A Guide to Estate Planning

WHAT YOU NEED TO KNOW

This guide provides an overview of the estate-planning process and addresses the main elements of an estate plan.

Note that it is meant to serve only as a general reference guide because the subjects addressed vary among the provinces and territories.

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Why an Estate Plan?

Estate planning is an essential component of financial planning. By planning today for when you're gone, you can retain more of your assets, ensure your estate is distributed according to your wishes and leave a legacy for your family.

Think of it this way: Financial planning is about building your assets, and estate planning is about preserving them. And estate planning is not just for the wealthy. In fact, just about everyone can benefit from having an estate plan. Over time, your home, your RRSP savings and other investments can grow in value to represent a substantial estate.

With a well-thought-out estate plan in place, you can reduce the taxes and expenses associated with the estate's various assets, simplify and speed up the transition of assets to your beneficiaries and ensure that the beneficiaries are protected.

Get Started by Creating a Will

We recommend that you have a lawyer draw up your will to ensure your estate-plan documents are legal and accurately reflect your wishes. Also, be sure to appoint one or more individuals you trust to have power of attorney in the event you become incapacitated.

Most people tend to put off estate planning, but that can lead to numerous problems down the road. Significantly, a good estate plan, supported by an up-to-date will and power of attorney documents, gives you peace of mind from knowing you've made plans to protect your future and, most importantly, your family's future.

Key Elements of an Estate Plan

In addition to a will, there are several other common estate-plan components that you should consider when creating your estate plan. These include:

1. Ensuring all adult family members, in addition to yourself, have a valid and up-to-date power of attorney (Mandate in Quebec)
2. Evaluating insurance coverage (e.g., do you have enough coverage?)
3. Reviewing ownership structures (e.g., which assets will pass through your estate or outside your estate?)
4. Updating beneficiary designations on registered plans and insurance policies
5. Planning for taxes at death
6. Evaluating advanced estate planning opportunities (e.g., the use of trusts)
7. Considering charitable giving
8. Putting funeral arrangements in place

Effective estate planning requires careful consideration of many factors. Often, your efforts to achieve one objective, such as minimizing income taxes, will conflict with a different desirable objective. Be prepared to consider the costs and benefits of different courses of action, and to make some hard — but incredibly important — decisions.

6 Basic Points of Estate Planning You Need to Know

1 Wills

The will is the most basic of all estate planning tools. In fact, preparing a will is the only estate planning that many individuals will ever do. In addition to providing for the orderly transfer of assets following a person's death, the will can be used to minimize taxation following a person's death. A sound financial plan extends beyond your lifetime to include an orderly transfer of assets to your beneficiaries. If you neglect this aspect of your total financial plan, there will likely be added costs and delays in the transfer of your assets, and the beneficiaries of your estate will be determined by the operation of the law, without regard to your wishes.

2 Life Insurance

Most of our financial planning is based on the assumption that we will continue to live for a long time and, thus, can earn an income for as long as we choose. There is a possibility, though, that we won't live to a ripe old age, and good planning must take this risk into account. Life insurance can be used to prevent potential financial disruption. Additionally, it may be an appealing option if you want to minimize or avoid selling assets to cover taxes incurred upon your death. There are three kinds of life insurance: term, permanent and variable life.

- Term insurance policies, which must be renewed periodically, are less expensive initially but increase in cost in the later years.
- Permanent life insurance policies are expensive early on and tend to carry higher sales fees and premiums.
- Variable (universal) life insurance can offer low-cost insurance with tax-free investment features.

3 Probate Fees and Taxes

Probating a will is a legal process that certifies the document is valid. Probate fees are the amounts charged by the court to carry out the certification, and the cost can vary from province to province. In Ontario, the cost of probating a will starts at $5 per $1,000 for the first $50,000, increasing to $15 per $1,000 for any additional assets. With proper planning, you can reduce probate fees and defer taxes.

4 Testamentary Trusts

A trust is an effective tool for accomplishing a variety of tax and estate-planning objectives. Its flexibility allows the creator to establish it for numerous purposes while setting almost any desired terms and conditions. Common uses for a testamentary trust include providing for a disabled child and reducing a spouse’s tax on income from inherited investable capital.

5 Executors and Trustees

An executor directs and manages a will through probate court, ensuring that the specifications of distribution of assets are fulfilled. Trustees perform a slightly different function, managing assets left in the trust. However, the two terms are often used interchangeably. Executors and trustees are entitled to compensation for their services. Fees vary depending on the nature of the estate assets, the complexity of the work and the amount of time required. Family members or friends usually do not claim for executors' compensation. However, when a professional or trust company acts as executor, it will often charge the full amount permitted.

