

# Financial UPDATE

From Milestone Wealth & Estate Planning Group Inc.

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## Who says investments don't come with guarantees?

### Segregated fund policies: the solution that can help protect your capital

The last few years have been challenging for investors. Market turbulence has caused many to avoid equity investing because they fear market declines. While they desire portfolio growth, they remain nervous about market performance. The return of their initial investment capital is just as important to them as return on their money. If this describes you, segregated fund policies may be the investment solution you've been looking for.

Like a mutual fund, a segregated fund is a pool of money invested in a variety of securities through professional fund managers. However, unlike mutual funds, segregated funds are only available through an insurance company. Because segregated fund policies are life insurance contracts, they have special protection features.

### Maturity and death benefit guarantees

Individual segregated fund policies protect part or all of your capital investment mitigating some risk to your investment by offsetting the possible effects of market fluctuations at specific times. You can choose to guarantee either 75 or 100 per cent of the investment's market value or the guaranteed amount – whichever is higher – at the maturity date or upon notification of death (upon death the proceeds pass to the named beneficiary).

So if the market declines significantly, you receive the guaranteed amount. If the market goes up significantly, bringing the value of the investment up too, you receive the market value. Withdrawals proportionately reduce maturity and death benefit guarantees.

### Resetting to lock in market gains

You can also opt for resets, which essentially lock in market growth from year to year, increasing the guaranteed amount when market value increases. Resets improve downside protection provided by maturity and death benefit guarantees because they capture market upswings. It's done automatically on the policy anniversary if the market value of the segregated fund policy is greater than the maturity or death benefit guarantee amount.

Maturity guarantee and death benefit guarantee reset options are available at an additional fee and must be selected at the time the application is signed. Maturity resets can occur up to 15 years prior to the maturity guarantee date and death benefit guarantee resets occur up to and including the last policy anniversary prior to the youngest annuitant reaching age 70.

### Are segregated fund policies right for you?

If you're attracted to some level of guarantee for the money you invest, please consult us to determine how segregated fund policies may fit into your financial security plan.



# Privacy and probate

The process of probate makes final financial affairs of the deceased a public record. Any individual may wish or have a need to keep some of his/her final financial arrangements private. This does not mean those who want to maintain privacy should try to avoid the probate process, and therefore, not prepare a will. In fact, a will is very important, and in many cases, needed to ensure the wealth that the deceased leaves behind is managed according to their wishes.

## The importance of a will

A properly documented and well-written will may help smooth execution of the final wishes of the deceased and the distribution of the assets to the intended beneficiaries (legatees in Quebec).

If an individual dies without a will in the common law jurisdictions, this is called intestacy and the court decides how the final assets of the deceased are managed or distributed based on the intestate laws of the jurisdiction. If an individual dies without a will in Quebec, the assets are transmitted to the estate, without the court having to decide how they will be managed or distributed. The appointed liquidator (or the heirs) will manage and distribute the assets according to the provisions of the Civil Code.

Such distribution may not be how the deceased might have distributed the assets, had a will been prepared. So, a will is an important estate planning tool. In Quebec, a will search certificate can be obtained from the Chambre des notaires and the Barreau du Québec. This certificate confirms if there was a will made before a notary or a lawyer and, if so, it confirms the last one made.

However, for common law jurisdictions, a perplexing question is how a third party would know that the will presented to them is the legally valid will providing the estate representative authority to execute the wishes of the deceased. If action is taken based on an earlier will, and subsequently, a more recent will is discovered and determined to be the legally valid will, the person who acted on the first will and any third party who acted on their instructions may be liable to the beneficiaries of the last and final will.

A solution for this problem is probate.

## What is probate?

Probate is a legal process that takes place after an individual has died. It provides legal proof that the will (in Quebec, a will prepared before a notary is not subject to probate) has been certified by the court (or a notary in Quebec) and that the executor (liquidator in Quebec) is authorized to represent the estate of the deceased. The amount of provincial estate taxes (also referred to as probate fees, estate administration tax or court fees) charged (only probate fees apply in Quebec) to probate a will differ by jurisdiction.

Many financial institutions, land registry office and other third parties may require that a will go through the probate process before they take any action on the will. The process generally involves identifying, inventorying and appraising (where needed) the assets of the deceased. Usually the will has to be provided as part of the probate process.

The documents provided for this process usually become part of the public record that can be accessed by anyone.

Many individuals may still have a desire or need to maintain the privacy of at least some of their final financial arrangements, and they also need assurance that the financial institution or third party holding their assets will pass them to the desired beneficiaries (legatees in Quebec) – without asking for a probated will, or maybe without asking for a will at all.

Fortunately, there are some options that may help.

