FINANCIAL PLANNING

DUE DILIGENCE:
Romance, love and the pursuit of happiness

By PETER MERRICK

When was the last time you heard an accountant initiating a conversation with a client about the financial and legal aspects of dating, living together, engagement, marriage, separation, divorce and re-marriage?

According to Statistics Canada there are 146,000 marriages each year. Of those, 38 per cent of first marriages and 60 per cent of second marriages will end in divorce. The story these numbers don't tell is of the growing number of adults choosing to live together.

Larry Lipiec, a lawyer and author of *I Had Dreams of a Happy House Now I'm a Former Spouse,* challenges taboos by addressing the legal and financial realities of relationships in the 21st century.

He points out that marriage and common law co-habitation are not just personal relationships but under Canadian law are treated as business relationships/partnerships. "Why then should someone get married or enter into a common law relationship without doing the same due diligence that they would have done before entering into any other type of business relationship?" Lipiec asks.

Before marriage it would be worthwhile for a client and his/her spouse to sit down and create a financial plan. The plan would give both spouses a blueprint for how they will deal with current and future financial obligations.

The financial planning process would enable couples to transition into a commingling of assets, financial responsibilities and goals. This process would encourage each member of the couple to have involvement in their money management and financial planning.

Marriage and finances are often taboo subjects.

During the financial planning process all the assets that both parties bring into the relationship will be recorded. Generally speaking assets brought into marriage are exempt from net family property.

I knew this fellow who had $150,000 in his bank account before he got married. When he got divorced 12 years later he could not claim that money because he lost his bank book. Banks routinely destroy their

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records every seven years.

By cataloguing assets before a marriage in a financial plan and keeping a copy in a secure place, situations like the one mentioned above would be avoided.

If parents buy a home or give a down payment to the kids, the son in-law or daughter in-law will get an automatic half interest in the property. So if a husband's parents buy a house for the couple and the wife's parents give her stocks, if the two separate, the wife gets half the house and husband only gets half of the increase in the value of her stock.

Consider doing a credit check before marriage. In any other business partnership it is wise to know who you are commingling your financial obligations with. I know a story of a woman who married this guy after only dating for two months. Shortly after they got married he convinced her to put her house in joint name. She lost her home because her new hubby was in debt up to his eye balls.

Prenuptial agreements are important in second marriages. These legal contracts set out what will happen if a marriage goes sour and frees the hand of each spouse when making out a will.

Assets are labeled as his and hers. It allows spouses to give what they want to each other on death. Without such an agreement a spouse must give at least half of his or her estate to his or her surviving spouse otherwise there could be a claim for dependent's relief.

If a client moves in with someone who has minor children, he or she could find himself or herself on the hook for child support in the event of a break-up, even though these children are not his or hers biologically. The courts, in most jurisdictions, are primarily concerned that children are not affected financially by the end of a relationship.

If a client's marriage ends it is wise for both parties to create separate financial plans. This will help both parties determine the short-term and long-term financial impact of any proposed divorce settlement.

These new financial plans provide valuable information on financial issues that are related to the divorce, such as the family investment portfolios, RRSPs, dividing pension assets, tax consequences, continued healthcare coverage, RESPs, children's education and weddings and a whole host of other financial considerations.

And, of course, a financial plan is also a tool to help prevent lump-sum-recipient spouses from coming back in the future to request lifetime spousal support payments.

As a client's primary financial advisor if you are not comfortable with starting the conversation about this subject you might want to direct your clients to work with a lawyer or financial planner who specializes in these areas. Or better yet, give those clients each a copy of Larry Lipiec's book for the holiday season. Remember, an ounce of prevention is worth more than a pound of cure.

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TAX SHELTERS:
Should you name your estate as beneficiary?

By CHRIS REYNOLDS

For years, standard advice has been to name your spouse as beneficiary of your registered plans. If you die first, your plan can then be rolled to his or hers on a tax-sheltered basis. Otherwise, it will be fully taxed on your final return.

But some tax advisors now suggest it might be better to name your estate as beneficiary and, in your will, authorize your executors to do any allowable rollovers. That maximizes their ability to save tax.

Some exceptions to the rule:

Consider this scenario where it could be to your advantage not to make the spousal beneficiary designation.

Suppose you were to die on January 1, with no taxable income for the year. You have left a $100,000 RRSP and $50,000 of other financial assets in your own name. Your will contains a $50,000 charitable bequest.

If your spouse is the designated beneficiary of your RRSP, your $100,000 plan will be rolled over, tax-free, and the $50,000 bequest will come out of your personal assets.

There will be no cash left to help your family adjust, and the estate won't get any benefit from the charitable tax credit unless it can be applied to your prior year's tax return.

Leaving your RRSP to your estate would deliver a much better result. As before, $50,000 in per-

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sonal assets would go to the charity as directed in your will. Half of the RRSP assets could be transferred to your spouse's plan. That would leave $50,000 of RRSP money still in the estate. Tax on that amount would be offset by the charitable tax credit, leaving most or all of it for your family's use.

Special considerations

There are, however, some potential pitfalls to this strategy. For one thing, probate fees will be due if the RRSP or RRIF is paid to your estate. That can be a major concern in some provinces but a minor one in others.

Of course, the potential tax savings from giving your executors full flexibility could easily outweigh that cost.

Creditor-proofing offered by life insurance does not apply if your estate is the beneficiary. You must name a close family member. B.C., Quebec, and Prince Edward Island make RRSPs and RRIFs creditor-proof in certain other cases, but also require a named beneficiary.

Should you determine that this strategy is appropriate, be sure that your will clearly authorizes your executors to make any allowable rollovers, considering potential tax savings and need. Otherwise, heirs who get left out could challenge the transfers.

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