Estate Planning Guide

You've worked hard to build your wealth and you want to take control of your legacy; but where should you start?

Every estate plan is different and your plan should address your particular needs. Whether you own a business, have a blended family or share a vacation property, your estate plan should ensure your wishes are clear, your family is protected and your legacy will live on.

There are many elements that make up a properly structured estate plan; and many misconceptions about the process as well. Let us clarify what you need to know to create the right plan for your loved ones.

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Do I need a will?

The short answer is "yes;" but the key is not to have just any will – you need a will that is structured to meet your needs. While standard form will kits may be valid, there are many situations where they aren't appropriate and don't include the types of provisions required to meet specific needs.

Here are a few examples of situations where you need to have a properly drafted will.

GUARDIANSHIP

The most important time to have a will in place is when you have young children. You will need to designate a guardian in your will (along with an alternate) so that someone is prepared to take physical custody of your children and their assets if you (and the child's other parent) die before they've grown up.

You should speak to your proposed guardian in advance of including them in your will to ensure they are prepared to take on this obligation. If they choose not to accept the responsibility after you pass away, they could leave your children in a difficult position and potentially expose them to a custody dispute. Discussing the concept with your proposed guardian in advance is a better way to ensure your children are properly taken care of after you are gone.

PERSONAL REPRESENTATIVES

One very important function of a will is to designate the person (or persons) who will administer and distribute your estate once you pass away. This person is sometimes referred to as an executor, liquidator or estate trustee, depending on your province of residence.

For this reason, it is vital that you appoint an appropriate personal representative in your will.

Here are a few factors to consider when choosing a personal representative:

Are they capable of handling the job? Speak with your proposed personal representative before appointing them in your will to ensure that they are prepared to accept the position and are capable of carrying out their duties. If you have extensive assets or business interests, be sure to choose someone with sufficient business acumen to manage your assets after you are gone. Not everyone is suited to the role; if your proposed choice is uncertain about accepting the position, ask your IG Consultant to provide him or her with a copy of our special report, *Acting as a Personal Representative*.

Are they a resident of your province or territory? At a minimum, are they a resident of Canada? If your personal representative is not a resident of your province, the court in certain jurisdictions may require they post a bond before being authorized to act (which usually involves private financing), or in a worst-case scenario, the court may refuse to accept their appointment. A non-resident of Canada could also be required to file additional tax returns in the country where they reside. If you do not have any close friends or family who live in Canada, you may want to consider appointing a trust company.

"If you do not appoint a personal representative, the court could appoint one for you and it may not be the person you would have chosen."

GIFTS TO CHILDREN

If you will be leaving a significant amount of money to your children, then you should consider how to properly distribute those funds among them.

If your children are adults when you die and you don't specify otherwise in your will, they will receive their full inheritances at that time, even if you feel they're too young to receive a large sum of money. In some jurisdictions, if your child is still a minor when you die and you don't specify otherwise in your will, then your personal representative may be required to transfer the funds to government control until your child is eligible to receive the inheritance at the age of majority (i.e. age 18 or 19 depending upon your province of residence).

In most cases, we recommend that funds for young children be left to them via a trust, and distributed in stages over a period of time (e.g. one quarter of the capital at age 25, half of the remainder at age 30, all of the remainder at age 35). Read our article, *Protecting Your Child's Inheritance*, for more information on how to best leave sums of money to children.

BLENDED FAMILIES

If you are in a relationship with someone who is not the natural or adoptive parent of all of your children, then you need to balance the interests of your spouse against those of your children from any previous relationship. You probably should not sign a "standard" will that leaves everything to your spouse if he or she survives you, since there is a chance that your children will be disinherited upon the death of that spouse.

If you are in a blended family, ask your IG Consultant for a copy of our article, *Estate Planning for Blended Families*, which provides further detail on how to ensure a loved one isn't inadvertently disinherited.

