

**NOTES ON THE NEW “JOINT-PARTNER” AND “ALTER-EGO” TRUSTS;
USING TWO WILLS; AND PLANNING YOUR ESTATE.**

BY WILLIAM ALLEN - CURRENT TO JANUARY 16, 2001

JOINT-PARTNER AND ALTER-EGO TRUSTS

Last year before the federal election, the government introduced tax changes to permit joint-partner and alter-ego trusts, discussed below. After the election, the Minister of Finance has stated that he will reintroduce these changes.

There are two new trusts: the “joint-partner trust” (“partner” includes a spouse) and the “alter-ego” trust.

Because of these changes you will be able to form a trust to hold your assets so that your family will not need probate of your Will to deal with the assets when you die. The trust can also replace a power of attorney for property (finances) to deal with your assets if you become incapacitated. Also, the trust will manage the transfer of the assets to your family when you die more easily than through a Will.

You form the trust while you’re alive. You need to have reached age 65. You can revoke the trust; you can change it.

THE JOINT-PARTNER TRUST:

In the joint-partner trust, while you and your spouse are alive, the both of you are the only beneficiaries; the trust income and capital can be paid only to you and your spouse and to your survivor.

You would use the joint-partner trust if your estate-plan is to use your assets for you and your spouse while you are both alive and while your survivor is alive, and is to pass on the assets to others, such as your family, when the survivor dies.

THE ALTER-EGO TRUST:

In the alter-ego trust, while you’re alive, you are the only beneficiary and the trust income and capital can be paid only to you.

You would use the alter-ego trust if your assets, when you die, are to go to others than your spouse, such as your family.

THE TRUSTEES:

The trustees manage the assets in the trust. You can be the trustee. You and your spouse can be the trustees. You, or both of you, can have co-trustees. Co-trustees can continue to manage if you become incapacitated and when you die.

WHAT ABOUT PROBATE TAX?

In Ontario, the probate tax on probating a Will is based on the gross value of the estate. The tax is 0.5% on the first \$50,000 of value, and 1.5% on the excess.

Assets that are managed through your joint-partner or alter-ego trust continue to be managed by the trust after you die. The trustees don’t need to “probate” you’re trust.

WHAT ABOUT INCOME TAX?

Normally, the transfer of assets to a trust means that, for tax purposes, the assets are sold at fair market value and any accrued gains are taxed.

The new income tax legislation will allow a tax-neutral transfer of assets to a joint-partner or alter-ego trust. Assets transferred to the trust will not be treated as sold. There will be a tax “rollover”. The assets will bring their tax-cost to the trust. (You can tax-elect against a rollover.) The “deemed 21-year-disposition” rule will not apply (this is the rule that says trust assets are treated as sold, and untaxed gains are taxed, every 21 years).

In a joint-partner trust, when the survivor of you and your spouse dies, the assets in the trust will be treated as sold and the accrued gains will then be taxed. This is the same as if you don't form a joint-partner trust.

In an alter-ego trust, when you die, the assets in the trust will be treated as sold and the accrued gains will then be taxed. This is the same as if you don't form an alter-ego trust.

If your will-tax-plan involves testamentary trusts after you die so that separate marginal tax rates can be used, you can form separate trusts for this purpose that take effect when you die.

WHAT ARE OTHER CONSIDERATIONS?

Cost:

There are legal fees to document a joint-partner or an alter-ego trust and the transfer of your assets to the trust. You would also do a Will to deal with the assets you keep in your name that are not in the trust, and that don't need probate of the Will to deal with them when you die. The legal fees will depend on the complexity and time taken.

There may be the cost of preparing an annual tax return for the trust.

Savings:

Your family will not pay the probate tax, or the legal fees to probate the Will, or other costs to set up the administration of the estate. The time involved in setting up the estate will be saved. Your trustees will be able to deal with the assets in the trust without the delays resulting from your death.

Trust Assets That Can Go into the Trust:

Your joint-partner or alter-ego trust can hold your investments. It can be the beneficiary of insurance on your life. It can be the beneficiary of your RRSP and RRIF (or, if your spouse is the beneficiary and dies before you, the alternate beneficiary).

You can transfer your home to the trust. If you don't want to have the trust own your home, to avoid the need to probate your Will to deal with the home, you can add another person as a non-beneficial joint owner. That person will agree to act as directed by you and your executors without probate of the Will.

The Trust as an Alternative to a Continuing Power of Attorney for Property.

By doing a continuing power of attorney for property (finances), you can name someone to deal with your assets if you become incapacitated.

If you do a joint-partner or an alter-ego trust that has co-trustees to act with you, your co-trustees can continue to act if you become incapacitated and you don't need a power of attorney to deal with the assets in the trust.

If you have assets outside Ontario, your co-trustees under an alter-ego trust may find it easier to deal with those assets than the person you name in a power of attorney.

Signing.

The trust does not need the same signing formalities as a Will.

Two Wills

In Ontario, you can now have two Wills: one for your assets that do not need probate; the other for your assets that do need probate. When your executors probate the Will with the assets that do need probate, the probate tax will payable only on those assets.

Thus, if the value of your assets that do need probate is not substantial, you can have a Will for those assets, and the cost to probate that Will would not be substantial. You can have another Will for your other assets.

Both Wills would provide for the same executors and distribution.