

The importance of assistance





Creating Your Legacy

Peace of mind and a happy family are common goals for estate planning. Estate planning is the ongoing process of managing, preserving and transferring wealth. You can eliminate uncertainties and ensure a smooth distribution of your estate by anticipating and planning for the transfer of your assets. With a properly structured estate plan, you can maximize the value of your estate by reducing taxes and other related costs as well as reducing the stress on your beneficiaries.

By creating an estate plan, usually with the assistance of an advisor, you can prevent complications in transferring assets due to unforeseen circumstances such as court costs, litigation between family members or unintended tax consequences. An advisor can assist you with fulfilling your financial and personal goals through a careful review of your needs and priorities.

Incapacity planning is an important step to prepare for the reality that many Canadians may suffer from some form of disability or diminished capacity at some point in their lives. Plan for these events and provide guidance to your family members by legally appointing someone to make financial and personal and health care decisions on your behalf. Clear direction reduces the guilt and worry of your loved ones over decision making as you will have left them with a road map to follow.

Steps in Setting up an Estate Plan

1. Gather Your Information
2. Set Your Goals
3. Plan How to Achieve Your Goals
4. Plan for Your Personal Well-Being in the Event of Incapacity
5. Implement Your Plan: Consult the Professionals
6. Review Your Plan Regularly

1. Gather Your Information

Prepare a summary of your estate by making a list of your assets and liabilities, including a description of the type of ownership and the approximate value of each asset. Assets may include real estate, private company shares, bank accounts, investments, registered plans, personal property, pensions and insurance policies. Also include information regarding any designated beneficiaries as well as agreements made during your lifetime such as shareholders or partnership agreements, spousal, cohabitation, prenuptial, common-law relationship, separation or divorce agreements. You should also gather your existing will, power of attorney for property, power of attorney for personal and health care, and trust deed, if applicable.

2. Set Your Goals

Important considerations include your choice of executors and trustees, as well as your choice of beneficiaries and alternate beneficiaries, taking into account their life circumstances, their capacity to manage your gifts and the potential timing of those gifts. Also reflect on the appointment of guardians to care for the well-being of your minor children. As minors may not be legally entitled to own or manage the assets you wish to give to them until they attain the age of majority, consider setting up trusts for such minors in your will and reflect on your choice of trustees to manage the assets on behalf of the minors.

3. Plan How to Achieve Your Goals

There are many ways to transfer your assets to your intended beneficiaries. Suitable options depend on your personal, financial and tax situation. Strategies may include executing wills, creating testamentary and inter vivos trusts; charitable gifts; debt forgiveness; joint tenancy; gifting during your lifetime; and designating beneficiaries for registered vehicles such as pension plans, RRSPs, RRIFFs, TFSA's and for insurance products.

We recommend that you consult with qualified advisors prior to implementing any of these strategies, as some strategies may result in reduced control over your assets and may have unexpected consequences for your estate.

4. Plan for Your Personal Well-Being in the Event of Incapacity

An individual may suffer from temporary or permanent incapacity for a variety of reasons. Without the proper planning, if you are no longer able to manage your property and/or make personal and health care decisions, your loved ones may need court approval to act on your behalf, which is expensive, time consuming and stressful. Legislation in all Canadian provinces provide solutions which make it possible to effectively plan ahead for these events with the use of certain legal documents.

5. Implement Your Plan: Consult the Professionals

An experienced professional can advise you on legal pitfalls, help to simplify your estate plan and create the most appropriate structure to achieve your goals. Your legal advisor may discuss ways to save on probate fees and taxes, and protect your estate from potential family disagreements and challenges to your will. A smooth implementation of your plan requires drafting the documents according to your instructions and explaining to your chosen attorneys, executors and trustees their obligations and responsibilities.

6. Review Your Plan Regularly

Your estate plan should be reviewed regularly. You should also review your estate plan in the following circumstances: the birth or death of a loved one, serious illness, coming of age of beneficiaries, concerns about a beneficiary's ability to manage large sums of money, changes in your or a beneficiary's marital status, including entering into a marriage or common-law relationship, separation or divorce, material changes in your financial situation, including the purchase or sale of property, and the purchase, sale or reorganization of your business, a change in your province or country of residence, and any significant amendments to tax, family property and estate laws.

Consider how any changes may affect you and review your plan with your advisor periodically.

DID YOU KNOW...?

Less than one out of two Canadians has a will.

A survey conducted by the Angus Reid Forum showed that:

- > 56% of Canadians do not have a will;
- > 71% of Canadians do not have a Power of Attorney; and
- > only 12% of young people between 27 and 34 years of age have a will.

Source: nbc.ca/advice

The study revealed that it is often a life-changing event that makes people draw up a will:

- > 30% created a will upon the birth of a child;
- > 20% did so because of a change in their marital status; and
- > 13% did so when they purchased a home.