6 Power of Attorney

Power of Attorney is a simple but important document that gives your attorney (agent) the authority to manage your assets and affairs on your behalf. Many individuals grant a Power of Attorney to empower someone to make decisions on their behalf if they become legally incapacitated due to illness or accident. Without a Power of Attorney in place, court applications may be necessary for someone to obtain the authority to manage the affairs of the mentally incapacitated individual.

4 Steps to Implementing Your Estate Plan

1

Decide how you would like the after-tax value of your estate divided.

- Will your spouse have enough income to live comfortably? If not, how much of your estate will be needed to bridge the income gap?
- Consider additional insurance to cover any shortfall.
- Determine who will be the beneficiaries, taking into consideration the tax implications of your choice.

2

Choose your beneficiaries wisely.

- Your insurance policies should name direct beneficiaries, as this can protect the proceeds from creditors.
- RRSPs, RRIFs and FHSAs can be transferred to your spouse as beneficiary, allowing for a tax-free rollover.
  TFSAs can be transferred to your spouse as beneficiary or successor holder, leaving their contribution room.

3

Consider reviewing your will.

- Be sure to account for any special needs your family may have.
- Beware that most opportunities to defer taxes can be lost if your will is not properly drafted.

4

Speak to a financial advisor if you:

- Have a large amount of money in registered accounts or insurance policies and worry about the impact of income tax on your estate.
- Have large unrealized capital gains on investments or property and want to minimize the tax liability.
- Own your own business or a holding company.
- Seek to maximize your donation to a favorite charity.
- Put a high priority on minimizing taxes and probate fees.

Provincial Probate Taxes

Probate is the legal process of having a will validated by the courts.

Probate taxes vary considerably between provinces and territories, but in most cases, these taxes are a percentage of the value of the estate being probated.

Province/Territory	Estate Value	Probate Fee/Tax
Alberta	$10,000 or under $10,001 - $25,000 $25,001 - $125,000 $125,001 - $250,000 $250,001 and over	$35 $135 $275 $400 $525 (Maximum)
British Columbia	$25,000 or under $25,001 - $50,000 $50,001 and over	Nil $6 per $1,000 (0.6%) $14 per $1,000 (1.4%)
Manitoba	N/A	Manitoba probate fees were eliminated as of November 6, 2020.
New Brunswick	$5,000 or under $5,001 - $10,000 $10,001 - $15,000 $15,001 - $20,000 $20,001 and over	$25 $50 $75 $100 $5 per $1,000 (0.5%)
Newfoundland & Labrador	$1,000 or under $1,001 and over	$60 $60 + $0.6 per $100 (0.6%)
Northwest Territories	$10,000 or under $10,001 - $25,000 $25,001 - $125,000 $125,001 - $250,000 $250,001 and over	$30 $110 $215 $325 $435
Nova Scotia	$10,000 or under $10,001 - $25,000 $25,001 - $50,000 $50,001 - $100,000 $100,001 and over	$85.60 $215.20 $358.15 $1,002.65 $16.95 per $1,000 (1.695%)
Nunavut	$10,000 or under $10,001 - $25,000 $25,001 - $125,000 $125,001 - $250,000 $250,001 and over	$30 $110 $215 $325 $425
Ontario	$50,000 or under $50,001 and over	Nil $15 per $1,000 (1.5%)
Prince Edward Island	$10,000 or under $10,001 - $25,000 $25,001 - $50,000 $50,001 - $100,000 $100,001 and over	$50 $100 $200 $400 $4 per $1,000 (0.4%)
Quebec	No probate fees	Nominal fees apply
Saskatchewan	Any amount	$7 per $1,000 (0.7%)
Yukon	$25,000 and under $25,001 and over	Nil $140

Due date for filing tax returns for deceased individuals

Period when death occurred	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	Six months after the date of death

If the deceased or the deceased's spouse or common-law partner was self-employed, the following due dates for final returns are as follows:

Period when death occurred	Due date for the return
January 1 to December 15	June 30 of the following year
December 15 to December 31	Six months after the date of death

* Any balance owing would still be due April 30th of the year after death or six months after death if death occurred between November 1 and December 31.

RRSP, RRIF and FHSA at death

The deceased is deemed to have received the fair market value of all property held in a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or First Home Savings Account (FHSA) at the date of death. No amount is included in the deceased's income if the designated beneficiary or heir is an "eligible beneficiary" and certain conditions are met. An eligible beneficiary who acquires rights in an RRSP, RRIF or FHSA has several options for deferring the income tax on those amounts.