COMMON-LAW COUPLES (DE FACTO COUPLES IN QUEBEC)

The rules regarding the rights of common-law couples (known as de facto couples in Quebec) vary quite dramatically across Canada. Common-law couples in some provinces have many of the same rights at the time of death as a married spouse after they have lived together for the required time period (usually two or three years, again depending upon the province). In other provinces, however, they have minimal property rights, no matter how long they have lived together.

It is important to know the rules in your province and to structure your will and estate plan in a way that best reflects your intentions with respect to your partner. For more information on the rules in your province, ask your IG Consultant for a copy of our article on the rights of common-law couples in your jurisdiction.

SEPARATION/DIVORCE

If you are separated or divorced, ensure that your estate plan has been updated to meet your needs. Consider the following:

- Have you updated your will since your separation? Does your current will still indicate that your former spouse is to receive most (if not all) of your estate and/or is to act as your personal representative? Is this still your intention?

  In some provinces, separation (no matter how long) will not impact gifts made in your will to your former spouse nor his or her designation as your personal representative. In other provinces, if you are divorced, your will may be interpreted as if your former spouse had died before you, leaving the gifts to the alternate beneficiaries you named.

  In any case, you should update your will as soon as possible to ensure it meets your current intentions. If you have young children, consider appointing another family member (or trust company) as your personal representative to manage your estate. You should also review the distribution of your estate to ensure that your property is held in trust for your children until they are mature enough to properly manage large sums of money.

- Have you updated your beneficiary designations on your pensions, Registered Retirement Savings Plans (RRSPs), Registered Retirement Income Funds (RRIFs), Tax-Free Savings Accounts (TFSAs), insurance and group benefits? There have been a number of reported court cases where separated or divorced spouses continued to be designated as the beneficiary of a former spouse's assets long after they were no longer in the deceased's life. The courts in some provinces allowed those former spouses to receive the designated amounts, leaving the deceased's current family members with much less of an estate than anticipated. Once you've separated or divorced from a spouse, you should review all of your beneficiary designations to ensure they are up to date. In many cases, it would not be appropriate to designate a new direct beneficiary (particularly when you have young children) but instead change the designation to your estate so that your personal representative can manage these assets for your beneficiaries as set out in your will. The same would also be true if you had a new spouse: if you are in a blended family, think twice before designating your new spouse as the direct beneficiary of the bulk of your assets, as that could disinherit your children from any previous relationship. If you are in a blended family, ask your Consultant for a copy of our article *Estate Planning for Blended Families*.

GIFTS TO GRANDCHILDREN

Some grandparents want to include gifts to their grandchildren in their wills; but are these really appropriate? Assume your will says to give $10,000 to each of your grandchildren, with the remainder of your estate to be divided equally between your children. In that case, any grandchild alive when you die will receive the $10,000 gift. But consider the following:

- What if other grandchildren are born after you die? They will receive no gift from your estate and may consider such treatment unfair.

- What if one of your children had four children and the other had none? The branch of the family with the four children would receive $40,000 more of the estate than the other family. What if the gifts to the grandchildren were $50,000 each instead of $10,000? Depending upon the value of the estate and the financial means of the heirs, these inequities could lead to arguments and bad feelings.

- Grandchildren who are minors when you die will receive their inheritance only upon reaching the age of majority or possibly even longer, depending on the provisions of your will. Is this really what you want? If you want the family to be able to use the funds immediately, then you should consider leaving your estate equally to your children and letting them use the funds for their family in the manner they see fit. Also, if your grandchildren are very young, it's impossible to know how responsible they might be at age 18, 21 or 25, or whether special circumstances such as disability or an illness will impact the way in which they should be receiving an inheritance.

Unless a child has already died before you (and you are therefore unable to simply divide your estate equally between your children), your estate will be easier to administer if you avoid direct gifts to your grandchildren. Direct beneficiary designations to grandchildren on plans like your RRSP, RRIF, TFSA, pension or insurance can be particularly problematic, since in those cases it could be difficult for minor grandchildren (or their parents) to access the funds before the age of majority. Moreover, at the age of majority, the grandchildren will receive all of the assets, regardless of their ability to manage a large sum of money.