Administering the Estate

Manoeuvring through probate and estate administration is a complex process with significant responsibilities and consequences. The executor is responsible for administering the estate and any missteps may lead to personal liability and litigation. The role of executor requires impartiality and dedication to complete the estate administration in an efficient and effective manner. Often it is important that the executor has sound knowledge of investments, taxation and the law as well as the ability to manage the potential issues among your beneficiaries. Trained professionals at National Bank Trust are available to assist and support your executor through this challenging process.

Basic duties of the executor include:

- > locating the will and, if necessary, obtaining a grant of probate;
- > identifying assets and creating an inventory of assets and liabilities;
- > determining the impact of spousal or other possible claims on the estate;
- > consolidating and managing assets temporarily, including, the sale of real estate and the liquidation of other assets, if needed;
- > contacting the beneficiaries, heirs and other persons with an interest in the estate and, when necessary, serving them with required notices;
- > settling debts and specific bequests;
- > assessing tax consequences and considering post-mortem tax planning in order to reduce or defer taxes;
- > preparing accounts and tax returns;
- > obtaining tax clearance certificates from the Canada Revenue Agency;
- > obtaining releases from beneficiaries or, if necessary, passing accounts before the Court; and
- > finalizing the distributions to beneficiaries.



Trust Administration

A trust is a legal relationship among the person settling the trust (the settlor), the person holding and administering property (the trustee) and the person(s) who are to benefit from the property (the beneficiaries). A trust can be settled during your lifetime or upon your death through your will. Where the trust is established through a will, the executor may also be the trustee of the trust or a different person. The trustee has a fiduciary obligation to the beneficiaries and must administer the trust in accordance with the terms set out in the trust deed (including where the trust terms are located in the will).

A comprehensive estate plan will ensure that your wealth is transferred to your loved ones in the way you intend.

Trusts are often a workable solution to many estate planning needs such as:

- > centralizing management of assets and ensuring continuity upon the incapacity or death of the person setting up the trust;
- > managing assets for minor children until they reach the age of majority or a later age;
- > managing assets for beneficiaries who lack the ability or interest to manage the assets on their own (including beneficiaries with a mental or physical disability, or that suffer from addictions);
- > protecting assets from spendthrift beneficiaries (and their creditors);
- > protecting assets from disgruntled family members; and
- > providing for children from a previous marriage.

The administration of a trust is complex and requires expertise in several areas. One option is to secure the services of trust professionals such as National Bank Trust to ensure proper and timely administration, active management and peace of mind for your beneficiaries. This way, you can be assured that your estate and trust objectives are fully realized.

Other Issues

- > Family obligations – All provinces recognize duties and obligations to family members upon your death. What constitutes “family” varies from province to province. Same-sex partners, common-law spouses and adult interdependent partners have different rights and obligations throughout Canada. Ensure that you understand how the laws in your province affect you by consulting your legal advisor.
- > Tax planning is an important component of the estate planning process.
- > The rules relating to U.S. gift and estate tax are constantly changing. If you are a U.S. citizen or green card holder, if you own U.S. property, if you own any other U.S. *situs* assets, if you were born in the U.S., if you are the son or daughter of a U.S. citizen parent, or if any of your beneficiaries may be a U.S. citizen, resident or green card holder, ensure that you speak with your legal advisor about the effect this may have on your estate plan.
- > Business succession planning is an important component of the estate planning process. Explore your options and finalize your goals with the help of your advisor so that you can develop an appropriate business strategy for an orderly succession or liquidation.
- > Planning for physically or mentally disabled beneficiaries may be challenging. Help is available to guide you through the process of creating a plan that would benefit your loved ones and give you peace of mind.
- > If you own property or are the beneficiary of a trust in a foreign country or if your beneficiaries reside in a foreign country, you should seek legal counsel.



❖ The information presented here is for your information only and does not constitute legal, accounting or tax advice. We strongly encourage you to seek professional legal and financial advice if any of these issues or circumstances relate to you.

In Conclusion

Estate planning requires time and careful consideration and it is important to be well supported in this process. The professionals of National Bank Trust can work with you to review your specific situation and wishes in order to find the solutions that are right for you. In partnership with you and with your family, we will ensure that you benefit from the ongoing support of an active, multidisciplinary team to help you with your estate and incapacity planning. National Bank Trust can be appointed as an executor, trustee and/or attorney to your property, alone or with one or more members of your family, or can act as an agent for you. By choosing National Bank Trust, you can count on a partner who will be there in your time of need. We strongly encourage you to seek professional legal and financial advice to discuss the options set out in this Estate Planning Guide.

Should you have any questions,
do not hesitate to contact us.

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514-871-7100

nbc.ca/estate



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