

Estate planning

# What are you leaving behind: family conflict or a memorable legacy?

The BMO Wealth Institute provides insights and strategies around wealth planning and financial decisions to better prepare you for a confident financial future.

How do you want to be remembered? What is the lasting memory that your heirs and beneficiaries will have when you pass away? Will they remember their period of loss as one when they were comforted and supported by each other, or will it be one of the most divisive and difficult interpersonal experiences of their lives?

Everyone needs to take the time to consider what they are leaving behind. What is left behind is often far more than may be measured in monetary terms. In addition to material worldly assets, a person leaves behind a legacy that represents values, plans, beliefs and many cherished memories.

Traditionally, estate planning focused on estate administration, tax considerations and having the proper legal documents in place. Now, however, it is commonly understood that the emotional impact on those left behind calls for the introduction of a broader concept of **enhanced estate planning**. Enhanced estate planning requires having detailed conversations to share the background and reasoning behind the estate decisions that have been made and that your heirs will have to implement.

Benjamin Franklin said **By failing to prepare, you are preparing to fail**. This statement holds true: many families have had direct experience of the reluctance of a parent to effectively plan, prepare and communicate his or her estate plans. Very often this aversion to enhanced estate planning is exacerbated by a lack of information about the parent's wishes, especially when it leads to fights and ongoing hostility over items that represent memories and are valued beyond their monetary worth.

A survey conducted by the BMO Wealth Institute indicates that more than half of Canadians (54%) 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.

Hurt feelings and damaged family relationships can be avoided, but it requires having the necessary estate conversations with family members and other intended heirs. Your personal legacy depends more on the effective communication of your values, plans and beliefs than on the items that can be neatly summarized in the paragraphs in your will.

**Enhanced estate planning** requires having detailed conversations to share the background and reasoning behind the estate decisions.

**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.



## Traditional estate planning

Estate planning has traditionally been seen as an exercise that begins with the assistance of accounting and legal professionals. The primary estate planning document that must be prepared is a will. Powers of attorney for property and for personal care should be prepared at the same time as the will. Incorporated into these documents are strategies that minimize taxes, ensure that your worldly assets are distributed as you desire, and provide a means to make important decisions when you are not able. Traditionally, only when the legal documents were completed would individuals consider letting family members know about what they had planned.

The importance of having a will prepared is well understood by Canadians who are in their retirement years. According to the survey, 91% of Canadians over the age of 65 have a will. Unfortunately, the survey indicated that only about half of Canadians (53%) have a will. The accompanying table shows that the likelihood of a Canadian having a will is strongly related to age.

▼

Age is a strong predictor of having a will	
Age	Have a will
18-34	24%
35-44	37%
45-54	53%
55-64	75%
65+	91%

Source: BMO Wealth Institute survey by Pollara, May 2013.

A will is important for all Canadians who have reached the age of majority, not just those who are at an age when they are thinking about their own estate plan. The most important reason is to be able to ensure that any assets, both financial and sentimental, are passed to the most appropriate people with the least amount of delays and unnecessary legal costs.

Incorporated into these documents are strategies that minimize taxes, ensure that your worldly assets are distributed as you desire, and **provide a means to make important decisions when you are not able.**

**91%** of Canadians over the age of 65 have a will, but **only 53% of all Canadians** have a will.



## Enhanced estate planning

Enhanced estate planning involves much more than just the creation of legal documents that include considerations for accounting and tax issues; it helps to avoid family conflicts over the division of financial assets and ensures the family is looked after in the manner intended by the deceased.

Enhanced estate planning is an important way to ensure an individual's own legacy is defined and in control. Legacy is the way in which a person is remembered by loved ones. It is how people would describe someone after they pass away.

When people pass away, they leave behind much more than assets and gifts for their loved ones. Often the most important things that are left behind are cherished memories. An important way to create lasting positive memories is to share stories about personal possessions and cherished assets with loved ones as you create your estate plan, so that they have an understanding of your intentions, feelings and wishes. Sharing stories about these non-financial assets with loved ones and learning about the objects' importance to them can help to avoid family conflicts over the division of personal effects.