VACATION PROPERTIES

One asset that often causes family disputes is the family vacation property. Leaving a vacation property to a specific individual is not usually recommended, since it's impossible to know how much the property will be worth when you die (or if you will even own that same property when you die).

For the most part, unless you specifically want to treat your children unequally, it is recommended that you divide your estate in equal parts (e.g. if you have two children then they would each receive half of the after-tax value of your estate; if you have three children, they would each receive one third, etc). However, what happens if one of your children is interested in receiving a particular asset from your estate (including the vacation property)? There are ways to plan for this.

Let's assume you have three children and one of them is very attached to your vacation property, which is worth $600,000 today. First, estimate the after-tax value of your estate. Then, in order to ensure that everyone is treated equally, ensure that the entire value of your estate will be worth a minimum of $1,800,000 after tax and other liabilities (or a little more, to account for appreciation). If there is a deficiency, you may need to purchase insurance to fund the gap. This way, each child will receive an inheritance worth at least $600,000. When you pass away, your children can decide between them who would like to receive what. If the child who originally expressed an interest in the vacation property still wants it, the property can constitute their portion of your estate. Alternatively, if more than one child wants the vacation property, perhaps they will agree to each take an ownership interest as part of their interest in the estate (although joint ownership arrangements between siblings are often not practical on a long-term basis). Refer to the our article, *Vacation property succession planning*, for more information on the issues to consider when leaving a vacation property in your estate.

> *"One asset that often causes family disputes is the family vacation property. Leaving a vacation property to a specific individual is not usually recommended"*

BENEFICIARIES WITH SPECIAL NEEDS

If you intend to leave some of your estate to a person who has special needs, then you should have a customized will. In many provinces, receiving a direct inheritance could disentitle a person with special needs from various social assistance benefits, such as a monthly stipend, specialized or subsidized housing, and/or medical benefits.

If a beneficiary is receiving government benefits, it is usually best to leave assets to him or her through a fully discretionary trust, sometimes referred to as a Henson trust. This is a type of trust where the trustee (as designated in your will) manages the assets for the benefit of the beneficiary, but the assets are not legally owned by the beneficiary, allowing them to continue to qualify for their benefits. Although Henson trusts may not be not fully effective in every province, there may be other reasons to use a discretionary trust, particularly if the beneficiary is mentally impaired and a trust is required to allow a third party (the trustee) to manage the inheritance.

The *Income Tax Act* (Canada) also allows for certain tax benefits when trusts established for individuals with special needs meet the requirements of a Qualified Disability Trust (QDT). In order to qualify as a QDT, the beneficiary of the trust must qualify for the federal disability tax credit and must be specifically named as the beneficiary of the trust in the will.

Certain other conditions must also be met in order to be considered a QDT. Speak to your IG Consultant and/or legal advisor about whether or not Henson trusts and qualified disability trusts have a place in your estate plan.

"In order to qualify as a QDT, the beneficiary of the trust must qualify for the federal disability tax credit and must be specifically named as the beneficiary of the trust in the will."

BUSINESS OWNERS

If you own a business, you need a business succession plan to preserve the value of your business for your heirs and minimize the income tax consequences of your death. Read our article, *Tax and estate planning – for business owners*, for more information on this topic.

CHARITABLE DONATIONS

If you want to leave some or all of your estate to charity, you need a properly drafted will. Be sure to:

- Use the correct legal name of the charity (or charities) in your will, since some charities have similar names.
- Confirm that the charity is a registered charity with the Canada Revenue Agency. If not, the organization may not be able to issue a donation tax receipt to your estate. This may not be a priority if you are not concerned about the tax benefits of making the gift, but for some individuals, the tax savings are relevant.
- Speak to your IG Consultant or legal advisor about the best way to make the gift – sometimes donating a particular type of asset is better, tax-wise, than donating cash.

Taxation at the time of death

Do you worry about minimizing probate fees on your estate? Many do; yet probate fees, which apply exclusively in common-law jurisdictions, are usually insignificant in value compared to the income tax liability that an estate may face. In addition, many probate planning strategies result in unintended consequences (e.g. unequal division of an estate in circumstances where assets are intended to be left equally to children).

