

Principal Residence, Investments and Trusts

The objective of this article is to help you minimize or avoid BC Probate Fee exposure to property including a principal residence.

Briefly, when a taxpayer dies, the estate property is probated in order to transfer title to the beneficiaries. Currently, BC imposes a Probate Fee of 1.4% on the fair market value of an estate that exceeds \$50,000. For example, if your home is worth \$3,000,000, the estate probate fee could exceed \$41,000.

A unique tax benefit is available only to those who are age 65 or older. Trusts have been long thought of as tax planning for only the rich, and it has been common practice to roll or transfer an investment portfolio into a trust. With the recently increasing property values, more Canadians are able to utilize and reap the benefits of Alter Ego and Joint Spousal/Partner Trusts (Trusts). Property, such as a principal residence, included in a Trust does not form part of the estate property and is exempt from the probate process and probate fee, simplifying the transfer of property to beneficiaries.

A key feature of these Trusts is that the settlor (property owner) remains the income and capital beneficiary of the Trust during their lifetime. The features and benefits of these Trusts are similar, in that a principal residence is an eligible property, with specific provisions in the Income Tax Act which permits the exemption of capital gains taxation when the principal residence is transferred to a Trust, and later disposed of by the Trust (with the customary duly completed election form).

A further consideration is the BC Property Transfer Tax (PTT) and careful planning will provide for PTT exemptions on transfers to properly structured Trusts.

These Trusts have a wide variety of other benefits such as confidentiality, control of capital, incapacity planning, along with waiver of the 21 year deemed disposition taxation rule.

While these Trusts are very beneficial for taxpayers, proper structuring of one's affairs is required in order to become tax efficient. Due to the technical nature of Trusts, consult a professional for advice.

John Parker, CA is a senior partner with Buckley Dodds Parker LLP located in downtown Vancouver. He provides thoughtful tax advisory services to individuals, entrepreneurs and business owners and can be reached at 604-688-7227 or john@buckleydodds.com.