The RRSP Mortgage

The Home Buyers' and Lifelong Learning Plans are not true loans (instead, tax penalties apply if you don't restore the funds to your RRSP within applicable time limits) - but the RRSP mortgage is. You can take out a loan from your RRSP provided that it is insured by the CMHC or a public mortgagor insurer (such as Genworth Financial Canada or AIG United Guaranty Canada). This is an exception to the rule that an RRSP cannot hold the mortgage of the plan-holder or a family member.

You might use your loan to pay down your mortgage. So instead of paying mortgage interest to the bank, you pay yourself. In this case, your benefit is largely based on the difference between the interest rates you'd otherwise pay on your mortgage (i.e., this is what you "save") and the return you'd make on your RRSP if you didn't follow this strategy. In addition, if you are paying more into your RRSP than the return you would make on a conventional investment, you will have more money compounding in your plan on a tax deferred-basis.

There is no tax rule that you have to use your RRSP loan to pay down your mortgage, or even put the money into your home, for that matter - the tax rules require that the loan must be secured by Canadian real estate. So the loan might be used, for example, to provide financing for a new business (the mortgage insurer must approve of the use, though).

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ESTATEPLANNING

You Live Once But Die Twice

Don't be forgotten

Mark Halpern, CFP, TEP

James Bond fans will remember that he faked his own death in the 1967 film, You Only Live Twice. Of course, we all know (until further notice) that everyone lives but once. However, few people realize that we actually die twice. The first death happens when your body shuts down, hopefully after a long, healthy, happy and fulfilling life. The second death occurs when your name is mentioned for the very last time, as it's only when people stop talking about you that you are truly gone.

Every living thing dies at some point. While we can't alter the inevitable, we can extend and delay that certainty for many years. We can do so by creating a lasting charitable legacy that will endure for many years to come.

I spend a lot of time with generous and fortunate people who, unless they radically change how they spend or invest their money, will have more money when they die than they have today.

The financial challenge on their death (the first one) is the looming intervention of the Canada Revenue Agency (CRA), the government's collection agency, which is only more than happy to take a big chunk of your hard-earned money: 54 per cent of funds accumulated in Registered Retirement Savings Plans (RRSPs) and Registered Income Funds (RIFs) after the death of the second spouse; 45 per cent of assets in personal holding companies, and 26 per cent of capital gains from non-registered investments and real estate investments that are not your principal residence.

The solution begins by defining your tax liabilities, and determining how much of your money can be used to implement strategies to preserve your wealth in a manner that will enable you to pass it on to the people and caus-

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es you truly care about. In our experience, every client prefers to leave money to family and charity versus funding the CRA.

You can do the same by using "your never spend" money - that's the money you will never really need to pay your bills, that's really earmarked for the next generation or causes you are passionate about.

Ensure That Your Name Lives On

With proper planning, you can use several available strategies to ensure that your name lives on for generations. Thus, the funds that would have otherwise gone to the government will instead go to your family and favourite causes.

There are two common ways for you to leave a legacy: one is through a charitable donation, where your name can be attached to a notable institution such as a hospital or educational facility, so people you have never met are touched in perpetuity by your generosity and selflessness. The second way, through a family legacy, is much more personal. Your name will be on the lips of your descendants for generations to come, particularly when they receive a generous cheque from your trustees or financial institutions every year, both of which you arranged well in advance.

Here's just one of example of how the second one can work. Joe, a grandfather, purchased a participating whole life insurance policy on each of his grandchildren many years ago at the best time to buy life insurance -- when the kids were young and healthy.

Joe committed to paying the premiums for 10 years only. The policies normally have different dividend-paying options used to increase insurance coverage, so they stay tax exempt, like all life insurance products.

There are several different dividend-paying strategies from which to choose. In this case, a policy worth, say $100,000, can lead to a dividend of 5-6 per cent annually, producing a dividend cheque of $5,000 for his grandchildren that will continue throughout their lifetimes.

The dividends generated can also be used to buy additional insurance coverage or reduce future premiums. Using this strategy, you could elect to apply annual dividends to future premiums (offsetting the cost of the policy), or deposit the dividends paid into a savings account and earn interest on those funds.