Here is a review of how an individual is taxed at the time of death and what can be done to plan for this tax liability.

INCOME TAXES

Income taxes are often an estate's biggest liability. Here is a summary of how these taxes are calculated:

- **Regular income**
  Let's say an individual dies on September 30 of a given year; their personal representative will have to file a terminal year return, which will include all of their regular income earned during the year of death from January 1 to the date of death, September 30. This might include employment income, pension income, interest income, dividend income, and so on. If the deceased normally earned $80,000 per year, they might have $60,000 of income in the year of death, as they lived for three quarters of the year.
- **RRSP and RRIF values**
  Other types of income may also have to be reported in the year of death, such as the fair market value of an RRSP or RRIF at death (excluding spouse rollovers). If the deceased had $300,000 in his or her RRSP or RRIF at the date of death, then $300,000 would have to be included in his or her terminal year return, which could significantly increase the income tax liability in the year of death.
- **Deemed dispositions of capital property**
  Another potentially significant tax liability could arise from your non-registered assets, otherwise known as capital property. During your lifetime, it is likely that you have acquired assets (which could include a home, vacation property, mutual funds, stocks, etc.) that have grown in value; this growth could trigger capital gains.
- Generally speaking, you only need to report capital gains when you sell or dispose of the asset(s) in question. Furthermore, the amount that needs to be reported is 50% of the difference between the "adjusted cost base" (which is generally what you paid for the asset, plus any capital improvements) and the fair market value of the property. So if you purchased mutual funds for $300,000 and they are worth $500,000 at the time of your death, then you would have a $200,000 capital gain ($500,000 - $300,000), 50% of which ($100,000) is taxable.

On the date of death you will be "deemed" to have disposed of all of your capital property for fair market value, although you obviously didn't actually sell all of your property on that date. Your personal representative will have to include 50% of all the accrued capital gains on your properties and non-registered investments as taxable income in your terminal year return, again subject to some exceptions.

As you can imagine, the amount of taxable income an individual might have in the year of death could be significant, and completely out of proportion to what they might normally have reported in any given year during their lifetime. As a result, a large portion of this income may be taxed at the highest personal marginal rate, which is above 50% in many provinces. If there aren't significant liquid assets, the estate may have to sell some of the estate assets such as a family business or vacation property in order to pay this tax, which may not have been the intention.

Speak to your IG Consultant about doing an estate analysis to determine what the after-tax value of your estate may be. If the income tax payable at death will result in an after-tax value significantly lower than anticipated, you may want to consider buying permanent life insurance to fund the difference.

In addition to the above, if you have U.S. connections (i.e. you own U.S. property or are a U.S. resident, citizen or Green Card holder), it is possible that U.S. estate tax may also be payable. Speak to a Canada-U.S. cross border tax expert if you believe you may have a U.S. estate tax liability.

DEFERRING OR MINIMIZING THE INCOME TAX LIABILITY

Are there any methods to defer or minimize the income tax liability at death? There are limited opportunities to shift taxable income to a beneficiary or avoid the tax altogether, but here is a summary of the most common approaches:

- **Spousal rollovers**
  If you leave certain assets to your spouse (e.g. RRSPs, RRIFs and capital property), these will usually "roll over" to him or her on a tax-deferred basis. Let's say you leave all of your RRSPs, RRIFs and capital property to your surviving spouse; subject to certain conditions, the transfer will have no tax repercussions. However, this is a tax deferral only and the tax will become payable when the surviving spouse dies (unless they leave the assets to their new spouse). Keep in mind that if you are in a blended family, it may not be advisable to leave your entire estate to your surviving spouse, so the spousal rollover may not be a complete solution in those cases. The estate distribution plan should take precedence over tax planning, as there's no point to maximizing the value of your estate if it isn't received by your intended beneficiaries.
- **Principal residence exemption**
  Each family unit may designate one personal use property as their principal residence for the purposes of the principal residence exemption, so that the capital gain on that property is not taxable. However, if you

own more than one personal-use property (e.g. an urban residence and a vacation property), then at least some of the capital gains on one of the two properties will be taxable.

