

BEQUEST IN YOUR WILL - PHILANTHROPIC WILL PLANNING

Ma and Pa Philein (age 70) have just transferred the family's mid-sized construction business to their son and his wife. Now that they are enjoying retirement, it is time to reflect on their life achievements and determine how they will allocate their assets in their will. Ma and Pa Philein have always had a passion for community involvement, a passion they've worked hard to instill in their children and grandchildren. As they consider their estate, they want to ensure they not only provide for their heirs, but also for the community in which they've thrived. The question for the Phileins is not whether to contribute to charity, but rather, how and how much.

As the Phileins begin the will planning process, they must consider the priorities and objectives that will guide their planning decisions. Important questions like, "How much do we want to leave for the children?" must be answered before they can determine what they'll commit to philanthropy. Also, they must consider the tax implications of each spouse's death and determine how charitable giving can offset those taxes and preserve their estate. Once the Phileins have set their retirement, wealth transfer and philanthropic objectives, they can look at strategies designed to help reach them.

Most traditional estate planning models only look at a bequest as a way of reducing taxes. In a sense, income tax has always been a certainty that one could not avoid. However, Canadian federal government legislation has recently changed to allow donors greater tax benefits on charitable contributions.

To illustrate, consider that Ma and Pa Philein have a net worth of approximately \$1.6 million, with payable estate taxes of about \$145,000. If they made no charitable contribution, their estate would simply pay the outstanding taxes and the remaining \$1.46 million would go to their family. This is important, as they want to know their family has the financial ability to pursue opportunities. Still, the Phileins firmly believe that instilling a sense of philanthropy into their children and grandchildren is more valuable and rewarding than financial inheritance.

Suppose the Phileins make a charitable contribution to a Family Foundation. Based on their net worth and outstanding taxes, a donation of \$350,000 does three things: 1) Provides a charitable deduction that eliminates payable estate taxes of \$145,000 2) Leaves the Philein's heirs with an inheritance of \$1.25 million 3) Creates the Philein Family Foundation with \$350,000 that can contribute to the well being of the community for years to come.

The key to optimizing the will planning process is collaboration. First, the Philein's advisors must work together to ensure the financial component satisfies the legal requirements of a last will and testament. That said, they must not allow the traditional will planning process to overlook emerging strategies for planned giving.

The face of philanthropy is changing. As governments reduce support of vital sectors and services, individuals are seeing an opportunity to have greater impact on the communities in which they work and live. The concept of social capital planning is based on the belief that the value of material wealth is enhanced by the strength and viability of the community in which it was created.

Note: An important factor in will planning is the structure and language, ensuring your wishes are carried out exactly as you intend. Attached is a sample will clause that satisfies the strategy discussed above.

PHILANTHROPIC WILL PLANNING
SAMPLE BEQUESTS IN THE WILL CLAUSES
ELIMINATION OF TAXES ON DEATH OF FAMILY MEMBERS

On the First Death

“To pay or transfer as a charitable donation to the Family Foundation Fund with _____ sufficient funds or specific assets as determined by my Trustee in his absolute discretion, subject to a maximum of \$_____, to achieve the maximum allowable reduction, including, if possible, the *complete elimination of any federal and provincial Canadian income tax* which would otherwise be payable by myself or my estate *in the year of my death and the year preceding my death.*”

On the Second Death

Subject to satisfying the bequests in subclauses 3(D)(i) and (ii) above, to pay of transfer as a charitable donation from the remaining residue of my estate to the Family Foundation Fund with _____ sufficient funds or specific assets as determined by my Trustee in his absolute discretion, subject to a minimum value of \$_____, to achieve the maximum allowable reduction, including, if possible, *the complete elimination of any federal and provincial Canadian income tax* which would otherwise be payable by myself or my estate *in the year of my death and the year preceding my death.*”

**Ultimate Residuary Beneficiaries
(Wipeout)**

- (i.) Two-thirds of the residue of my estate shall be divided equally amongst my _____
- (ii.) The remaining one-third of the residue of my estate shall be distributed to charity as a *designated philanthropy fund*.
 - a. _____, my Trustee shall pay to _____ to be added to the Family Foundation Fund, an amount sufficient to obtain the maximum recovery or reduction of Canadian income tax on behalf of my estate;
 - b. After Canadian income tax recovery or reduction on behalf of my estate has been maximized, my Trustee shall have the authority to use any balance remaining in *this philanthropy fund to reimburse* _____ for any charitable contribution which they have made during the fiscal taxation year in which this *philanthropy fund* has been distributed.