### Distinct advantages of the enhanced estate planning process

Avoid family conflicts over the division of the [financial assets](#)

Avoid family conflicts over the division of the [personal effects](#)

[Leave a legacy](#) that represents values, plans, beliefs and cherished memories

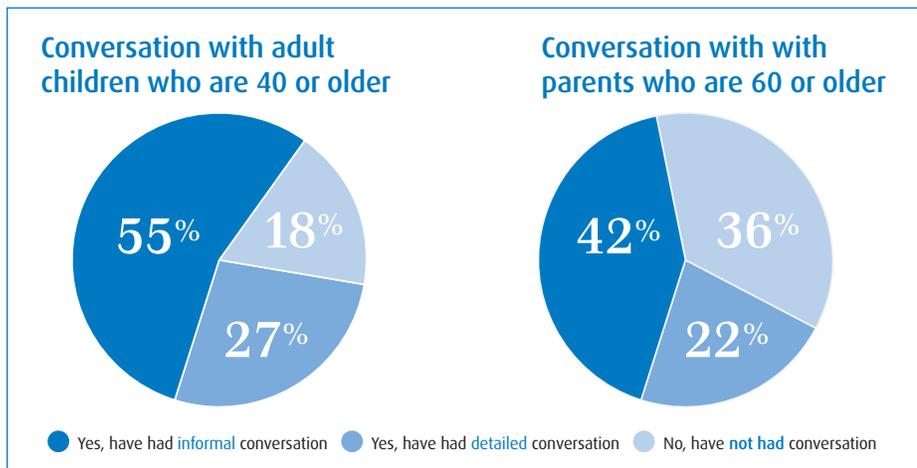
One of the most interesting findings to come out of the survey conducted by the BMO Wealth Institute was that many families are having conversations about estate planning and goals. In fact, 82% of Canadians with a child at least 40 years of age have had at least one conversation with their adult child about their legacy goals and estate plans. Unfortunately, only about one-third of these conversations were considered [detailed](#). From the point of view of adult children with parents who are at least 60 years of age, 64% of the adult children reported having had at least one conversation with their parents. Telling a child that a will and powers of attorney have been prepared, and maybe even letting them know some of the plans for managing and distributing assets, would be considered a discussion, but not a detailed discussion.

To learn more about enhanced estate planning, click here [bmo.com/video/estate-planning/en](http://bmo.com/video/estate-planning/en)

**Legacy** is leaving behind the essence of who you are.

Only **one-third** of estate planning conversations are detailed.





Source: BMO Wealth Institute survey by Pollara, May 2013.

A detailed discussion would explain the reasons for the decisions that were included in the preparation of the will and powers of attorney, and be key to the process of building a legacy for those left behind. These enhanced estate planning conversations would ensure that a legacy that represents the values, beliefs and cherished memories will remain long into the future.

## Estate planning conversations

Consider the story of Marcel, the retired father of three adult children who lost his wife many years back. Several years ago, after a wonderful Thanksgiving dinner with his whole family, Marcel gathered his three adult children together to let them know that he had his will updated, and that he had made sure that each of them would be treated fairly. All were relieved to find this out, and no further conversation took place.

Last year, Marcel passed away suddenly, and his children were quite surprised by the instructions he left behind in his will. He had intended to give one real estate property to each child, but at the time of his passing, only one real estate property remained. One of his adult children would receive the remaining property, as she was specifically named as the beneficiary of that property. The other two children received no real estate, as they were individually named as beneficiaries on two properties that had been sold over the intervening years to provide money for Marcel to live on. The small amount of remaining cash and other assets were more easily divisible. Because the will had not been updated for many years, what might have once been considered fair from a financial point of view was no longer fair.

This situation might have been avoided had there been enhanced estate planning conversations before the will was drafted. Even after that date, conversations could have been initiated as things changed, and the will could have been updated, or replaced, while Marcel was able to do so. While Marcel did have an estate planning conversation, it was not detailed.



The disposition of personal effects are often not included in a will. In many cases, this omission can cause lasting grief. In the case of Marcel's estate, the one prized possession that Marcel did not include in his will was the family cookbook that was left behind by his wife. Many pages included her handwritten notes that helped to explain how she turned ordinary recipes into family favourites that all of the children fondly remembered from their childhood. One daughter took possession of the family cookbook many years ago and has not let her sister or brother see the cookbook since.

Often non-financial assets are not even considered in a will, leaving children to fight among themselves for the most coveted personal possessions that hold memories. Estate planning conversations could have been initiated by the children in connection with both financial assets and personal items. The conversations could have been a valuable opportunity for Marcel and his children to share his wife's memory, avoid future conflicts and get a better understanding of importance of these possessions to each family member.

