

# Passing on Your Wealth – What you need to consider

This guide has been developed as a practical overview of things that you should consider and the personal matters that need to be addressed when preparing your Will and estate plan. We recommend that you consider periodically reviewing your Will, estate plan and any trust arrangements you may have established to ensure that they are up-to-date.



# Getting started

Will and estate planning is an essential part of every wealth plan. Some people assume that without a Will, everything will go to their spouse and/or children when they die, which might not be the case. Many avoid what can be a difficult discussion with loved ones. Others simply don't make the time to plan for something that seems a long way off.

A number of people will die "intestate," meaning without having a valid Will. A Will is a legal document in which you designate someone to administer your property (the Executor<sup>1</sup>), tell that person how your assets should be distributed and, if necessary, express your wishes as to guardianship of your minor children. Your Will must be made according to the law of the province where you live. Those laws may also impose some limits on how you can distribute your estate.

A Will is only one part of an overall estate plan, however. An estate plan is a combination of a valid Will and a strategy for directly transferring assets through joint ownership or designated beneficiaries. In many cases, living or testamentary trusts are also helpful to achieve a number of goals.

Even if you do not think your estate is complex or large, you may be surprised by the extent of your property when you consider your home, registered accounts, life insurance, investments, and business assets. A Will is an essential part of your estate plan that reflects your values and considers your needs today, as well as the best interests of your loved ones down the road. It is as important as saving for your children's education, investing for your retirement or any other considerations in your wealth plan. It provides you with the comfort that comes from knowing that you've provided family members and your executor(s) with the information they need to act on your behalf and oversee the passing on of your estate according to your wishes.

## Step 1 Assemble key documents

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You'll need to gather a number of information sources before you begin the estate planning process, including but not limited to:

- Address book
- Real estate documents
- Bank account statements
- Credit card, loan, and mortgage statements
- Investment account and RSP statements
- Pension statements
- Vehicle ownership(s)
- Recent tax return and notice of assessment
- Insurance policies
- Separation agreement and/or divorce documents
- List of liabilities/debts
- A listing of digital assets and passwords (online accounts, websites, digital photos, videos, songs, and other electronic property)
- Current Wills and/or Codicils

## Step 2 Know what you have

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Using your current financial situation as a guideline, begin by identifying assets you own and how you own them, and those that have designated beneficiaries, such as your registered investments, pensions and life insurance policies. Then identify liabilities you owe, including any significant debts.

Examples of assets you may own:

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|--|--|--|
| <input type="checkbox"/> Bank accounts               | <input type="checkbox"/> RESPs             | <input type="checkbox"/> Pension plan            |
| <input type="checkbox"/> Investment accounts         | <input type="checkbox"/> RDSPs             | <input type="checkbox"/> Private business shares |
| <input type="checkbox"/> GICs/Term deposits          | <input type="checkbox"/> TFSAs             | <input type="checkbox"/> Principal residence     |
| <input type="checkbox"/> Stocks, bonds, mutual funds | <input type="checkbox"/> Other investments | <input type="checkbox"/> Other real estate       |
| <input type="checkbox"/> RSPs                        | <input type="checkbox"/> Annuities         | <input type="checkbox"/> Loans owed to you       |
| <input type="checkbox"/> RIFs                        | <input type="checkbox"/> Life insurance    |  |

Examples of liabilities you may owe:

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|--|---|
| <input type="checkbox"/> Mortgage              | <input type="checkbox"/> Other loans or debts |
| <input type="checkbox"/> Loans/Lines of credit | <input type="checkbox"/> Income tax           |
| <input type="checkbox"/> Credit cards          |   |

\*Not applicable in Quebec.

## Step 3 Decide what your Will and estate plan should achieve

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While your goals are unique to your circumstances, some common objectives you may wish to consider include:

- Providing for loved ones
- Distributing assets according to your wishes
- Selecting responsible guardians for your children
- Making sure your estate has sufficient liquid assets to pay taxes and other liabilities
- Maximizing the value of your estate assets
- Giving to your community or a charitable organization

Listed below are some common issues you will want to minimize or avoid. Make note of what might apply to your circumstances:

- Leaving a financial burden for your family
- Incurring delays in settling your estate
- Leaving a tax burden on your estate
- Incurring unnecessary estate costs
- Adding to family stress at a difficult time
- Affecting a beneficiary's entitlement to government assistance

## Step 4 Choose how you want your estate distributed

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Below are several strategies you may wish to consider for distributing your assets. Each strategy can be complex. TD can work with you, bringing in specialists when needed, to examine your options and create a solution that helps meet your needs.

- **Gifting assets before death** – Passing assets on to your beneficiaries during your lifetime. These gifts can be both financial and personal.

- **Distributing assets in your Will through your estate** –

Your Executor distributes assets within your estate to the beneficiaries (as specified in your Will) after all outstanding debts and taxes are paid, and any tax issues with Canada Revenue Agency (or other tax authorities) are resolved.

- **Distributing assets outside your Will** – some investments held in registered plans, including TFSAs, life insurance policies and pensions, may not be subject to probate fees (fees paid to Court to have the Will validated; usually mandatory) provided there is a beneficiary other than your estate (allowed in most provinces/territories) named in your Will, or designated directly with the plan or policy administrator.



