

Estate Planning Basics



For some Canadians, the concept of “estate planning” is often synonymous with Wills and Powers of Attorney. It is important to note, however, that those crucial documents should not be considered the entirety of estate planning, but rather the written results of a detailed, multi-step process. Some of the key steps you should take to help ensure your estate plan is up to date and tailored to your needs and circumstances include:

1. [Information Gathering](#)
2. [Goal Setting](#)
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1. Information Gathering

Before you consider meeting with a lawyer to have your Wills, Powers of Attorney, and any other relevant estate plan documents prepared, be sure that you've collected all the necessary information that you, and subsequently your Will and Estate lawyer, will need to form a comprehensive picture of your life, and the people and goals that are important to you. These details can be broken down into the following categories: i. your personal situation, ii. your financial and asset information, and iii. your intended beneficiaries (i.e. those you would like to benefit through your estate plan).

Your personal situation

The information that will be relevant in this section of your data collecting provides the who, what, and where of your life and any complicating circumstances that might require advanced estate planning strategies. Some important details would be: your place of birth, citizenship and residency, your marital status and the relevant documents pertaining to your status (e.g. domestic contract or separation agreement), your occupation, any health concerns you have which may need to be addressed through your estate plan, and the possible complications that exist now or may occur in future which may require special attention (e.g. an ongoing lawsuit or a potential claim against your estate).

It is important that you provide a full and unfiltered account of these details since they might play a significant role in your estate plan.

Your financial and asset information

This section of your gathered information should cover all of the details that outline what you own and what you owe. You will want to list your assets, how much they cost you at acquisition, how much money you put into significantly improving the asset, and how much you estimate the fair market value of the asset to be if you were to sell it today.

Another important detail in this section of your information gathering is how the asset is held. This may seem like basic information, but it can be more complex than you

realize. For instance, assets may be held by you personally, through a corporation of which you hold shares, or through a trust of which you are a beneficiary. You may assume you own the asset insofar as you have had unfettered use of the asset, but you may not own the asset personally. You may also not be the sole owner of the asset, so your exact ownership interest should also be noted. This information can have a significant impact on your estate plan.

It is a best practice to note any conditions or restrictions regarding your use, ownership, and ability to transfer the asset. For example, you may wish to leave your shares of your family's business to your spouse, but you may be subject to a Shareholder's Agreement which specifies that your siblings have the right to buy your shares from your estate. Another factor which may restrict your ability to transfer an asset would be different modes of ownership, such as: joint tenancy, tenancy-in-common, or a life interest. You may wish to leave your interest in a property to your children, but your interest in the property may be a joint tenancy which means your interest would go to the co-owner of the property by right of survivorship at your death. If you are not able to ascertain these details for yourself, your real estate lawyer will be able to assist you.

It is also important to note any liabilities you may have, including the terms regarding security and repayment. Your financial information should include details of any money owed to you, the terms of the loan, and whether you would like the debt(s) forgiven or collected at your death.

And it is very important to think about the accrued income and capital gains taxes that may be associated with the various assets, as well as other forms of expenses, such as probate fees.

Understanding the liquidity of an estate allows individuals to have certainty regarding the beneficial entitlements they want to leave. Having a detailed listing of assets, liabilities and tax, is necessary to confirm that the objectives reflected in the estate plan are achievable.

Your intended beneficiaries

You should include full biographical details for the people you would like to benefit through your estate plan. These details may include: full legal name, their date of birth,

their citizenship, residency and place of birth, their relationship to you, and their contact information.

Next, take note of any health or financial issues for your beneficiaries which may require advanced estate planning strategies. It is important to be forthcoming with this information, even if it is delicate or sensitive, so your lawyer may assist you in putting the appropriate strategy in place to deal with the issue. For instance, if one of your beneficiaries has poor money management skills and consequently has creditors, your lawyer may recommend a trust to protect your beneficiary from mismanaging the funds and prevent their creditors from having access to the capital of the trust. If you have a disabled beneficiary who is receiving provincial disability support, it is important that your lawyer be made aware of this fact so they can structure a trust for this beneficiary that would preserve their government benefits if that is important to your beneficiary.

If you would like to benefit charitable organizations through your estate plan, you should note their registered charitable name (which may be confirmed on Canada Revenue Agency's Charities Listing) and which branch of the organization you would like to benefit.

Under this section, you should also include information about the individuals you have specifically chosen not to benefit. If you have an estranged family member who may be expecting an inheritance from your estate, it is important for your lawyer to know why you have chosen to not leave part of your estate to this individual and the history behind the estrangement. This information may prove helpful in the event of a Will challenge and it will provide your lawyer with the information they need to minimize the risk of a claim against your estate.

2. Goal Setting

Your task at this stage of the estate planning process is to consider your priorities and set goals for your estate plan. You should consider what legal and moral obligations you have that must be fulfilled through your estate plan. You should then consider which other goals you would like fulfilled, whether they be tax minimization, asset protection, charitable giving, or simply providing

for loved ones after death and distributing assets on a timely basis.