Often **non-financial assets are not even considered** in a will.

## Having an estate planning conversation

It is important to try to have estate planning conversations prior to going to a legal professional to draft a will and powers of attorney, and prior to working with accounting and tax professionals on the implementation of tax-saving strategies. In Marcel's case, he skipped having detailed conversations about his estate plans, goals and wishes, with the outcome being unfair and potentially divisive for his children.

There are four steps to having meaningful estate planning conversations that BMO Financial Group's Life Transition Expert, [Dr. Amy D'Aprix](#), calls [Essential Conversations](#).

Clearly identify the issue

Avoid assumptions and expectations

Hear the point of view of everyone involved

Problem solve

Had Marcel or his children started a more in-depth estate planning discussion, they would have identified the family cookbook as a prized asset that had sentimental value to each of the children. Marcel would have been able to hear each of his children express their points of view about the cookbook and other items that had emotional value. Other family heirlooms could have also been considered, so that each child could receive family possessions that had important personal meaning to each of them.

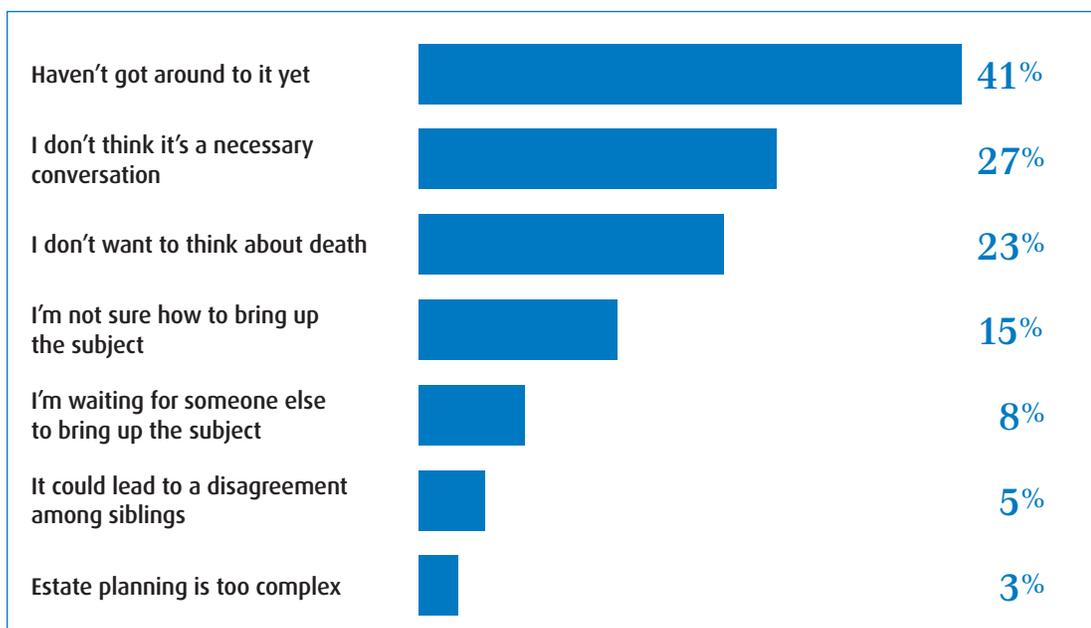


During these estate planning conversations, Marcel and his children could also have looked at the decisions he had made to implement a **fair** financial distribution in his will. Fairness could have been achieved through the use of contingencies built into his will, or by updating the will to accommodate the significant changes that resulted each time he sold a real estate property. Each of these changes could have helped to improve upon the now damaged legacy that Marcel left behind – had he only had more detailed conversations with his children that explained his wishes and goals for his estate plan.

Also, consider the added importance of having estate planning conversations for blended or non-traditional families. More complex family relationships heighten the importance of hearing the varying viewpoints of all family members in order to avoid future conflicts.

Unfortunately, a large number of families have not yet had any estate planning conversations. The reasons are varied, but the most prominent reason is that they have simply not gotten around to it yet. Other reasons include fears about starting conversations that some feel are not necessary, as well as the fear of thinking about death.

**Complex family relationships** heighten the importance of hearing the varying viewpoints of all family members in order to avoid future conflicts.



### Reasons families have not had detailed estate planning conversations

Source: BMO Wealth Institute survey by Pollara, May 2013.

