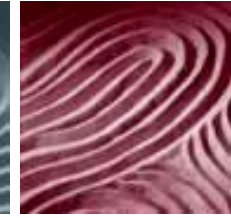


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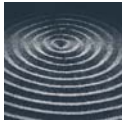
MARKHAM

MONTRÉAL

USING TRUSTS TO PRESERVE THE FAMILY COTTAGE

By Martin J. Rochweg

FEBRUARY 19, 2005



Using Trusts to Preserve the Family Cottage

Saturday February 19th, 2005

Martin J. Rochweg

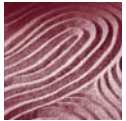
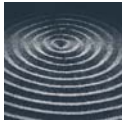
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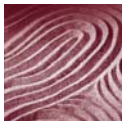
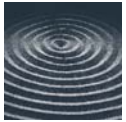


Family Harmony

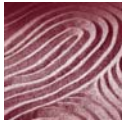
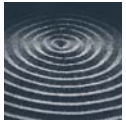
- How to pass the cottage on to a spouse, children and/or others
- Unique situations:
 - Second marriages
 - Two sets of children
 - Children's spouses
- Funding Aspects:
 - Capital gains tax
 - Maintenance and repair costs



Methods of Transfer



- Possibilities for leaving the family cottage to family or others:
 - Gift
 - Sale
 - Will
 - Trust
 - Power of Attorney

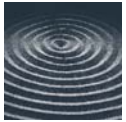


Gift and/or Sale

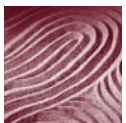
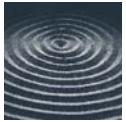
- Advantages
 - Avoids probate fees
 - Can retain life estate
- Issues
 - Capital gains tax
 - Loss of control
 - Family law
 - Land transfer tax
 - Creditor Protection



Will



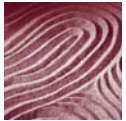
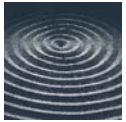
- Capital gains tax
- Probate fees
- Directions re control
 - Instructions:
 - who gets to buy it
 - how is price determined
 - who gets to use it
 - who pays for upkeep
 - “points” system, rotation system
 - Are instructions binding?



Trusts – An Overview

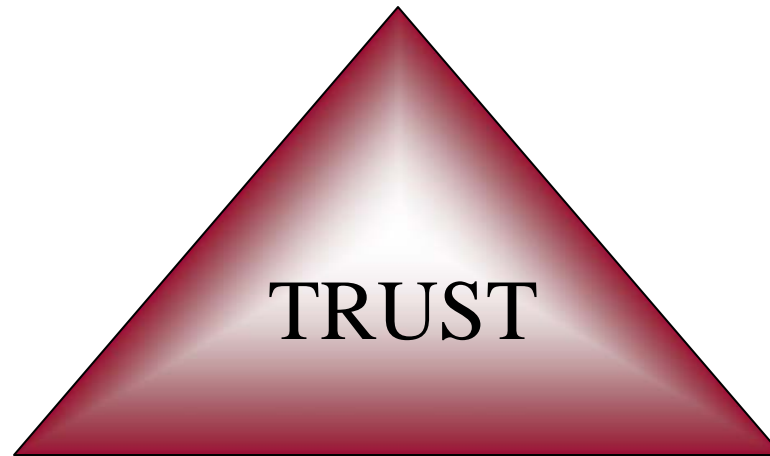
- What is a trust?
 - “A trust is an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or *cestuis que trust*), of whom he may himself be one, and any one of whom may enforce the obligation.”

Underhill’s Law of Trusts and Trustees



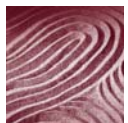
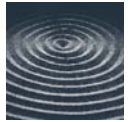
Trusts – An Overview

Settlor/Testator:
Gives Property



Trustee:
Legal Title

Beneficiary:
Equitable Title

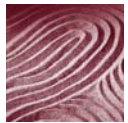
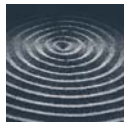


Types of Trusts

- Maintenance Fund Trust
- *Inter Vivos* Family Trust
- Testamentary Trust
- Alter Ego Trust
- Joint Partner Trusts



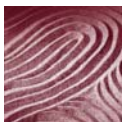
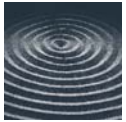
The Alter Ego and Joint Partner Trusts



- Property transferred on rollover basis if:
 - Settlor \geq 65 years
 - Sole beneficiary during his/her lifetime
 - Entitled to receive all income during his/her lifetime
 - No other person may benefit during his/her lifetime
- Rules for joint-partner trusts are analogous



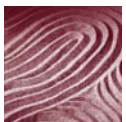
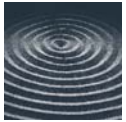
Transfer of Assets to a Trust



- Usually at fair market value
- Exceptions:
 - Trustee as nominee
 - *Inter Vivos* Spousal Trust
 - Testamentary Spousal Trust
 - Alter Ego and Joint Partner Trusts



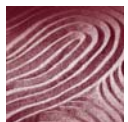
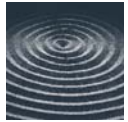
21-Year Deemed Disposition Rule



- Children's trust deemed to dispose of property every 21 years at fair market value
 - Triggers accrued capital gains
 - Property deemed to be reacquired by the trust at fair market value



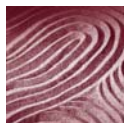
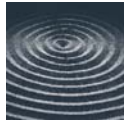
Maintenance Fund Trust



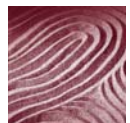
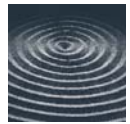
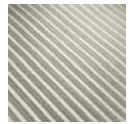
- Testamentary
- Funding
 - Set amount out of the residue of estate
 - Insurance proceeds
- Upkeep
 - personal expenses
 - responsibilities



Inter Vivos Cottage Trust



- Family trust
- Buy-out and equalization provisions
- Potential Drawbacks:
 - Capital gain on transfer
 - 21-year deemed disposition rule
- Alter Ego and Joint Partner Trust

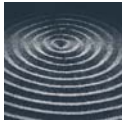


Features of the Alter Ego and Joint Partner Trusts

- Property rolls into the trust
- On death of settlor (or last to die of settlor and spouse) deemed disposition of property
- Insurance to fund capital gains tax
- Settlor maintains control of property during his/her lifetime



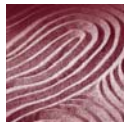
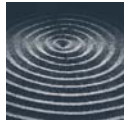
Features continued



- Can set parameters for use by children/grandchildren
- Avoid probate fees
- Avoid will challenges
- Planning for incapacity



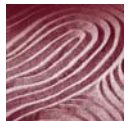
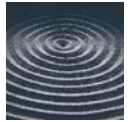
Testamentary Family Trust



- Set up in will
- Sets terms for use of cottage
- Termination of trust?
- 21-year deemed disposition rule applies



Summary



- Use of spousal trusts to defer capital gains tax
- Use of trusts to control use
- Funding capital gains tax liability
- Funding maintenance fund