Every year, the insurance company will send a cheque to your grandchildren (and likely be subject to dividend taxes at their tax rates) and continue to do so in perpetuity as a gift to the policy owner.

It's like receiving a birthday card in the mail from a late relative. If you received a cheque in the mail every Jan 1st from your great-grandfather, do you think you would remember his name? You can do so with this strategy.

When you do the math over a long period of time, this dividend may be equal to anywhere from a 9 to 10 per cent pre-tax return. The grandfather is not so much concerned about the return. Instead, he is convinced that this is the best investment he has ever made for his grandchildren, one that allows them to stay connected to him for decades after he is gone.

A Second Tax-Efficient Strategy

Another strategy, known as "melt and cascade" (the subject of my Dec. 2015 TaxLetter® article) allows taxpayers to "thaw out" the registered and unregistered investments they are not using in their retirement, and stream those funds to children or other beneficiaries in the most tax-efficient method possible.

For example: Jack is 65, a divorced man with a thriving business and two grown children. He has almost $2 million in his RRSP and wants to leave half of it to his children and the other half to charity. He starts withdrawing from his RRSP to provide the after-tax funding needed to buy a $2-million life insurance policy on his life.

When Jack dies, his children will receive $1million of death proceeds, tax-free and probate-free. The remaining $1 million of insurance proceeds will go to the designated charity. On top of that, it will generate a charitable receipt of $1 million, saving the estate about $500,000 in taxes.

In the end, his children get a $1.5 million benefit - that's $500,000 more than the $1 million. His favourite charity recognizes him while he is alive as a $1 million donor, and he will be remembered for leaving a large charitable gift, instead of a large sum to the tax department, all through this creative planning.

Use your life insurance to leave a legacy, and cash.

1. Buy the policy and name the charity as the owner and beneficiary. Once you are sure that the charity has a charitable registration number, the premiums you pay for the policy qualify as a charitable tax deduction on

your annual income tax return.

2. Transfer ownership of an existing policy to a charity. In this case, you can get an actuary to put a present value on the old policy, thus generating a charity receipt for the actuarial value, which could be quite large. This can be used to offset current taxes owing. Going forward, you can claim the charitable donation credit for any premiums you pay after the transfer takes place.

3. Buy a new policy and name either the charity or your estate as the beneficiary and include the charity as part of your will. This is a good strategy for anyone who wants the flexibility to change the charitable beneficiary in the future.

Unlike the first two methods, you will not be able to receive a charitable donation credit for premiums. However, the charity will issue a tax receipt for the death benefit proceeds it receives from your final tax return, potentially saving your estate a lot of taxes.

Consider an Endowment

Rather than a one-time gift, you can also give to charity through an endowment, a sustainable legacy achieved by providing an irrevocable gift to either a private foundation or a donor-advised fund (DAF) within a public foundation.

There are specific tax rules for these endowments for how much must be granted every year. Private endowments and DAFs can receive full tax benefits for contributing, without having to disburse the entire contribution amount immediately.

DAFs, which are typically created around the end of the year to take advantage of annual tax deadlines, take only about a day to set up. They are easier to operate than a private foundation, which can take about three months to establish, and is set up strictly for charitable purposes. Private foundations must maintain their own record-keeping and reporting, and pay for administrative and legal expenses as well as set-up costs.

The CPP Philanthropy™ strategy (the subject of my Oct. 2017 TaxLetter® article) is a very simple way to use government-supplied pension benefits to reduce your taxes significantly, while creating charitable gifts of over $1 million for your family and charities.

We all know people are living longer than ever. Life expectancy continues to expand, and "old" has taken on new meaning, as people aged 100 years plus are a fast-growing population segment. Many TaxLetter® readers can't name their great-grandparents. But readers do have a unique opportunity to create a charitable legacy for the benefit of their families and charities. It's a legacy that will endure long after they are gone, ensuring their great-grandchildren will definitely remember their name.

Don't do it alone. Get advice from experienced professionals to ensure that your hard-earned money ends up where you want it to go, not in Ottawa's coffers. Be remembered for something other than paying a lot of taxes.

