needs to be transferred, and that requires a lawyer and is an added cost to draw up the paperwork. All of this can take a lot of time.

While this can all be done, you have to look at the ultimate benefit. If the intention is saving $15,000, it's going to cost the client a few thousand in legal fees to start. They'll have a few hundred dollars in accounting fees each year because there's separate income tax returns for the trusts.

It often doesn't make sense for even the ultra high-net-worth (UHNW). There could be immediate tax consequences when transferring the assets, depending on the type of trust. Do they want to trigger a capital gain today, especially with the increased inclusion rate? Do they want to pay tax at the highest rate of over 35 per cent in Ontario today to save 1.5 percent in 20 to 30 years?

One negative consequence of any asset subject to probate is assets are essentially frozen while you go through the probate process. But most techniques to avoid probate [don't involve] using a living trust.

What are some alternate solutions?

Make sure you have beneficiary designations on all your registered investments.

For life insurance … without a designation, the estate is the designated beneficiary and would be subject to probate.

For UHNW clients, we often look at multiple wills, particularly if they own a business through a corporation. In special circumstances, if they want to maintain control, have privacy and the benefit of avoiding probate, then a living trust such as an alter ego trust may be an option.

What should advisors tell clients about these simplistic memes?

It's not a one-size-fits-all approach. It's extremely important to consider the individual's needs, goals and concerns and then find the appropriate planning for them as opposed to the meme trend of the day.

This interview has been edited and condensed.

– Deanne Gage, Globe Advisor reporter

Must-reads from Globe Advisor this week

Growth of private assets poses liquidity issues for estates, requiring careful planning

As private assets become more common in investment portfolios, estate experts say these alternative investments create unique challenges for executors. Private equity, private credit and other alternative investments can be challenging as estate assets, says Holly LeValliant, estate and trust consultant with the Davis Group at ScotiaMcLeod in Toronto. "To start with, there is often a lack of liquidity," she says. Jamie Sturgeon reports.

As CIRO consults on advisor incorporation, harmonization of rules proves challenging

CIRO is attempting to level the playing field on advisor incorporation, but experts say there are key tax, regulatory and investor protection details to iron out with the approaches put forward. Lorraine Lynds, partner in Osler, Hoskin & Harcourt LLP's corporate group in Toronto, says CIRO appears to recognize that there are limitations to the tax benefit advisors would enjoy through an enhanced directed commissions model. "The tax implications need to be understood before the regulators propose their final model," Ms. Lynds says. Kelsey Rolfe reports.

For tax-efficient wealth transfers, plan early and revisit often

Nothing is certain except death and taxes. With upward of $1-trillion in assets passing between Canadian estates and beneficiaries this decade, the significant tax implications require careful planning. "The wealth plan is the best way to determine what tax consequences exist," says Tannis Dawson, high-net-worth planner with Napper Wealth Management Group at TD Wealth Private Investment Advice in Winnipeg. Jamie Sturgeon reports.

Also read:

Three small-cap picks – and one sell – from a Canadian-focused money manager

Reading The Wealthy Barber and investing early helped this advisor launch his own firm

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What you and your clients need to know

Yes, couples can income-split the CPP – in a way

Income splitting is a perennial hot topic among retirees, but one aspect of it is often neglected, according to some financial planners: the ability to share Canada Pension Plan payments. Erica Alini reports.

The compounding investing lessons of Roger Federer

Tennis is a good parallel to investing. In a sport with fewer variables than most (often only two players and one ball) and many points required to win a match, career statistics from one of the greatest players ever demonstrate the power of compounding and consistency over the long term. Doug McCutcheon reports.

Receiverships soar, putting distressed commercial properties on market

Buyers smell blood in the water as distressed commercial properties are put up for sale. But so far, sellers of that troubled real estate are refusing to accept rock-bottom values. With developers filing for bankruptcy protection or lenders forcing their projects into receivership, the number of available properties is on the rise. And, certainly, sales are up substantially. Still, real estate pros say there's a disconnect between buyer and seller expectations. Rachelle Younglai reports.

– Globe Advisor Staff

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