Estate planning conversations are very important and should be about far more than money. Family relationships can be at stake. Although difficulties can start with the division of valuable financial assets (such as Marcel's real estate properties), issues are compounded when items are involved that have only sentimental or emotional value and that cannot be divided.

Estate planning conversations are very important and should be about far more than money. **Family relationships can be at stake.**



## Moving from estate planning conversations to estate planning action

It is important to complete the four steps to [Essential Conversations](#) to gain an understanding of what is important to the heirs. While there may not necessarily be agreement among all of the heirs regarding estate planning decisions that are made, the conversations will serve two purposes. First, they will provide the information necessary to help to build a more robust estate plan that has fewer potential surprises, and second, they will help to create a legacy that loved ones will remember fondly.

Only when the conversations are complete would it be time to create an estate plan. Estate planning has two important components. The first is providing for the quality of life of the people left behind; this is done through the will. The other is providing for the quality of your life, both financially and personally, should you become incapacitated. This is done through the creation of powers of attorney.

## Why you need a will

If a will is never made or cannot be found, provincial legislation, called intestacy laws, determines how the assets of the deceased are to be allocated. While there are legislative differences between provinces, this legislation typically provides for the spouse first, and if there are also children then they will receive a predetermined percentage of the assets. As the rules regarding intestacy distributions are very specific, in many cases these allocations will differ from the distributions that would have been made through a properly drafted will.

### Important reasons to create a will

**Ensures distributions** to family and loved ones based on the wishes of the deceased, rather than based on the provincial government's intestacy legislation

**Helps to speed up** the process of estate distribution

**Puts controls on access** in place where needed (especially for minor children or individuals who may not be able to control their spending if they received a cash distribution)

**Puts strategies in place** to help reduce income taxes

**Only when the conversations are complete would it be time to create an estate plan.**



## Why you need powers of attorney

Powers of attorney can be divided into two major categories: those that deal with property and those that deal with the health and personal care of the creator of the document.

### Power of attorney for property

Authorizes a **trusted person** to make decisions about personal finances in the event that the person creating the power of attorney is unable to do so

Can be used to **manage** banking, retirement savings, insurance, investments, real property or real estate, mortgage and other debt payments, taxes and small business operations

### Power of attorney for personal care

Authorizes a **trusted person** to make decisions about personal care and health care issues in the event that the person creating the power of attorney is unable to do so

Can be used to **manage** the types of medical treatments received or decisions to not receive medical treatments

As the naming of a power of attorney puts so much responsibility in the hands of the person named, it is critical to ensure that the trusted person chosen has the ability, knowledge and willingness to make difficult decisions at times when needed.

Having planning conversations with the people named and other loved ones is necessary to avoid misunderstandings and potential conflicts when tough decisions are required to be made under either of the powers of attorney.

Having an understanding of the wishes and intentions of the provider of the powers of attorney gives greater peace of mind to the loved ones charged with the responsibility to act, and reduces the potential for conflict with other family members.



## Essential components of an estate plan

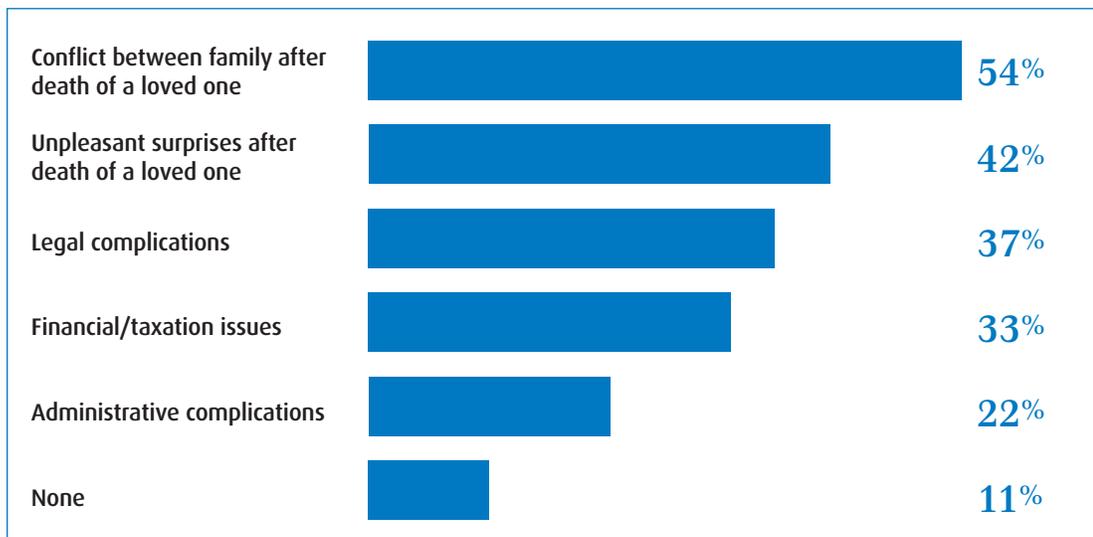
A great number of potential strategies and solutions can be used to help create the estate plan you envision. The following are four components that are considered key for the preparation of a well-thought-out estate plan.