Call us for a consultation. We'd love to help. ❑

Mark Halpern is one of Canada's top life insurance advisors, a Certified Financial Planner (CFP), Trust and Estate Practitioner (TEP) and CEO of WEALTHinsurance.com®.
He guides successful business owners, who are already challenged for time, through the complex process of ensuring the people and organizations they care about are taken care of.
If you are like his other successful business owner clients, you are looking to reduce your tax obligations, preserve your wealth and leave a legacy. Incompletions rob us of energy. Mark collaborates with your professional advisory team to achieve your desired outcomes. His approach is simple. He makes sure what is important to you gets done. He gets you organized, provides a big picture view of your financial affairs, determines your strategy and helps you take action. He will simplify the complicated, so you and your family can rest easy. He can be reached at 416-364-2929, toll-free at 1-800-566-2001 or Mark@WEALTHinsurance.com.
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- threaten you

Even if these messages may seem convincing, they are scams and you should never respond to them or click on links.

Canada.ca

ESTATEPLANNING

Power of Attorney Need To Know

Mark Goodfield (aka The Blunt Bean Counter)

I recently interviewed Katy Basi, a lawyer and my resident estate and wills expert, on a very important topic, Power of Attorney for Personal Care. A summary of her responses follows.

Mark: Katy, a concern for all of us as we age is mental capacity. How does mental capacity affect POA's for health?

Katy: First we need to appreciate that a POA for personal care is only relevant and effective when the person in question does not have the mental capacity to make their own health care decisions. I am asked fairly commonly by my clients to include provisions regarding medical assistance in dying in their powers of attorney for personal care. This request usually comes on the heels of a discussion about whether or not to include a "no heroic measures" clause in their document. I have to tell my clients that the legislation does not allow a mentally incapacitated person to have medical assistance in dying. This is the case even if the person requested this assistance, when they were capacitated, in writing via their power of attorney for personal care.

Mark: So, are you saying that even where you have requested medical assistance in dying in your POA for personal care, if you do not have mental capacity when the medical assistance is desired, that request is essentially voided?

Katy: There is a clear distinction in the medical assistance in dying legislation between a person who has the capacity to make their own personal care and health care decisions, and a person who does not have this capacity. The former can request medical assistance in dying if all of the other conditions of the legislation are met, and the latter cannot. As a person's power of attorney for personal care is only effective upon the person losing their capacity to make personal care and health care decisions, by definition the document is only relevant upon incapacity. At that time, medical assistance in dying is off the table as an option.

This exclusion only relates to medical assistance in dying. Your most recent verbal or written instructions, made while capacitated, otherwise govern your personal care and health care.

Mark: This provision seems unfair?

Katy: Under one view, the legislation is discriminatory – people with capacity can obtain this assistance, and those without capacity cannot. So, I guess that if I have a grievous and irremediable medical condition, which is another requirement under the legislation, I hope that I at least have capacity, as otherwise I cannot receive medical assistance in dying. If I am mentally incapacitated, with a grievous and irremediable medical condition, my power of attorney for personal care can request that all heroic measures stop at this point, and that lots of morphine and other pain relief be administered. But that's it – medical assistance in dying cannot be given, and I will have to die on my own, when my body finally gives up.

Mark: So, is there anything that can be done in case of mental incapacity?

Katy: For some clients, we include a clause in their power of attorney for personal care that indicates their desire for medical assistance in dying, if they are in a situation where the other conditions of the legislation are met, in the event that the current requirement to have capacity is amended by future legislative changes. A bit of a Hail Mary, but why not?

Power of Attorney: The Basics

The following information comes from the Ontario Attorney General, and can be found at attorneygeneral.jus.gov.on.ca

A Power of Attorney is a legal document in which you give someone you trust (called your "attorney") the right to make decisions for you if something happens and you are no longer able to look after matters on your own.

There are two types of Power of Attorney:

- **Power of Attorney for Personal Care** – the person you name can make decisions about your health care, housing and other aspects of your personal life (such as meals and clothing) if you become mentally incapable of making these decisions.
- **Power of Attorney for Property** – the person you name can make decisions about your financial affairs (including paying your bills, collecting money owed to you, maintaining or selling your house, or managing your investments).

You don't have to create a power of attorney. But if something happens to you and you don't have one, other arrangements will have to be made. A family member may have the right to make certain personal care decisions, and can apply to become the guardian of your property. Alternatively, someone else — like a close friend — could apply to the court to be authorized to act for you.

