



## YOUR ESTATE PLAN

# Do You Have These Four Key Elements?

Benjamin Franklin once noted that *"in this world, nothing can be said to be certain except death and taxes."* Yet, despite these certainties, many of us fail to plan ahead. In fact, the majority of adult Canadians don't have a recently updated will, which is the cornerstone of any estate plan. And, perhaps somewhat surprising, despite greater access to estate planning education and resources for many individuals, over the years these statistics largely haven't changed. Thirty years ago, an Angus Reid poll suggested that only half of Canadians had a will in place. Since that time, surveys done every few years have yielded similar results.<sup>1</sup>

The reasons are many: The task of creating an estate plan is routinely pushed back due to other life priorities. Others may assume that only the wealthy may benefit. For some, estate planning may evoke discomfort as it forces us to think about our own mortality.

Yet, the significant benefits that arise from establishing a solid estate plan should not be overlooked. It goes well beyond

just arranging for the distribution of your assets – it may also include important instructions on caring for children or family, how to approach medical or financial decision making if you are unable and can extend to creating effective wealth planning solutions so that more of your assets can be passed on to your heirs.

As you consider your own estate plan, there are four key elements that should be considered:

- 1) Power of Attorney/Mandate;
- 2) Living Will/Advanced Directive;
- 3) Standard Will; and
- 4) Trust(s).

Do you have these elements in place? If so, when was the last time you reviewed them? Given our familiarity with your financial position, we can act as a resource and also work alongside experienced estate planning specialists to help you address your needs.

Here are the four elements, in greater detail:

### 1. Establish a power of attorney/mandate.

Do you have a plan in place to support you in the event you are unable to speak for yourself? An important aspect of estate planning is to identify a person(s) you trust to make financial and/or healthcare decisions on your behalf, often called an "attorney" or "mandatary." The power of attorney is a legal document that allows the chosen individual(s) to make financial or healthcare decisions if you cannot act for yourself. While the name, terms and conditions may vary by province, generally there are two separate documents for financial and medical powers of attorney.

A financial power of attorney will be responsible for opening mail, contacting financial institutions, transferring assets and paying bills, as well as making other financial decisions in the event you become incapacitated. As such, appointing someone trustworthy is important. A healthcare power of attorney can make medical decisions on your behalf. Generally, establishing a living will (see section 2, below) can help to provide guidance in determining the care you desire. Oftentimes, a spouse or adult child is named to this role, and it may be helpful to have an alternative named if the initial designated person is unable to act. Having conversations to communicate your wishes while you are healthy and able can help to make the job easier for the chosen individual, should they ever need to fulfill the role.

### 2. Create a Living Will/Advanced Directive.

What kind of care would you wish to receive if you were unable to communicate? In provinces where applicable, a living will (which is sometimes referred to as an "advanced directive") allows you to specify certain medical or lifestyle decisions

should you become unable. This may be useful to clearly indicate your wishes and can provide guidance to caregivers in the event it is needed. Within a living will, instructions relating to the following preferences and aspects of your care are often specified:

- Pain relief and palliative care;
- Life-prolonging treatments, including blood transfusion, medication or surgery;
- Administration of food and water, including tube feeding;
- Artificial life support, such as intubation and ventilators; and
- Do-not-resuscitate (DNR) orders.

### 3. Make a Will.

How will you pass along your assets? A will helps to pass along material possessions in accordance with your personal wishes. If you have minor children, the will should also designate who will be their guardian. The will is the cornerstone of any estate plan. Without it, you will be considered to die "intestate," which means that assets will be divided according to rules laid out by your province of residence. Provincial laws vary, such as differing rules for the amount of preferential share of an estate that will be received by the spouse, how much will be held in trust by the provincial trustee if you have minor children and differences in recognizing common-law spouse status under intestacy.

Within a will, an executor will also need to be appointed – a person or institution who will oversee the management of the estate and carry out the instructions set forth in the will. In some cases, you may consider designating an alternative executor in the event that the named individual(s) is unable or unwilling to serve as executor. The duties of the executor can be significant and may include arranging the funeral, finding, itemizing or managing estate assets, arranging probate (in provinces where applicable), calling financial institutions to notify them of the death, managing income tax returns, liquidating or distributing assets as directed by the will, and more. Consider that many of these duties may need to be carried out during a time of grief. As such, it is not only important to choose someone who is trustworthy and responsible, but it is also important to communicate with your potential executor(s) to make sure they are willing to take on this important role. You may also consider selecting a professional executor, such as a trust company, to perform the executor duties.

