

Estate Planning Essentials



No one wants to leave behind a fractured family. All too often questions are resolved in a moment of crisis.

You've devoted yourself to providing for your family, enjoying the life you have built and saving for a comfortable retirement. It can be difficult and uncomfortable thinking about what would happen if you were no longer around to take care of things. It can be so uncomfortable in fact, that a BMO Wealth Institute survey suggests only 53% of Canadians have a will, which is the cornerstone of any estate plan.

Some of the common misconceptions about estate planning are that it is only something to consider when you are older; that it only comes into play when you die; and that it largely has to do with money and taxes. While clearly outlining what to do upon your death and taking taxes into account are important aspects of any estate plan, it can serve important purposes while you are still here. It's true that estate planning is about your family, and what legacy you will leave behind, but it should also be about you and your needs should you become incapacitated either through illness, a disabling accident, or just the aging process.

No matter what stage of life you are in, it's important to start thinking about and planning your estate so that loved ones are not put in a position to make important decisions in a moment of crisis. You want to ensure that your wishes can be carried out if you die or are incapacitated and that you minimize the fracturing impact it can have on family and loved ones if matters are left undecided. Starting the conversation now and planning ahead can help reduce some of the difficult practical, emotional and financial implications of transitioning your estate.

Did you know?

91% of Canadians over the age of 65 have a will

only 53% of all Canadians have a will

(BMO Wealth Institute).



Here are some considerations to help you get started:

Key people to help you prepare your estate plan

Lawyer

Whenever you are preparing documents like a will or powers of attorney, you will likely need the expertise of a legal expert with specific knowledge in these areas.

Accountant

You will likely need someone who understands the financial side of estate planning, most notably the tax implications and associated tax regulations that need to be met.

Financial planner

Financial planners do more than invest your money. Planning with a professional can help cover off key elements of your estate, whether related to business, your children from a previous marriage, beneficiaries, or assets in other jurisdictions.

Seeking professional advice becomes even more important if the details of your estate or life situation are complex.

Creating wills that work

The cornerstone of any estate plan is a will. A will is a document that directs how your assets should be distributed at the time of your death. Without a will, you are said to die intestate and provincial law dictates who will receive the assets of your estate. Having a will can save your estate money and your family a lot of anguish and frustration. It's the only way you can have control over who will administer your estate, how your estate will be distributed and to whom.

A well drafted will gives you control over the details of the distribution of your estate including:

- Choice of beneficiaries;
- Their respective shares of your estate;
- The type of asset(s) each will receive, and the timing of distribution.

The will should also name an executor who will be responsible for making sure all assets in your estate are accounted for, along with transferring these assets to the intended party. He or she also ensures that all debts are paid off, including any taxes. Choosing an executor is an important decision that depends on where they reside, the nature of your estate, the complexity of your will and the dynamics of your family. Many people choose a close friend or family member, but you may also consider a professional or corporate trustee to administer the distribution of your estate. The administration of an estate can mean navigating complex legal, income tax and investment issues that can be overwhelming in a period of grief. Also, the accounting, banking and record-keeping responsibilities can be time-consuming, especially if the executor is unfamiliar with legal forms and procedures.

Quick tips



Starting the conversation

Communication is key when planning your estate. Start the conversation by having a family meeting to discuss.



Keep it up-to-date

An estate plan is a living document. Whenever a major life change occurs, or you make a major purchase, remember to update your plan.



Keep all documents in one place

Ensure your attorney under a Power of Attorney and executor know where to locate your important documents such as your will, marriage certificate, insurance policies and safety deposit box.

If you have minor children, you should consider appointing a guardian or guardians in your will as well as including potential compensation for taking on the responsibility of caring for your children in the event of your death.

Ins and outs of powers of attorney

A comprehensive estate plan addresses important issues that impact you and your family throughout your lifetime, not just after your death. This includes incapacity planning. If you are unable to manage your own financial affairs, someone must step in and become your substitute decision maker.

A Continuing Power of Attorney for Property is a document that appoints another person or trust company (the attorney) as your substitute decision maker and gives authority to that person or corporation to make financial decisions on your behalf. Your substitute decision maker will have the authority to make decisions with respect to your property (i.e., financial and personal assets).

A Continuing Power of Attorney for Property applies to all of your property, but it is possible to limit that scope. You may want to restrict the Continuing Power of Attorney for Property to specific assets or defined time periods.