## Tools to avoid probate and maintain privacy

### Life insurance

Generally, insurance legislation permits life insurers to pay the proceeds of a life insurance policy directly to a named beneficiary. The proceeds will not form part of the deceased

policyowner's estate and need not go through the probate process. The beneficiary may be designated in the insurance policy or in the will. However, designating the beneficiary directly in the insurance policy may provide added privacy since the will usually has to be produced as part of the probate process.

### **Certain financial products**

Providing beneficiary designation on products such as annuities, segregated fund policies, registered retirement savings plans (RRSP), registered retirement income fund (RRIF) accounts, or a tax-free savings account (TFSA) that is purchased from a life insurance company produces the same result as life insurance. RRSPs, RRIFs and TFSAs sold by other financial institutions that have a named beneficiary can be paid directly to the named beneficiary without a will in most provinces.

When assets can be transferred without the direction of a will, it helps maintain privacy.

### **Joint ownership**

Generally, assets held as joint tenants with a right of survivorship (subrogated owners in Quebec) are presumed to pass automatically on death of one owner to the surviving joint owner(s) without having to go through the probate process. However, there are some limitations to this presumption.

### **Multiple wills**

Some jurisdictions permit multiple wills. The assets that would be subject to probate are included in a primary will, while the assets that are not subject to probate may be included in a second will. On death only the primary will is presented for probate. The assets mentioned in the second will do not become public record.

When there is doubt about whether an asset is subject to probate or not, it may be safer to include it in the primary will that would otherwise go

through probate. If such an asset is mentioned in the second will, and later it is determined that the asset is subject to probate, then the entire second will would need to go through the probate process, defeating the purpose of having a second will.

Extra care is required when implementing a multiple will strategy, as making a second will could cancel the primary will. This strategy should only be implemented under the advice and assistance of a lawyer and in jurisdictions where multiple wills are permitted.

### **Revocable living trusts**

In common law jurisdictions, when the assets are transferred to an inter vivos trust, the trustee becomes the owner of the assets. Consequently, the assets will not form part of the estate of the transferor upon death.

In Quebec, the concept of a trust is different than in other jurisdictions. Once the trust is created, the trustee is no longer the owner of the assets. The trust constitutes a patrimony by appropriation, meaning that the person transfers assets from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose. The trustee holds and administers the trust.

Depending on the terms of the trust, during the lifetime the transferor can benefit from the income of the transferred assets, and after death, have the assets distributed to the beneficiaries of the trust. Generally, the transfer of assets by an individual to the trust would trigger an income tax liability immediately. However, in the case of an "Alter Ego Trust" or "Joint Partner Trust", it may be possible to defer the deemed disposition of the capital assets on transfer to the time of death of the transferor, or the surviving partner, as the case may be.

Setting up a trust is a complex matter and should be done with the assistance of an accountant and a lawyer.

Note: The information in this article focuses on probate taxes. It does not address the income tax consequences related to implementing any of the planning tools.

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# Effective diversification puts you in control



Equity market volatility and a subdued forecast for fixed income returns are creating a troublesome environment for investors. Some are abandoning their long-term investment mix by avoiding equity assets and overweighting their portfolios in cash and income investments.

With interest rates at historic lows, we see limited opportunities for strong returns in fixed income investments. Meanwhile, European debt worries and the pace of economic growth in the U.S. and major developing countries like China, have caused recent equity market volatility. As always, exactly how and when these and other world events will play out is largely unpredictable. Instead, we focus on factors we can control – like portfolio construction and balancing risks and opportunities.

Diversified portfolios can help achieve strong long-term investment performance while reducing risk. Too little equity risk (i.e., a portfolio of

bonds and interest rate sensitive products) and you increase the risk of not achieving sufficient growth or income to meet your financial goals. Too much market risk (i.e., a portfolio focused on stocks and commodities) and you increase the risk of abandoning your investment plan altogether during periods of market volatility, which often leaves you further behind than when you started.

Finding the right balance of fixed income and equity exposure is often the most significant factor in determining how your portfolio performs over the long term. What's right for you depends on your financial goals and timelines, and your tolerance for market volatility.

For most investors, maintaining a portion in equities is key to the growth they need to meet long-term financial goals. The fixed income component adds the stability desired during periods of heightened market volatility. By combining these two elements in a proportion that's right for you, each asset class can play its role and provide you with the opportunity for greater capital appreciation, while mitigating the risk and volatility of your portfolio.

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## Tax rules and interpretations subject to change.

**A description of the key features of the segregated fund policy is contained in the information folder. Any amount that is allocated to a segregated fund is invested at the risk of the policyowner and may increase or decrease in value.**

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