The following table summarizes the rules:

Heir/Beneficiary	Amount taxable at death	Transferrable to:(1) RRSP/RRIF	Transferrable to:(1) FHSA	Transferrable to:(1) Annuity
Spouse	Nil(1)	Yes	Yes	Yes
Child or grandchild financially dependent because of an infirmity	Nil(1)	Yes	No	Yes
Child or grandchild financially dependent not because of an infirmity	Nil(1)	No(3)	No	Yes(2)
Other	Fair Market	No	No	No

(1) Certain terms and conditions may apply.
(2) The annuity may provide for payments for a period of not more than 18 years, less the age of the child or grandchild when the annuity is purchased. Annuity payments must start no later than one year after the purchase.
(3) If the child or grandchild is not infirm, the funds cannot be rolled over to their RRSP/RRIF.

What happens to your TFSA at death?

Since contributions to a TFSA aren't tax-deductible, any withdrawals made during your lifetime are free from taxation, and the TFSA's value isn't taxed upon your death. Nevertheless, the management of the TFSA's value, along with any income accrued after death, can differ for your beneficiaries based on who inherits the TFSA and their place of residence.

TFSA Successor Holders Vs Designated Beneficiaries

Successor holder

Certain provinces allow for TFSA beneficiary designations, enabling TFSA holders in those areas to designate a successor holder either in the TFSA contract or within their will. A successor holder is specifically limited to a spouse or common-law partner. Upon the death of their partner, the named successor holder automatically becomes the new holder of the TFSA. Provided the TFSA did not exceed the allowable limits at the time of death, the beneficiary's unused TFSA contribution room remains intact despite assuming ownership of the deceased's account. They also have the option to transfer the new holdings into their existing TFSA account as a qualified transfer, which is tax-free and does not affect their unused contribution room.

Designated beneficiary

Alternatively, you can designate a beneficiary for your TFSA. If your spouse or partner is named as the beneficiary rather than the successor holder, they have until December 31st of the year of your passing to contribute any payments received from your TFSA—up to its value at the time of death—into their own TFSA, without impacting their unused contribution room. To qualify for this "exempt contribution," they must submit form RC240 – Designation of an Exempt Contribution – TFSA within 30 days following the contribution. It's important to note that any income generated between the date of death and the transfer will be taxable to the surviving spouse.

Designated beneficiaries may also include former spouses, children, a subsequent survivor holder who is the new spouse or common-law partner of the successor holder, and qualified donees. These designated beneficiaries will not incur taxes on payments from the TFSA up to its fair market value at the time of the holder's death. However, any income earned in the TFSA after death is taxable. A designated beneficiary can contribute any amounts received to their own TFSA, provided unused contribution room is available.

Transfer from an RRSP or RRIF to an RDSP

It is possible to transfer funds held in an RRSP or an RRIF at the time of death to a Registered Disability Savings Plan (RDSP) of a child or grandchild who was financially dependent on the deceased because of a mental or physical disability. However, the amount transferred must not exceed the beneficiary's RDSP contribution room of $200,000, and is not eligible for the Canadian Disability Savings Grant/Bond.

Transfer from an RRSP or RRIF to a Lifetime Benefit Trust

Section 60.011 of the Income Tax Act ("ITA") of Canada provides for the creation of a Lifetime Benefit Trust (LBT"), which is a discretionary testamentary trust that is funded by the tax deferred proceeds of a registered plan (RRSP, RRIF, PRPP, RPP or SPP). The LBT is required by the ITA to use the registered plan proceeds to purchase a Qualifying Trust Annuity ("QTA") for the sole benefit of a mentally infirm spouse/common law Partner of the deceased or the mentally infirm and dependent child or grandchild of the deceased. The QTA must either be for the lifetime of the beneficiary of the trust or for a fixed term equal to 90 years minus the age of the sole beneficiary of the LBT.

Provincial Intestacy Rules

“Intestate” is the term used when an individual dies without a will. Each province/territory has its own laws as to how assets are to be divided when someone dies without a will.

Province/Territory	Spouse & One Child	Spouse & Children
Alberta [1a]	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of the surviving spouse, the spouse gets 50% of the value of the estate, and the children receive the remainder of the estate.	
British Columbia [1i]	If all children are also children of the surviving spouse, first $300,000(6) + ½ of the remainder goes to spouse; if any of the children are not also children of the surviving spouse, the first $150,000 go to the spouse(6), ½ of the balance goes to the spouse, ½ of the balance to the children.	
Manitoba [1g], [1j]	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of surviving spouse, greater of $50,000 and half of estate goes to spouse(5). Remainder of estate is split ½ and ½ between spouse and children.	
New Brunswick	Marital property to spouse; balance split equally[1]	Marital property to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children[1]
Nfld & Labrador	Split equally[1]	1/3 to spouse; 2/3 to children[1]
Northwest Territories & Nunavut [1e]	First $50,000 to spouse, balance split equally[1,2]	First $50,000 to spouse; 1/3 balance to spouse, 2/3 balance to children[1,2]
Nova Scotia [1c]	First $50,000 to spouse; balance split equally[1]	First $50,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children[1]
Ontario	First $350,000 to spouse; balance split equally[1,4,7]	First $350,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children[1,4]
Prince Edward Island	Split equally[1]	1/3 to spouse; 2/3 to children[1]
Quebec [1d]	1/3 to spouse; 2/3 to child[1]	1/3 to spouse; 2/3 to children[1]
Saskatchewan [1b], [1i]	First $200,000 to spouse; balance split equally[1]	First $200,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children[1]
If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of the surviving spouse, the spouse gets 50% of the value of the estate, and the children receive the remainder of the estate.		
Yukon [1f], [1h]	First $75,000 to spouse; balance split equally[1]	First $75,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children[1]

