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YOUR MONEY

A simple guide to estate planning

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Planning your estate matters is first and foremost about having a will. But it can also be much more. A well-thought-out estate plan ensures that your family is cared for should something happen to you, and that your money goes where you want it to. It's an important pillar of managing your wealth. Individual requirements range from drafting a simple will and enduring power of attorney to a complex estate plan that includes an estate freeze. This guide is meant to get you thinking about your situation.

When I first sit down with clients, I start with this question: "What is important to you about planning your estate?"

There are many possible answers. For some people, preserving the family wealth is top of mind. For others, providing for a spouse and children. Transferring the reins of the family business. Minimizing probate fees. Funding educational pursuits for children and grandchildren. Perhaps, leaving a legacy to a charitable cause.

Pay close attention to one caution. Developing your estate plan can can be difficult because it requires facing your own mortality. Talking openly about it with family members helps.

1. Getting started

If you die without a will, your assets are distributed according to provincial legislation. This may result in a loss of control. It may also necessitate additional time and legal fees to settle your estate issues. Anyone getting married, separated, divorced, remarried or having children should revisit their current will.

Make a detailed list of your assets and liabilities. Consider your tax positions and desires for the disposition of each asset. Pay special attention to a family business and cottage.

Review your family's needs and ability to maintain their lifestyle if something happens to you. Check the beneficiary designations for accounts such as your RRSP, RRIF, RESP, DPSP (deferred profit-sharing plan), pension plans, and life insurance policies.

2. Consider your options

Beware of how provincial legislation — such as B.C.'s Representation Agreement Act or Wills, Estates and Succession Act — may affect your desires. Particularly, if you're governed by two or more provinces or countries. You want to appoint someone who can make health and personal care decisions on your behalf if you are not able.

Examine whether to leave your estate to the beneficiaries either outright or through trusts. Think about whether a portion of your wealth should be dealt with while you are living. A family business succession plan may should tie into your estate plan.

3. Appoint representatives

Take great care in appointing capable representatives, powers of attorney, executors and trustees for your estate. They have similar powers as you do in dealing with your accumulated wealth.

Choosing the right guardians for minor children is vital. Your guardians and trustees may have duties lasting up to 18 years, or longer, depending on the children's ages and the life of the trust you create.

Appoint two qualified people for every position. Ideally, one should be younger than you and live in the same province. Grant them sufficient powers to perform their duties as you would.

Be certain each appointee wants the often thankless job. Understand that being an executor is no picnic. I also counsel clients to provide their appointees a detailed letter of instruction to make their tasks easier. They will likely encounter some family dynamics in need of attention and resolve.

4. Use of trusts
Trusts may often be useful in providing income for family members. They are part of the process to transfer assets and ensure your beneficiaries are cared for. However, they don't fit every situation. Generally, there are two types of trusts: A "testamentary trust" is established when you die. An "inter vivos trust" is set up while you're alive.

For example, some goals while living may benefit with an alter-ego trust or joint spousal trust. A spouse, child or other dependent may have special needs and care to be addressed.

5. Jointly-owned assets
A popular estate-planning strategy is for a parent to register an asset, such as an investment account or residence, in joint name with an adult child. Joint ownership is generally set up for convenience and to minimize probate fees.

While joint ownership can accomplish both objectives, complications may arise. Placing an asset in joint name with an adult child can result in unintended and unhappy consequences.

The implications of individual or joint ownership of assets need assessment for both income tax and probate purposes. Sometimes they are at odds.

6. Estate freezing
You may decide to freeze the growth for your account of some or all of the assets now owned. The family business or farm often comes up. The expected future growth on the selected assets can then be passed to the benefit of other family members, such as a child or grandchild.

One method to carry out an estate freeze uses the share structure of a private company. The general concept is for an individual to transfer certain assets at today's fair market value for shares of equal value in the private company.

An estate freeze should be considered as non-reversible. I focus on the adequacy of the assets remaining in the individual's hands before any transfers take place.

7. U.S. assets
U.S. citizens living in Canada and Canadians who own property in the U.S.should review the American estate tax treatment they face upon death. Unlike Canada, the U.S. imposes a tax on estates.

Generally, American citizens and residents are subject to an estate tax based on the value of their worldwide estate. If you are not a U.S. citizen or resident, you may have to pay U.S. estate taxes based on property value located in the U.S.

8. Cottages
Simply said, beware of cottages. They are full of wonderful memories, but can cause plenty of headaches. For example, squabbles may arise among family members who have differing views on what to do with them and who picks up the expenses.

Special attention is often required for cottages, particularly those that are not principal residences. They may have been bought long ago and could trigger substantial capital gains if sold today.

9. Getting it done

Don’t just think about putting together an estate plan – get it done. Make sure your professional team, which could include an investment adviser, tax practitioner or a lawyer, clearly understands your objectives. Then instruct them to put the best personal plan in place that reflects your wishes.

The cornerstone of your estate plan is a well-crafted will. Review your will every two to five years. Legislative changes and life events may both alter your objectives.

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