- **Charitable donations**
  If you make a charitable donation in the year of death (perhaps through your will), then the charity will issue a charitable donation receipt that can be used to offset the tax owing. Further tax benefits may be derived when you donate publicly traded securities (which could include mutual funds) to a registered charity, because while the disposition will still result in the realization of the accrued capital gain, the capital gains inclusion rate will be 0%. If you are interested in more information about charitable giving, ask your IG Consultant about IG Wealth Management's Charitable Giving Program.

- **Unused capital losses**
  Generally speaking, during your lifetime, capital losses may only be used against capital gains, not other forms of income (such as employment income, interest, or dividends). If you have unused capital losses, you should keep a record of these so that your personal representative is aware of them when you pass away. In the year of death (and the previous year), capital losses may be applied against any form of income, so this may be another way to reduce income taxes in the year of death.

There are limited ways to minimize or eliminate taxes on your estate. In most cases, the recommended planning strategy is to ensure that your estate receives sufficient life insurance proceeds in order to fund this liability, so as to maximize your beneficiaries' inheritances. Ask your IG Consultant to do an estate analysis with you to determine how much insurance you may require to meet your personal needs.

Probate fees (applicable exclusively in common-law jurisdictions)

Your estate may also have to pay probate fees (also known as estate administration taxes in Ontario). Generally speaking, probate fees range from as little as $140 in the Yukon, to approximately 1.5% of the value of the estate in British Columbia, Nova Scotia and Ontario. Although the dollar amounts can become large when dealing with larger estates, probate fees are usually insignificant in comparison to income taxes. In Quebec, probate fees do not apply.

Some individuals mistakenly believe that adding a joint owner to their assets or a direct beneficiary will reduce taxes, when in fact, those strategies relate to possibly reducing probate fees, not income taxes. In addition, these strategies often result in large amounts of assets being directly transferred outside of an estate, putting the personal representative in a difficult position when attempting to distribute the remaining estate.

"Some individuals mistakenly believe that adding a joint owner to their assets or a direct beneficiary will reduce taxes."

Let's look at an example:

- A widower has two children whom he wants to treat equally. He has $200,000 in RRSPs along with $200,000 in a Guaranteed Investment Certificate (GIC). He believes he will be saving "tax" if he designates one of his two children as the direct beneficiary of his RRSP, leaving the other child as the beneficiary of his estate. Unfortunately, this is not what happens.

- The child who is the direct beneficiary of the RRSP does receive $200,000; however, the estate must pay the tax liability on this $200,000 before any remaining assets can be distributed to any other beneficiaries. Let's assume that the $200,000 in taxable income due to the RRSPs results in $75,000 of income tax liability. This means that there is only $125,000 remaining in the estate to give to the other child. Although the father did save a small amount in probate fees (approximately $2,000 in his province), he did not save anything in income taxes and has most likely caused significant animosity between his children due to the disparity in their inheritances.

Read our article, *Beneficiary Designations - Do's and Don'ts*, for more information on this topic.

The following are some of the more popular probate planning strategies and their drawbacks:

DIRECT BENEFICIARY DESIGNATIONS

Many different types of plans and policies allow for the designation of a direct beneficiary (e.g. RRSPs, RRIFs, TFSAs, pensions, and insurance policies). In Quebec, direct beneficiary designations are generally only allowed on insurance and annuity products.

Direct beneficiary designations can help to reduce probate fees and are quite useful in the following situations:

- **First marriages or relationships**
  If you are in a first marriage or relationship and you intend to leave all of your assets to your surviving spouse, designating them as a direct beneficiary is usually recommended.

- **Only one beneficiary**
  If you do not have a spouse and you intend to leave your estate to only one beneficiary (perhaps an only child or a charity), then a direct beneficiary designation may be recommended; however, if you are leaving assets to a minor child or even a young adult, you might not want to designate them as a direct beneficiary until they are sufficiently mature to manage a large lump sum of money (e.g. perhaps 30 years of age or older). It may also not be recommended if the beneficiary has special needs or difficulties with personal creditors.