Note: In some cases, provincial Family Law Acts can override these distribution formulas.
(1) Issue of a deceased child (i.e., grandchildren, great-grandchildren) takes that child’s share.
(1a) In addition to “spouse”, the Alberta Will and Succession Act refers to and accords equal rights to an “adult interdependent partner” or AIP.
(1b) “Spouse” in British Columbia and Saskatchewan includes common-law same-sex partners.
(1c) Domestic partners (common-law partners of any sex registered as such in Nova Scotia) will have the same rights and obligations as spouses under the Intestate Succession Act.
(1d) A civil union spouse has the same rights to inherit as a spouse. A civil union is a new legal institution in Quebec which entitles couples, whether of the same or opposite sex, to similar legal rights and obligations as married spouses.
(1e) Includes common-law partners.
(1f) If an intestate dies leaving a common-law spouse, under the Estate Administration Act, the court may order that whatever portion of the intestate’s property that it deems appropriate be retained and allotted to the common-law spouse for support and maintenance.
(1g) The Intestate Succession Act of Manitoba, provides common-law opposite-sex or same sex partners with equal rights to those of a married spouse upon intestacy.
(2) Spouse may elect to receive house and contents in lieu of $50,000.
(3) Plus household furniture and life interest in family home.
(4) Subject to possible equalization claim under Family Law Act.
(5) Plus, life interest in the home (Homestead Act) and a possible equalization payment under the Family Property Act.
(6) Plus, household furniture.
(7) Ontario - based on Ontario Regulation 54/95 “preferential share” equals $350,000 as of March 1, 2021. Saskatchewan – based on I-13.2 Reg 1 “prescribed amount” equals $200,000.

Strategies for Minimizing Probate Fees

There are a number of methods you can use to decrease probate fees on your estate. Since probate fees are assessed based on the value of your estate, most methods involve passing assets directly to others without them having been included in your estate.

Life Insurance Policies

Often people make their estate the beneficiary of their insurance policy. The problem with this approach is that it leaves the proceeds subject to probate fees. It's better to name an adult as beneficiary. This way, the proceeds go directly to that person, rather than passing through your estate.

Registered Plans (RRSPs)

If your spouse is named as the beneficiary of your RRSP, RRIF or FHSA, the proceeds can be rolled over to them directly without going through probate.

Joint Accounts

If you hold your bank accounts and investment portfolios jointly with your spouse or other beneficiary, the assets will automatically pass to the survivor. The status of your accounts should be: Joint tenancy with right of survivorship.

Joint Tenancy

Similarly, if you own your home jointly, it will pass directly to the surviving partner without probate.

Trusts

Consider transferring assets to a trust while you are alive. Assets held in a living trust are not included in your estate because they are no longer your property. Assets bequeathed to your spouse will be subject to probate fees when he or she dies. To avoid paying probate fees twice, you may want to set up a spousal trust in your will, so the assets pass directly to your children when your spouse dies.

Final Thoughts on Probate

Due to the high probate fees in many provinces, particularly Ontario, taking steps to reduce or avoid probate fees has become an important element of estate planning. Typically, one or more of several available probate-fee minimization strategies can be used to achieve your goals.

Whether or not a given strategy is right for you will depend on the nature of your assets, the size of your estate and the need to avoid any undesirable consequences related to your income tax. It's also important to consider how your tax-minimization efforts could affect any other estate-planning objectives you may have.

All that said, it may not make sense for you to invest significant effort in avoiding probate fees. Ultimately, it's a question of the costs and benefits. For example, probate may not benefit you if you're leaving behind only minimal assets or if you're married and plan to leave everything to your spouse.

Here's where we can help!

We first prepare and review a comprehensive financial plan – *which includes a well-thought-out estate plan.*

Then we help you decide on the best options for investing, building your portfolio and implementing your estate plan.

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