The primary goal in many individual's estate plans is to ensure that they have left enough for their dependents – their spouses, minor children, and any adults they are providing regular support to – and how that inheritance should be structured to enable these dependents to thrive. A goal specific to business owners might be equalizing the estate between beneficiaries involved in the business and those who are not involved in the business. With blended families, the goal might be leaving a regular income stream to a surviving spouse while preserving the capital of the estate for children from a prior marriage.

You should also consider your charitable intentions in this section of the estate planning process. You may have charitable goals you would like to accomplish through your estate plan but are unaware of the organization that carries out that type of work. Also, one of your goals may be to leave a lasting legacy to a charitable organization beyond just a one-time gift from your estate. If you identify these philanthropic goals, your lawyer will be able to assist you to find the organization or suitable charitable structure that best aligns with your objectives.

It is important that you consider who will be able to carry out your stated goals during a potential incapacity or after your death. You may have different individuals in mind for different tasks. A close friend may be quite financially astute, trustworthy, and have the time to devote to administering your estate so they may make a good option as your estate trustee. A relative may be very good in an emotional crisis and have experience navigating the health care world so they may be your natural choice for your attorney for personal care.

When you are considering the various individuals you would like to fulfill these roles, consider their location, their age, their experience, and their ability to devote the time to these roles. You should take the opportunity to confirm that these people are willing to act in the roles you have in mind for them and you may also wish to discuss their expectations regarding compensation for carrying out these roles.

If there are complexities in your estate or you do not wish to put the burden of these responsibilities on the shoulders

of your loved ones, you may wish to consider whether professionals would be better able to undertake these duties. A few options to consider include: a trust company, a lawyer, or an accountant. It is important that you speak with a representative from the organization to get a sense of the service they provide and whether they are willing to act in that capacity for you.

3. Implementation

Once you have gathered the necessary information and thoroughly considered your obligations and goals, the next step in the estate planning process is to find a Will and Estate lawyer who will help you implement your estate plan. A good resource may be the Law Society of your province or territory insofar as they will be able to refer you to a Will and Estate lawyer certified by them as an expert in Will and Estate matters. You may also wish to consult with a lawyer who holds a Trust and Estate Practitioner (TEP) designation granted by the Society of Trust and Estate Practitioners (STEP).

You may also consider doing your own research to determine which lawyers in your area specialize in estate planning or have estate planning as one of the primary service areas of their practice. You may wish to consider recommendations from friends and family members, but it is advisable that you confirm that the lawyer being recommended to you is a specialist in estate planning or has estate planning as a primary service area of their practice.

Once you have engaged your estate planning lawyer, they will work with you to ensure that they have an understanding of you, your financial information, your intended beneficiaries, and any complications that might arise in your estate or during a potential incapacity. This information is crucial for your estate planning lawyer and it will prove helpful for them that you have gathered this information in advance.

Your lawyer will then be able to work on your personalized estate plan, which may include the following documents: Wills, Powers of Attorney with respect to property, Powers of Attorney with respect to personal care, trusts, and other documents or structures which may be necessary or beneficial to carry out your goals.

After these documents are prepared and executed, it is important that you follow your lawyer's advice regarding the safe storage of these documents.

4. Regular Reviews

Your information, your beneficiaries' information, and your obligations, priorities and goals may change throughout your life, so be sure to revisit your plan often and make revisions to mirror these new circumstances.

It is recommended that you review your documents every three to five years or as circumstances change in your life that might necessitate a review. Such circumstances may include: a change in your marital status, a move to a different jurisdiction (i.e. a different province or a different country) for yourself or your executor, birth of a new beneficiary, death of a beneficiary, an illness or disability for one of your beneficiaries that might have a prolonged impact on their future, or an acquisition of an asset that might require specific estate planning. Changes to existing federal and provincial laws including income tax legislation as well as changes in case law may also have an impact on estate planning and may warrant an update to your estate plan.

It is prudent to discuss these changes with your Will and Estate lawyer to determine whether a change is necessitated in your estate plan documents. Oftentimes lawyers will build contingencies into your estate plan documents to cover some of these situations, but it is a good idea to let your lawyer know of these changes in circumstances so they may note them down in their file even if a change to your estate plan documents is not required at this time.

Considerations

Estate planning is a multi-step and ongoing process which takes into account your unique personal and financial circumstances as well as those of your intended beneficiaries, your family dynamics, and your goals and intent. It can be a daunting undertaking but it doesn't have to be. With the help of qualified Will and Estate professionals, no matter your life stage, it is never too soon or too late to be engaged in developing, implementing and updating a plan that can satisfy your estate planning objectives.

Speak with your TD Advisor to help outline your goals and determine if further planning is required to ensure all steps in the estate planning process are up to date and aligned with your situation and objectives.



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