### Have family meetings about the estate plan

At the core of an effective and successful estate plan is communication among everyone involved, so that there is an understanding of what is intended by the will. It is not possible to consider all potential scenarios and to provide for them in the writing of a will. But by sharing the thoughts, wishes and goals to be achieved by an estate plan, it is possible to give beneficiaries an understanding of the intentions on which the plan is based.

An analysis of the estate distribution as provided for in the will is a valuable exercise to determine if the will actually provides for the distribution intended.

Many families avoid having family meetings and conversations in which enhanced estate planning could take place. The potential problems that this could cause were recognized by participants in the survey. Two of the greatest risks noted were the development of conflicts within the family (54%) and finding unpleasant surprises after the death of a loved one (42%).



### Downside of putting off detailed estate planning conversations

Source: BMO Wealth Institute survey by Pollara, May 2013.



### Establish or update the will and powers of attorney

In the example described previously, Marcel did not update his will, even after his personal circumstances had changed considerably. When changes are significant, the will may not provide for the distribution originally intended. Not only might assets no longer be available, but intended beneficiaries may have predeceased, new potential beneficiaries may have been born (such as grandchildren) or changes in family circumstances (divorces) may not have been considered.

Powers of attorney should also be kept up to date. If an attorney moves far away or is no longer available, the power of attorney may be unusable. In such a case, trusted family members might have to go through the time-consuming process of going to court in order to assume responsibilities that could have been easily provided for by up-to-date documents.

### Put proper insurance in place

Insurance can provide a financial safety net for loved ones who are left behind. It can be used to replace earned income that is no longer provided. It also provides liquidity to pay off debts or pay for final expenses and taxes. An estate liquidity analysis should be performed periodically to ensure that as time passes and circumstances evolve, the estate plan contains the funds required to look after the estate issues and beneficiaries as intended.

#### Additional strategies to consider when developing an estate plan

Trusts – family trusts, alter ego, joint partner trusts, testamentary

Corporate executor

Long-term care insurance

Use of joint accounts

Successor trustee

Updated powers of attorney

Probate planning

Business succession plan

Tax minimization planning

### Appointment of an executor

An executor is the person appointed to administer an estate. The executor is responsible for locating the will and then following the directions and obligations contained within in order to distribute the assets according to the wishes of the deceased. It is important to inform the person(s) you have selected to be your executor beforehand to address any concerns or questions they may have.

To learn more about Estate and Trust Services, visit [bmo.com/estate/](http://bmo.com/estate/)



The executor usually works with family members to administer the estate, a process that includes a large number of tasks and responsibilities. Families can consider appointing a corporate executor to handle these responsibilities, especially if there are concerns regarding the significant investment of time required and the high level of knowledge required to perform the role effectively, or if there are concerns about being at the centre of family conflicts.

## BMO Estate planning family meeting guide

It's not easy to have estate planning conversations with your loved ones. But your personal legacy will depend on the effective communication of your values, plans and beliefs. The BMO Wealth Institute can help. The Estate Planning Family Meeting Guide is a helpful resource to get started with setting up the meeting, and provides some tips and ideas to engage your family in this conversation. To prepare your enhanced estate plan, ask your BMO financial professional for a copy of the guide.

## Conclusion

We believe proactive planning and professional advice go hand in hand. By working with a BMO financial professional who understands the importance of estate planning conversations and who can also make the appropriate referral or introduction to other key professionals, Canadians can develop a thoughtful estate plan and enjoy greater peace of mind.



<sup>1</sup> BMO Wealth Institute study conducted online by Pollara with a random survey sample of 1,513 Canadians between May 23 and 27, 2013. This survey uses a sub-sample that contains 874 Canadians with at least one parent age 60 or over, and 127 Canadians with at least one child age 40 or over.

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