In many cases, direct beneficiary designations are not recommended as they can result in unintended consequences. Here are a number of scenarios in which direct beneficiary designations are generally not recommended:

- **Blended families**
  If your spouse is not the natural or adoptive parent of all of your children, then you should exercise caution before designating them as the direct beneficiary of your assets. If you designate your spouse as the direct beneficiary of an asset, you cannot assume that any of those funds will ever go to your children. After reviewing your situation with your legal advisors, you may still decide that you would like to designate your spouse as the direct beneficiary of some (or even all) of your assets, but you should speak to an estate planning expert before making this decision.

- **Minors**
  Generally speaking, it's not recommend that you designate a minor (or even young adult) as a direct beneficiary of any of your assets. If the beneficiary is a minor at the time of your death, those funds will be inaccessible until they reach the age of majority, at which point they will receive the entire lump sum. As a reminder, when you are leaving assets to a child, it's wise to designate your estate to receive the funds so that the assets can be transferred by your personal representative to a trust for the child where the trustee is able to distribute the funds gradually, as per the terms of the trust.

- **Multiple beneficiaries**
  Designating multiple individuals as direct beneficiaries to a plan or policy may create unintended consequences. For example, if you have three children and designate all three as the direct beneficiaries of your RRSP, only the children who survive you will receive any portion of that asset. If one of your children dies before you, then that child and that child's family will not inherit any of that asset. If you want to benefit multiple individuals, it is generally recommended that you designate your estate to receive the funds so that the assets can be distributed through your will, which can be written to contemplate different scenarios.

- **Beneficiaries with special needs**
  Designating a person with special needs as a direct beneficiary to a plan or policy may impact them adversely, especially if the person was otherwise relying on certain income-tested and/or asset-tested government benefits. We recommend that you designate your estate to receive the funds, so that the assets can be distributed by your will to a discretionary trust for the person with special needs, which in turn should help them continue to qualify for various government benefits (although this strategy may not work in all provinces).

As you can see, there are many instances where designating a direct beneficiary is not recommended. Speak to your IG Consultant about your specific situation before making a decision. Many people mistakenly believe that so long as their will indicates a specific distribution (e.g. that all of their

> *"If you are in a blended family, you may not want to leave all of your assets to your new spouse, as doing so could inadvertently disinherit your children from a previous relationship."*

children will receive an equal portion of their estate), that those provisions will take precedence over everything else. It's important to remember that, generally speaking, the terms of your will only govern the assets that form part of your estate, not those distributed outside of your estate through direct beneficiary designations. This is why direct beneficiary designations can result in disputes between beneficiaries.

JOINT OWNERSHIP WITH RIGHT OF SURVIVORSHIP (APPLICABLE EXCLUSIVELY IN COMMON-LAW JURISDICTIONS)

Another strategy commonly believed to reduce income taxes upon death is to add a joint owner to certain assets. In the common- law provinces and territories, adding a joint owner with a right of survivorship may help to reduce probate fees since the asset may pass directly to the survivor, reducing the value of the estate and the corresponding fee payable (note: right of survivorship is not recognized in Quebec). This does not, however, reduce the income tax liability.

In fact, adding a joint owner often causes confusion in situations with adult children since the child added as joint owner may feel that the jointly held asset will be theirs alone when the parent passes away, whereas the other children may believe the asset should form part of the estate and be divided along with the other estate assets in the proportions set out in the will. For this reason, this strategy is generally not recommended, unless completed with the assistance of an estate law specialist who drafts an additional document indicating what the intention is with respect to the distribution of the jointly held asset. Ask your IG Consultant for a copy of our article, *Adding an adult child as joint owner to property in common-law jurisdictions*, for more information on the problems that can arise when an adult child is added as a joint owner to an asset.

Even adding a spouse as a joint owner may not be recommended in all cases. As mentioned previously, if you are in a blended family, you may not want to leave all of your assets to your new spouse, as doing so could inadvertently disinherit your children from a previous relationship. If you intend to leave a part of your estate to your children, you should not hold all of your assets in joint ownership with your new spouse, as there will be no assets in your estate to distribute to your children.