If no suitable person is available, the government may have to step in, through the *Office of the Public Guardian and Trustee*.

To sign a power of attorney you must be considered mentally capable.

To be considered mentally capable of giving a power of attorney for personal care, it must be clear that you understand the need to choose someone with genuine concern for your welfare, and that there may be a need for that person to make *personal care* decisions for you.

To be considered mentally capable of giving a power of attorney for *property*, it must be clear that:

- you know about your assets (what you own, what they're worth)
- you are aware of your obligations to your dependants, and
- you understand the authority and power you are giving to the person holding Power of Attorney.

Your good judgment is key to choosing a trustworthy person for this important responsibility.

The person you choose as your power of attorney for personal care must be at least 16 years old. For a power of attorney for property, the person must be at least 18 years old.

Anyone given power of attorney must be considered mentally capable when they are appointed.

Choosing your attorney for personal care

The person you decide to appoint as your attorney for personal care should be someone you trust to make decisions about your housing, food, health, safety, hygiene and clothing. This could be a family member or a close friend. Talk to the person and make sure that he or she is willing to take on this responsibility if needed.

Certain people are not allowed to be your attorney. Do not name any of the following people if they are paid (by you or someone else) to provide services to you, unless that person is also a family member:

- your landlord
- any person who provides care for you in the place where you live
- your social worker, counsellor, teacher
- your doctor, nurse, therapist, or other health care provider
- your homemaker or attendant

Important legal note: unless your power of attorney says otherwise:

- An attorney for personal care is only allowed to make medical or long-term care decisions if a medical professional or evaluator finds you mentally incapable of making the specific decision.
- For all other types of personal care decisions, the attorney can step in if they believe you are incapable — no assessment is required.

Choosing your attorney for property

Important: Be very careful signing a power of attorney for property, because unless you specify otherwise, the person you name can start making decisions immediately. You may want to include a statement in your Power of Attorney that says the attorney can only make decisions if you become mentally incapable.

If you choose to appoint this kind of attorney, make sure the person you choose understands your wishes and agrees to this important responsibility, which includes keeping detailed records of all transactions involving your money and assets.

Advance directives

You may want to include an advance directive as part of your power of attorney for personal care.

An advance directive is a document that tells others what you want to happen if you need medical care and are unable to consent or refuse treatment. For example, some people write an

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What's more, if the money is used for business or investments, the interest should generally be tax-deductible to the borrower. (The CMHC does not allow these "equity take out" loans, though; so when it comes to this sort of thing, you're better best is to go with Genworth or AIG.)

According to CanRev, the "RRSP mortgage" - which must be secured by Canadian real estate - must have normal commercial terms, including market interest rates.

Now you might be thinking that this is a great idea, and how do you sign up? Well, word of caution. Obtaining an RRSP mortgage is not as easy as it may seem. For one thing, the insurance providers such as Genworth tend to be very particular about when they would provide insurance, especially as some believe that when you borrow form your own RRSP, there may be a higher risk of default. Why? Well, some people may think that when they are borrowing from themselves, then maybe it's not such a big deal if one or two payments are missed. However, CRA in addition to the mortgage insurers would have an issue with this since you would effectively be taking money tax free from your RRSP without repaying it.

Tax Tip #1. One interesting use of an RRSP mortgage could be to make a catch-up contribution to your RRSP - that is, if you haven't maxed out on your RRSP contributions in the past. It works like this: your RRSP makes you a mortgage loan. Then you put the proceeds right back into your RRSP – as a catch-up contribution, that is – and you get a tax deduction based on the amount of your catch-up contribution.

Tax Tip #2. It's possible to make an RRSP mortgage loan to another family member. It is also possible (theoretically, at least) to do the RRSP mortgage manoeuvre based on a second mortgage or even a vacation property. However, it may not always be possible to get mortgage insurance in these circumstances as the insurers tend to shy away from the risk associated with a non-income producing property (especially if it is already subject to another bank's mortgage). ❑

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advance directive that says they do not want to be kept alive on life support if they have no hope of recovery.

Under Ontario law, if you express wishes about your future care while you are mentally capable, these instructions will be binding on your attorney or other substitute decision-maker, unless your wishes are impossible to follow at the time the attorney is asked to make the medical or care decision. ❑

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