As you consider the assets that will be included in your will, some forward planning may help to better pass along these assets in the future. For instance, in many cases, the potential future tax liability associated with certain appreciated assets, such as a business or cottage, can be so significant that an estate will need to liquidate the asset to cover the tax expense. There may be opportunities to structure your financial assets in a way to more efficiently address the potential tax liabilities. This may include the use of life insurance, charitable giving or other tax-planning strategies. As investment advisors, we can help to recommend and work alongside insurance and tax-planning specialists to find solutions that support you and your wealth plan.

#### 4. Consider the Value of Having a Trust.

If something were to happen to you, would family members need ongoing financial security or support? In some cases, creating a testamentary trust as part of an estate plan can help to provide asset protection, preservation and growth by limiting access and specifying the timing and amount of distributions to be made to beneficiaries. A trustee may be appointed to manage particular assets, such as a private corporation or investments, for the benefit of a spouse or other beneficiaries, such as minor or disabled children. There may be other benefits, including:

- Protecting assets from current or future creditors;
- Legacy planning to preserve a portion of the estate for children outside of your current marriage;
- Capital gains planning using a spousal trust to help defer taxes until assets are sold or the surviving spouse passes away; and
- Safeguarding assets from future relationships in the event of changes in family matrimony.

#### Other Considerations

Beyond the importance of considering the four elements discussed above, there may be other aspects to consider. Beneficiary designations for registered plans (not including Quebec) and life insurance may help to assist in the distribution of your estate. If we can assist with updating beneficiaries,

please contact us. The arrangement of assets, such as the use of joint ownership with rights of survivorship (not including Quebec), may also help ease the transfer of assets upon death but can introduce other estate planning complexities. Life insurance may be a valuable tool for tax planning, to provide financial security for loved ones or preserve an estate's assets.

Also of importance is updating your plan in the event of major life changes – such as marriage, divorce, births, adoptions, death or establishing a business – to make sure that it continues to reflect your desires and needs. Beyond these changes, many estate planning experts suggest reviewing the plan every three to five years as the legal landscape may have changed as well. Even if there haven't been major changes, it is important to check in with those individuals you have appointed to support your estate plan to confirm that they continue to be willing and able as time goes on (see, "Who are the Key Players").

One of the greatest legacies you can leave is having a thoughtful plan that includes the instructions and documentation to pass along your assets in the way you desire. This should also provide you with comfort, knowing that your loved ones will be well cared for into the future. As estate planning is governed by provincial legislation, it is important to consult local legal and estate planning professionals. For an introduction to those who can assist, please get in touch.

<sup>1</sup> "Finding the Will to Write," Ellen Roseman, The Globe and Mail, March 10, 1993, B10.

"Click Here for a No-Fuss Legacy," Rob Carrick, The Globe and Mail, May 15, 2012, B15.

<https://www.bnnbloomberg.ca/51-of-canadians-don-t-have-a-will-in-place-poll-finds-1.976147>

Recent surveys suggest that despite Covid-19, the overall percentage of individuals who hold a will has not significantly changed, but the number of young adults who have a will has increased over the pandemic. <https://www.caring.com/caregivers/estate-planning/wills-survey/>

## YOUR ESTATE PLAN

# Who are the Key Players?

Your estate plan includes more than just you. Various individuals will help to support different components of your plan. Here are the key players:



**Legal Attorney** – A will and estate lawyer will guide you through the process of creating your estate plan. You may wish to seek support for more specialized areas of estate law depending on your personal situation, such as special needs planning, corporate planning, elder law or complex family structures.



**Investment Advisor** – We are here to help you take inventory of your assets and work alongside estate planning specialists to structure a plan that helps you to meet your wealth goals for your loved ones.



**Wealth & Estate Planner** – Canaccord Genuity has a nationwide team of Wealth & Estate Planning Specialists who build plans that consider your current needs, retirement plans and the estate you may leave. This can help you be best prepared to discuss the legal documentation required with an estate lawyer.



**Estate Executor/Liquidator** – You will need to designate an individual(s) to manage the administration of your estate. Settling an estate generally takes around 18 months on average, but some estates may take several years to settle

depending on complexity. Given that the scope of the executor's duties may be significant and time consuming, some individuals have considered the use of a corporate executor to act in this role.



**Power of Attorney/Mandatary** – Within your power of attorney /mandate documents, you will need to appoint individual(s), often called the "attorney" or "mandatary," who will help to make financial or healthcare decisions based on your instructions in the event you are incapacitated.



**Trustee** – If you establish a trust, you will need to designate a trustee who will be responsible for managing the assets and related administrative aspects of the trust. In some circumstances, a corporate trustee may be an appropriate choice, especially in instances in which the trust is complex.



**Guardian** – If you have minor children, it is important to appoint a legal guardian for their care in the event that both parents pass away. A guardian may also be considered for adult dependent children, such as those with special needs, or for elderly parents who need ongoing assistance.