



Planning for the Surviving Spouse

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Surviving Spouse Scenario

1. Everything to the spouse **Absolute**



2. Some or all assets/amounts held by a
Spousal Trust



3. An amount immediately to the **children** with
the balance to the spouse **Absolute**



1. *Everything to the Spouse Absolute*

*All assets that you own go
to your spouse with no strings*

- Survivor can do whatever he or she wants with the inheritance.
- Survivor can change their Will and leave your inheritance to other people that you may not approve of.
- There are no restrictions or accounting of the funds to any one else.
- Simple and no ongoing expenses.

2. Spousal Trust

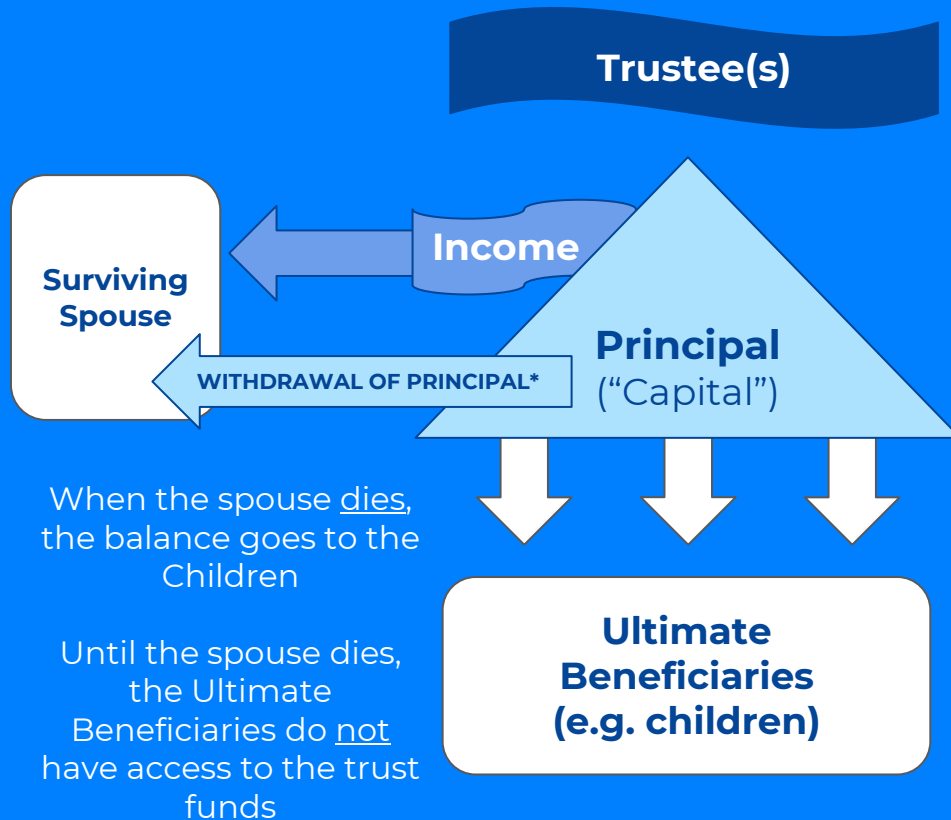
The inheritance can be used for the surviving spouse during his/her life, but you decide what happens to it when the spouse dies

- Can be a specific amount, a percentage of the estate or a specific asset.
- The gift is held for the **rest of the surviving spouse's life**.
- You create the rules for how much the surviving spouse can receive.
- You select the person(s) in charge of the trust – “Trustee(s)”.
- You pick who gets the balance of the trust when the spouse dies (“Ultimate Beneficiaries”).
- The “Ultimate Beneficiaries” must be informed on all aspects of the trust.

Main Rules for a “Qualifying” Spousal Trust

1. The gift is held for the **rest of the surviving spouse’s life**.
 - Can’t terminate the trust on an event other than spouse death
1. The surviving spouse must be entitled to **all of the income**.
 - Trust Rules not Tax rules govern definition of income
 - Can’t stop the income during spouse’s lifetime.
1. **No one else can benefit** from the trust during the surviving spouse’s lifetime.
 - Careful about lending powers, waiver of income, paying life insurance premiums

2. Spousal Trust



*Rules for Withdrawals of Principal to Spouse

1. Mandatory?

- Income (Required for tax deferral)
- Annual Amount

2. Unlimited?

- Trustee(s) can give any amount to the spouse

3. Limited?

- To a maximum amount:
 - Annual
 - Total over lifetime
- For specific reasons:
 - Medical needs
 - Nursing Home costs
- Start/Stops if certain events occur:
 - Stops on Remarriage
 - Stops on Cohabitation
 - Start if Spouse used up all of own assets

Dual Trust Planning

Estate Assets Allocated by the Executors
Between the Spousal Trust and the Family Trust

Family Trust

Trustee(s)

Income
and
Principal

Children

Spouse
and
Children

Spouse
Only

Spousal Trust

Trustee(s)

Income

Principal

Children

When the spouse dies,
the balance goes to the
Children

3. Amount to Children, Balance to Spouse

*1. Carve out \$\$ to the Children - Absolute or Trust;
and*

1. Balance goes to Spouse Absolute

- Avoids having to use a spousal trust for the spouse.
- Ensures the children get at least a basic amount even if spouse changes will.
- Best to use life insurance to avoid any income tax.

Rammage v. Estate of Roussel

Ontario Superior Court of Justice

Facts:

- Second Marriage for both Alf and Ruth who each have two children.
- They signed wills by which they gave all of their respective estates to each other and provided for an equal division amongst all of their four children on the death of the survivor.
- After Alf's death, Ruth changed her will to leave all her property to only her children.

Rammage v. Estate of Roussel

Ontario Superior Court of Justice

Issues:

- Did Alf and Ruth have an agreement not to change their respective wills after the death of the first of them?
- Were Alf and Ruth's wills **Reciprocal** Wills only, or were they also **Mutual** Wills?

Rammage v. Estate of Roussel

Ontario Superior Court of Justice

Proof of Agreement:

- The **obituary** published after Alf's death was indicative of a unified family, including his "four children" and grandchildren without distinction as to parentage.
- Birthday and Christmas **presents** from Alf and Ruth to the children showed that the four of them were treated in a similar way.
- Alf told his daughter that after Ruth's death, he and Ruth had arranged that the four children would **share everything** that was left.
- After Alf's death, the sons-in-law and grandsons were invited by Ruth to **select items of sentimental value** from Alf's collection of model trucks.

Rammage v. Estate of Roussel

Ontario Superior Court of Justice

“ The lawyer who prepared the wills did not discuss that matter with Ruth and Alf. He simply accepted their instructions... He **asked them no questions** as to mutuality. ”

Rammage v. Estate of Roussel

Ontario Superior Court of Justice

Conclusion:

- “The 1998 wills contained two key components: the provision of **financial security for the surviving spouse**, and an **inheritance for the four children** in due course.
- The first component is consistent with a long-term **supportive relationship** between spouses, and the second is reflective of the **blended family history.**”
- Alf and Ruth “wanted to **ensure that a benefit was bestowed on their respective children by the survivor of them.**”