

Alter Ego vs Joint Spousal Trust Planning

What is an Alter Ego Trust?

An Alter Ego Trust is a type of trust allowed under the *Income Tax Act* (Canada) (the “Act”). By setting up this trust, any assets you transfer into the trust are no longer held by you personally. Rather, the trust holds the assets and, typically, you manage the assets as a trustee on your own behalf, for your sole benefit, for as long as you are living. You also designate who receives the trust assets after your death. To set up this trust, you must be 65 years of age or older and a Canadian resident.

What is a Joint Spousal Trust?

A Joint Spousal Trust is a trust where assets are transferred into the trust, and either one or both spouses are entitled to receive all income and capital of the trust prior to the death of the surviving spouse. To set up this trust, one of the spouses must be 65 years of age or older and a Canadian resident.

Advantages to these forms of Trusts

There are numerous advantages to setting up an Alter Ego Trust or Joint Spousal Trust (the following is not an exhaustive list):

- 1. Ease of Control:** You can handle your own trust affairs by appointing yourself as the trustee. You may also provide a replacement trustee in the event that you become incapacitated. This addresses succession/control problems and is effectively a substitute for a power of attorney.
- 2. Avoiding Estate Litigation & Blended Family Planning:** You may be entering a second marriage in which you want to provide for your second spouse during their lifetime, but leave the remainder of your assets to your children of the first marriage. Unlike a Will, which can be challenged by an unhappy spouse or child, through a trust you may divide your assets in any manner and the assets in your trust are not subjected to variation claims. The same protection is afforded in a situation where you want to treat children unequally; had you done so through your Will, your Will could be challenged by your unhappy child.
- 3. Probate planning / fee avoidance:** By transferring assets into the trust, there is the potential to bypass the need to probate your Will/estate, and to reduce probate fees. A Will requires the executor to probate the Will, in order to administer your estate, which can be costly and time consuming. Unlike a Will, the trustee dealing with the trust does not need to obtain probate to administer the trust assets once you pass away. The Trust beneficiaries will receive their inheritance with fewer delays, and reduced legal costs. In BC, the probate fee is 1.4% of the gross estate. So if you transferred assets worth \$1,000,000 to your trust, these assets would not flow through your estate on your death. The probate fee savings to your estate would be approximately \$14,000.
- 4. Privacy:** The trust provides a level of privacy and confidentiality that a Will does not. If your Will is probated through the BC Supreme Court, then it becomes a public document that can be obtained by anyone. A Will discloses your testamentary intention and the estate value, whereas your trust does not become a public document.
- 5. Foreign Assets:** If you have assets in numerous jurisdictions, appointing one person as the trustee of your trust may avoid having to make multiple power of attorneys, one for each jurisdiction in which you hold assets.

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Disadvantages to these forms of Trusts

- These types of trusts are not suitable for nominal value estates.
- Setting up the trust can be complex, and the professional fees (legal, tax and accounting) can be costly to establish or maintain the trust.
- The trustee must commit time to managing the trust affairs, and have obligations imposed on them (e.g. filing the necessary tax returns). Finding someone to take on this burden can be difficult, and should you choose to act as your own trustee, you must be aware of your obligations.
- In a Spousal Trust there is an added risk, because the spouses must both be entitled to receive all the income of the trust. Be cautious of with whom you enter into a Spousal Trust, as your situation may change later in life.
- On the death of the settlor (the creator of the trust), or in the case of a Joint Spousal Trust, the death of the surviving spouse, all of the income and capital is taxed at the highest marginal rate. Compare this to a situation where you hold your assets outside of the trust; your estate would benefit from the graduated tax rates.

If you are considering setting up an Alter Ego or Spousal Trust, it is essential you seek advice from tax and legal professionals to determine whether these types of trust are suitable for you. Contact one of our Wills and Estates lawyers for further information and guidance. If you have questions, we're here to help.

Questions? Contact a member of our experienced [Estate Team](#):



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