There are some common misconceptions about Powers of Attorney that may lead people to think they simply don't need them. One of the most common misconceptions is that in the event of incapacity, a family member can automatically deal with your property. This is not the case. If you have not granted anyone Power of Attorney for Property, someone will need to get a court order to become the guardian of your property in order to manage it. This process can be costly and time-consuming, and there is no guarantee the family member will be granted the authority. Another common misconception is that if all of your property is held jointly with your spouse, they will be able to manage every aspect of your financial affairs. This is not entirely true. Your spouse may be able to deal with joint bank accounts, but would not be able to sell or mortgage a jointly-owned home or other property. These transactions require the signature of both spouses or if one of them is incapable, the signature of his or her attorney. If there is no attorney, the court may appoint a representative.

A Power of Attorney does not only have to apply to your property. Most provinces allow you to grant substitute decision-making authority and to give directions about your personal care and medical treatment in the event you lose capacity to make the necessary decisions for yourself. In some provinces this is called a 'Living Will' and others a Power of Attorney for Personal Care.

The most important decision when it comes to granting a Power of Attorney is who you will give control to. Depending on your circumstances you have many options, including your spouse, adult children, lawyer, accountant or another family member or a friend.

Did you know?

54% of Canadians recognize that the most serious drawback for families of not having estate planning conversations is the potential for conflict between surviving family members after the death of a loved one.



Tax efficient estate planning

There are currently no estate taxes in Canada, but that doesn't mean your estate can be transitioned tax-free. There are two basic types of tax that can arise upon your death – income tax and probate fees.

When an individual dies, their assets are treated as if they had been sold. For many Canadians, the largest tax liability their estate will face is the potential tax on their RRSP or RRIF. Tax rules require the fair market value of the RRSP or RRIF be included on the deceased's final tax return with tax payable at the deceased's marginal tax rate for the year of death. This tax can be deferred, however, if the RRSP or RRIF is left to a surviving spouse or partner, tax can be paid by the survivor at his or her marginal tax rate in the year in which funds are withdrawn from the RRSP or RRIF.

Probate fees are based the value of your estate. What is probate? At the time of your death, your last will and testament may need to be approved by the courts under the laws of your province or territory. The process confirms the authority of the executor to deal with the assets of your estate. Most provinces charge a fee for probating a deceased's will – basically it's a tax. If you hold certain assets jointly with right of survivorship, those assets may, in certain circumstances, pass outside of your estate directly to the other joint owner(s) at the time of your death and probate fees can be avoided. Another option, but not in all provinces, is establishing multiple wills – one for assets that must go through probate and one for any non-probatable assets.


These are just a few ways to minimize the taxes on your estate. Consult with a tax or estate professional to take full advantage of your options.

New frontiers: digital assets

The digital world continues to reshape the way we interact with family and friends, acquire information, experience entertainment and manage our financial accounts. This accumulation of digital property raises an important question: what happens to all of these assets we accumulate, such as social media accounts, online photo or music collections, and online stock trading accounts in the event of our death or incapacity? It's important to incorporate these digital assets into your estate plan to minimize leaving a daunting digital mess for your loved ones.

There are currently no laws on the books in Canada that deal specifically with providing authority to estate trustees to access digital assets. Privacy laws require businesses that hold digital files to protect the user's personal information, so they in turn may not allow access to files. In the absence of any clear legal framework, executors need to follow the Terms of Use for each individual site on how content can be accessed.

It may be a legal gray area, but you may consider listing your digital assets and accounts in your will, whether they have value or not, so that the executor is at least aware of them. Passwords or other sensitive information should be kept separate from the will as probated wills become public documents. You may also consider granting authority to the executor to access the accounts, though the legality of this is questionable today. Finally, you may leave instructions on how to treat your digital assets (e.g. delete, sell, pass on).



Age is a strong predictor of having a will

Age	Has a will
18–34	24%
35–44	37%
45–54	53%
55–64	75%
65+	91%

Planned giving

Philanthropy and charitable giving opportunities come in many forms, whether it's linked to an emotional connection with a loved one, a personal experience or simply a desire to make a positive difference

While there are rules governing gifts other than cash, you can contribute almost any property of value (i.e., securities, RRSPs, RRIFs, life insurance and real estate) to a registered charity. Although no one typically makes a charitable donation solely for the tax benefits, the federal government provides favourable tax incentives that encourage Canadians to be generous with their charitable giving strategies. A charitable donation tax credit can be claimed for donations up to 100% of net income in the year of your death.

Whatever strategy you choose, it can be ultimately rewarding to see the positive effects of your gift at work in your lifetime and beyond. Adding a philanthropic component to your estate planning can result in significant tax savings, while addressing your desire to leave a lasting legacy.

Start planning today

No matter what your age or stage in life, it's important to start planning today. In what can be an emotional time, you want to ensure your wishes are clear and that leaving a lasting legacy is as easy as possible for your loved ones.

Let's connect



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