



Have you considered how your RESP will be dealt with, should you die?¹

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If you are the sole subscriber of an RESP when you die (there is no surviving joint subscriber) the RESP forms part of your estate. Unlike an RRSP/RRIF or TFSA, you cannot make a “beneficiary designation” to allow the RESP to pass outside your estate. It doesn’t matter that you have named RESP beneficiaries in the RESP. RESP “beneficiaries” are not beneficiaries for estate purposes. Because the RESP forms part of your estate, the person with the right and the ability to deal with it will be your estate representative, whether appointed through your will or otherwise under the law. As part of your estate, it would be available to creditors, if necessary. You should consult with a legal advisor about how to deal with your RESP in your will, including what the estate representative should do with it.

Under the *Income Tax Act*, your “estate” can become the subscriber of the RESP. If you do not specify in your will what happens with the RESP, it forms part of the residue. Generally, the estate representative could not continue to operate the RESP unless all the residuary beneficiaries agreed. If you stated that someone was to become the subscriber of the RESP, that would be a bequest of the RESP. That person would then have all the rights of subscriber, including:

- Whether or not to direct education assistance payments or payments of contributions and to whom;
- Possibly to add or delete RESP “beneficiaries” from the plan; and
- Even to wind up the plan and not pay to or for the RESP “beneficiaries” at all.

If you want the estate representative to continue to operate the plan, you should specify that in your will as well as:

- What discretion the estate representative has in deciding how much is paid for which RESP “beneficiary”;
- If you want the estate representative to make contributions to the RESP, a source for the funds to make the contributions; and
- What happens to the funds in the RESP and the contribution source if circumstances are such that not all the RESP funds and the contribution source are paid out for the RESP “beneficiaries”.

Regardless of what you say in your will, the RESP must still be operated in accordance with the *Income Tax Act*. This includes, where applicable, repayments of government grants and bonds, restrictions on accumulated income payments based on how long the plan has been open and characteristics of the RESP “beneficiaries” and 20% additional tax on accumulated income payments, if accumulated income payments are available.

¹ Please see the article titled “Have you considered how your RESP will be dealt with in Quebec, should you die?” for information related to the province of Quebec.

As with all planning strategies, you should seek the advice of a qualified tax advisor.

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