

RAWLING REPORT

WINTER 2008 • BROUGHT TO YOU



BY RAWLING FINANCIAL INC.

HELPING CLIENTS MAKE WISE DECISIONS REGARDING THEIR WEALTH

Death, taxes and joint last-to-die life insurance

The objective, generally, in estate planning is to minimize taxes and preserve the estate for the beneficiaries. Since tax legislation deems most capital property to be disposed of for fair market value at death, there could be a substantial tax liability to the estate. This capital gains tax can be deferred on death where such property is transferred to a surviving spouse. Many clients relying on this tax deferral forget that at some point the taxes must be paid. Tax cannot be deferred beyond the surviving spouse's death. Increases in property values and changes in tax laws could result in a potentially significant tax liability at the surviving spouse's death.

RRSPs and pension can present another tax problem at death. These retirement plans can also be transferred to a surviving spouse. Any amounts

held under such plans at the death of the surviving spouse must be taken into income in his or her estate.

Although, effective lifetime tax minimization strategies (e.g. gifting, estate freeze, trusts) can reduce the tax liability at death, the estate could still be subject to considerable tax. Life insurance on a joint-last-to-die basis can, depending on the age and health of the individuals, provide a less expensive means of funding to cover the tax liability in the estate and preserve the estate for the beneficiaries.

Ownership issues

There are several ways to deal with ownership under joint policies and each has its own implications. Since the life insurance is to become payable on the second death, it is important that the ownership structure should be established to ensure that such

ownership does not create unnecessary complications at the first death. With joint ownership, both spouses, while living, have equal rights under the policy. At the first death, the deceased's ownership is generally intended to go to the surviving spouse.

However, there is not an automatic transfer of ownership unless the policy wording clearly indicates this intention. Otherwise, there must first be evidence that the surviving spouse is the intended owner of the deceased's interest in the policy. Such evidence might include letters probate or letters of administration. This can be a costly and undesirable process where it would not otherwise be necessary to probate the will or seek letters of administration. This result can lead to delays and, of more concern, frustration.

continued on back page ➡



From our family to yours... have a safe, happy and prosperous 2008.

➔ continued from front page

The most common forms of ownership under a joint last-to-die policy are set out below:

1. **Single owner** – Only one of the life insured is named as owner of the Joint Last-to-Die policy. In such a situation, if the owner dies first, the estate of the deceased owner maintains ownership until ownership is transferred or otherwise dealt with by the personal representative. Where a transfer of ownership occurs a taxable disposition, generally would be deemed. In such, even any gain in the policy would be taxable to the estate except where the transfer falls within subsection 148(8.2) of the Income Tax Act (Canada). This subsection allows a tax-free transfer of ownership of a life insurance policy to a surviving spouse.
2. **Joint ownership** – Where ownership is on a joint basis between spouses there is no deemed disposition at

the first death. At the first death the ownership continues as between the deceased's estate and the surviving spouse until a transfer is made. A transfer of the deceased's interests in the policy to the surviving owner must be made in order to have all rights of ownership flow to the surviving owner spouse. In order to avoid the complications mentioned earlier, the ownership can be set up to include the right of survivorship. This provision can avoid the need to the transfer requirements mentioned above and the transfer can be made promptly upon receipt of proof of death.

Such a joint ownership designation can be provided for directly on the application. In the ownership section, the names of the joint owners need to be identified with the words "with right of survivorship" included.

3. **Secondary ownership** – Naming one spouse as primary owner and the other as secondary owner gives the

primary owner full control of the policy during his or her lifetime. If the primary owner dies first, a transfer of the primary owner's interest is made to the secondary owner. This can be done without a deemed disposition for tax purposes.

Existing policies

The ownership of a policy is established at the time of application. It can, however, be amended at any time. This release deals with estate preservation through the use of life insurance. As such, it deals only with ownership issues as between spouses. In such cases there are generally no tax implications on transfer of the deceased's ownership interest. Where the policy held under a joint ownership is between parties other than spouses, tax implications would depend on the tax law applicable under the circumstances.

The above should not be taken as providing legal, accounting or tax advice. You should obtain your own independent professional advice from your lawyer and/or accountant to take into account your particular circumstances.



The Annual Rawling Financial Vegas Golf Trip, October 2007; Brian Bell looking out on a challenging tee shot at Wolf Creek Golf Club, Mesquite, Nevada.

RRSP contribution limits

Year	Contribution limit
2007	\$19,000
2008	\$20,000
2009	\$21,000
2010	\$22,000

Check out: www.cra-arc.gc.ca/tax/individuals/topics/rrsp/contributing/limits-e.html

Friday, February 29th, 2008 is the deadline for RRSP contributions to use against 2007 earned income.



**RAWLING
FINANCIAL
INC.**

Hugh Rawling, CFP, CLU, CH.F.C.

Financial Coach

Rawling Financial Inc.

Suite 420, 200 Queens Avenue, London, ON N6A 1J3
519-963-4400 • Toll free 1-866-963-4400 • Fax 519-963-4402

Customer Care Line: 519-963-4401 • Toll free 1-866-963-4401

E-mail: hugh@rawlingfinancial.com • admin@rawlingfinancial.com

Website: www.rawlingfinancial.com

This newsletter contains general information only and is intended for informational and education purposes. While information contained in this newsletter is believed to be reliable and accurate at the time of printing, Rawling Financial Inc. does not guarantee, represent or warrant that the information contained in this newsletter is accurate, complete, reliable, verified or error-free. The information provided is based on current tax legislation and interpretations for Canadian residents and is accurate to the best of our knowledge as of the date of publication. Future changes to tax legislation and interpretations may affect this information. This information is general in nature, and is not intended to be legal or tax advice. For specific situations, you should consult the appropriate legal, accounting or tax expert.