UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

TAX-FREE SAVINGS ACCOUNTS AND THE UNIFORM RETIREMENT PLAN BENEFICIARIES ACT

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Ottawa, Ontario
August, 2009

TAX-FREE SAVINGS ACCOUNTS AND THE UNIFORM RETIRMENT PLAN BENEFICIARIES ACT

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Background

What is the nature of the problem which this proposal addresses?

[1] There is a wide range of future income security plans that provide an individual with retirement income. Banks, credit unions, investment entities, and others provide retirement savings plans.

[2] The need to address beneficiary designation issues in relation to future income security plans was recognized by the Conference. In 1975, the Conference adopted the Uniform *Retirement Plan Beneficiaries Act* (RPBA). The RPBA allows a participant in a plan to designate a beneficiary of a benefit payable on the participant's death by using an instrument that does not comply with the formalities of a Will. RPBA provisions have been enacted in eleven jurisdictions including Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Ontario, Prince Edward Island, Saskatchewan and Yukon Territory.

[3] In the Federal Budget 2008 and the *Federal Budget Implementation Act 2008,* the federal government proposed amendments to the *Income Tax Act* (ITA) to allow the establishment of a Tax-Free Savings Account (TFSA). TFSAs came into effect on January 1, 2009.

[4] Canadians over the age of 18 may contribute up to a maximum annual amount of $5000 to a TFSA. Similar to a Registered Retirement Savings Plan (RRSP) income and capital gains earned within a TFSA are not taxed. Unlike an RRSP, contributions to a TFSA are not deductible for income tax purposes and investment income including capital gains earned in a TFSA is not taxed even when withdrawn.

[5] The individual holder of a TFSA is able to designate a beneficiary of a TFSA. On the death of the holder the TFSA assets can be transferred or rolled-over to a designated surviving spouse or common-law partner similar to an RRSP.

[6] TFSAs have been referred to as a new type of future income plan. Some writers have suggested the tax treatment of TFSAs make them the "new" retirement savings vehicle and more attractive for retirement savings than RRSPs especially for younger individuals.

[7] Financial Services entities have requested that provinces and territories amend their legislation to allow beneficiary designations for TFSAs. At least, six jurisdictions have or are in the process of amending their legislation or making regulations to allow beneficiary designations for TFSAs.

Recommendation

[8] The Conference has recognized the need to address beneficiary designation issues in relation to future income security plans in adopting the Uniform *Retirement Plan Beneficiaries Act* (RPBA). Amending the RPBA to allow for designating new types of savings arrangements keeps the RPBA current with new financial products being given tax relief and offered to individuals.

[9] It is recommended that the Uniform *Retirement Plan Beneficiaries Act* be amended to allow for designating new types of savings arrangements as “plans”. The following amendment is recommended:

“Section 1(b)(iii) a fund, trust, scheme, contract or arrangement prescribed in regulations”