Why a Trust?

By David M. Cieslowski

Regardless of where families are in the estate planning process, issues can emerge—having been overlooked, underestimated or newly minted by life's changes. At times, concerns spark a conversation about establishing a trust.

The very mention of the word, trust, causes a couple of common reactions. People narrow their focus to tax planning or envision blowing dust off an archaic tome. The federal government and Canada Revenue Agency measures of 2016 significantly eroded the broad tax benefits of testamentary and other types of trusts. While some worthy tax considerations remain, they're just part of the conversation about how trusts can help address modern and future-focused estate planning.

Though the topic of trusts is far larger than this space allows, here are a few reasons to talk about how a trust might help with your wealth and estate planning.

- Keeping Things Private

  Would you share your will with the world today—all the details, complexities and thoughtful decisions you've made in terms of your assets, your family, friends and legacy building? Remember, once you pass away, your probated will becomes public information.

  Generally speaking, any nosy neighbour or long-lost relative can go to the local court registrar, request a copy of your will and pay the fees, then head home and sift through personal affairs you expected to always remain private. Who's interested? Years ago, I'd have said likely no one. Today, sharing life's details on social media is a popular pastime. While you may be gone, consider the potential ripple effects for beneficiaries.

  An *inter vivos* trust or living trust (created while you're alive), for example, provides a privacy screen. Assets held in the trust are not part of your estate. Directions or bequests made regarding trust-held assets do not become public while you're alive or upon your death.

- Managing Your Money

  An inter vivos trust also affords some present and future financial advantages. For example, you can determine how assets held in the trust are used and income is paid (or not) to beneficiaries. You can ensure a family cottage, ski chalet or villa is available and maintained for generations to come.This can help alleviate worries that someone will sell it, against what would have otherwise been your wishes, or let it fall into a state of disrepair.

  Looking ahead, probate fees associated with processing a will don't apply to assets held in trust. In addition, a trust structure can also potentially help reduce taxes owed on disposition proceeds triggered by your death.

- Protecting Your Interests

  Trusts help acknowledge the twists and turns of life. For instance, assets held in trust can be protected from creditors, or remain inaccessible in the event of marriage breakdown. Family-business owners, concerned about their child's choice of a partner, will consider using a trust to hold their child's shares in the company. Should the marriage end in divorce, the child's former partner may not be entitled to the shares. This latter protective measure can be established within an inter vivos trust or as part of a testamentary trust that arises out of your will.

In my experience, reasons for talking about trusts are as distinct as the individuals and families we serve. For some, the focus is on creating a charitable legacy, preserving family values or disability benefits. For others, it's helping ensure a spendthrift or "young" family member doesn't prematurely deplete assets. The important thing is to first understand your concern and then see how and whether a trust makes sense for your situation.