- **Joint Ownership** – Joint ownership of an asset may allow an asset to pass directly to the survivor without passing through the estate.
- **Insurance** – In many situations, life insurance policies, with a designated beneficiary appointed within, provides an efficient, cost-effective way to pass on your wealth. Under current Canadian tax law, life insurance proceeds are received tax-free, providing liquidity that could be used to pay taxes and other expenses that arise at death.
- **Establishing a Trust** – A legal arrangement by which you transfer property to a trustee to be held for the benefit of one or more beneficiaries. The trustee owns and manages the trust property for the beneficiaries.
- **Charitable giving** – Many people choose to leave a legacy to or for a cause they believe in. In addition to the altruistic and goodwill benefits a charitable contribution brings, it can also have significant tax advantages.

## Step 5 Choose your Executor(s)

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The Executor(s) is the individual(s) or estate professional (trust company) appointed in your Will to administer your estate after your death. Many people believe they are bestowing an honour on family members or friends by naming them Executor. However, the duties of an Executor can be onerous.

Being an Executor is a complex role that includes many duties, some of which call for specialized expertise. Among them:

- Make funeral arrangements
- Locate, identify and prepare a detailed statement of assets and liabilities valued at the date of death
- Ensure all property such as real estate, investments, businesses, etc., are managed, protected and insured, if necessary, during the estate administration
- Apply to the court for probate, which may involve retaining a lawyer
- Communicate with beneficiaries as the estate settlement progresses, and address any questions or concerns as they arise
- Pay bequests and distribute gifts of property according to the Will
- Retain sufficient cash to settle final debts and/or expenses of the estate
- Prepare and file final tax return(s), pay any outstanding taxes and obtain tax clearances from Canada Revenue Agency



Executors can be held personally liable for errors made in administering the estate. In addition to determining whether your chosen Executor has the expertise to carry out your estate settlement, he/she should also ideally live near you (estates are administered in the jurisdiction where the deceased resided?), agree to take on the role, and have the time to carry out all of the estate settlement duties, which in some cases can take years.

It's also important to consider the potential impact of your choice on family dynamics – naming only one of your children as Executor, or all of your children as co-Executors, for example.

If your estate is complex, or you feel that the burden of the Executor role is too much to ask of a loved one, help is available. You may choose to name a professional Executor or co-Executor to look after all or a portion of the settlement of your estate (tax returns and administration, for example). TD can help arrange these services for you, if you wish. Alternatively, your Executor has the option of hiring a professional to assist him/her in settling your estate. You can add a note in your Will to your Executor about these services.

The benefits of working with an Estate and Trust specialist extend beyond the relief of having professional support at a trying time – they can also help to maximize the value of your estate for your beneficiaries through expert handling of estate assets and taxes.

Whatever level of professional support you need, TD can help. We will work with you and a TD Wealth Estate and Trust specialist to build an estate plan that works for you and your family.

## Step 6 Prepare your Will

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**Have a lawyer draft a Will for you** – Your Will should be prepared by a lawyer who is familiar with Wills and knowledgeable about how to complete the necessary legal work. Depending on your situation, you may also enlist the expertise of other specialists, such as tax and estate planning professionals, to help ensure that your estate is organized in a tax-efficient manner.

## Step 7 Prepare your Power of Attorney<sup>3</sup>

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Part of a complete estate plan includes planning for possible illness, accident, or other disability that leaves you unable to manage your financial affairs and personal medical care.

A Power of Attorney for Property is a legal document that allows you to appoint another individual to manage your financial affairs during your lifetime including instances where you are unable to do so. Similar to choosing a professional Executor, many people are choosing to name professionals as their Attorney for Property should the need arise to have someone manage their financial affairs for them.

In some provinces/territories, it is possible to name a Power of Attorney for Personal Care (or the equivalent), which allows you to appoint someone to make decisions on your behalf concerning your nutrition, shelter, clothing and consent for medical



treatment or withholding treatment, should you become incapable of doing so. TD will work with you and your legal advisor to help you determine the best solutions for you. In all cases, Powers of Attorney arrangements terminate upon your death, at which time your Will takes effect. Preparing your Will and your Power(s) of Attorney at the same time can help provide continuity of your affairs at the end of your life.

## Step 8 Prepare the rest of your estate plan

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TD can work with you to map out the remaining elements of your estate plan. Many trust companies, including TD, have tax and estate planning professionals on staff who can help guide your overall estate plan. TD also offers certain complementary services should you choose to appoint The Canada Trust Company, such as safekeeping your Will.

## Step 9 Review your estate plan regularly

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Completing your estate plan can feel like a huge relief, knowing that the legacy you want to leave for your loved ones has been clearly documented. It's important to revisit your plan periodically to ensure that it is up-to-date. There are a number of life changes that should trigger an immediate review of your estate plan and key documents, including:

- A change in your marital status
- A move to another province or country
- Births or deaths in your family or with other named heirs or dependants
- A significant change in your health
- A significant change that affects the suitability of your named executor or power of attorney
- A significant change that affects the suitability of your named guardian(s) for your dependants
- A significant change in your estate's value
- A change in your philanthropic goals
- A change to the laws governing estate and incapacity planning that may affect your Will and estate plan



<sup>1</sup> "Liquidator" in Quebec; "Estate Trustee with a Will" in Ontario.

<sup>2</sup> Except in cases where the deceased has property in multiple jurisdictions.

<sup>3</sup> Called Mandates in Quebec.

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