JOINT OWNERSHIP: FURTHER CONSIDERATIONS

Even if you are in a first relationship, you may not want to add your spouse as a joint owner of your assets if you are concerned about how your assets may be distributed in the event of separation or divorce. In a number of provinces, assets acquired prior to your marriage or assets received as a gift or inheritance are exempt from the division of family property, but only if they are kept separate from jointly held family assets. Although the growth on assets from the date of marriage to the date of separation (or divorce) may be shareable even if they are held in your name alone, that is not the same as having to divide the entire asset. If you want to preserve at least

some of the value of an asset you believe might be exempt from the division of family property, you should not be adding your spouse on as a joint owner. Note that this exception does not always apply in the case of a marital home. Speak to a family lawyer if you have an asset you would like to protect in the event of relationship breakdown.

Another problem with adding a joint owner is that, in some cases, joint owners can misuse the property for their own benefit. If your goal is to appoint someone to manage your assets in the event you become incapacitated, the solution is to appoint a trusted person as your attorney under a power of attorney document (in Quebec, mandate in case of incapacity/protection mandate) rather than giving them an ownership interest.

In some cases, more advanced probate planning strategies such as alter ego trusts and multiple wills may be recommended, particularly for high net worth individuals. If you are interested in learning more about other probate planning techniques, ask your IG Consultant for a copy of our article called "Probate fees: Four advanced financial planning strategies".

Powers of attorney

As part of the estate planning process, you should ensure that you have documentation in place that allows someone else to manage your assets and affairs in the event you become incapacitated. These documents are often known as powers of attorney. In Quebec, make sure you establish a mandate in case of incapacity (protection mandate) in the event you become mentally incapable. Given the nature of the position, you should choose someone with sufficient maturity who has the ability to properly manage your assets. Read our article, *Power of attorney for property – Duties and responsibilities*, for a discussion of the responsibilities and obligations involved in acting as someone's attorney.

Also, as is the case with appointing a personal representative at the time of death, you should avoid appointing a non-resident of Canada as your attorney, as your financial advisor may be prohibited from taking instructions from that person due to securities regulations, and it may result in additional tax filings in the country where the attorney lives.

Testamentary trusts

Testamentary trusts are trusts created as a result of the death of a testator, whose terms are usually included in the deceased's will. As discussed previously, trusts are used primarily to ensure that sufficient controls are put in place in the event you die before your children reach an age when they would be mature enough to manage a large inheritance. Trusts may also be used where the beneficiary has special needs, among other situations.

A trust is a legal arrangement where a trustee (usually your personal representative) holds legal title to the trust property for the benefit of the trust beneficiaries. The trustee has the power to invest the assets and to distribute income and capital of the trust to the beneficiaries in accordance with the terms of the trust.

Where the size of the estate warrants it, you should also consider creating trusts in your will that provide not only for your children, but also their "issue," meaning their children or grandchildren who are earning less income.

The income from the trusts could be used to pay school fees and/or the personal expenses of the various family members, but taxed in the hands of the lower income beneficiaries, resulting in less tax paid by the family as a whole. With that being said, care should be taken when including the next generation in your estate plan and we often do not recommend direct gifts to grandchildren.

Each estate plan should be customized to meet your personal needs and objectives. Generally speaking, the estate planning process involves the following steps:

IDENTIFY YOUR BENEFICIARIES

Every life situation is different and requires a customized plan. You should make a list of the people and charitable organizations you wish to benefit from your estate. For the most part, it is not recommended that a will include a long list of specific gifts – usually, the easiest method is to divide the value of your estate into portions and then allow your beneficiaries to pick and choose which assets they want to receive as part of their share. If you want to make a list of personal effects such as family heirlooms or household furnishings, consider leaving that list with your personal representative, so that he/she is aware of your wishes.

CALCULATE THE NET VALUE OF YOUR ESTATE

Ask your IG Consultant to perform an estate analysis to estimate the after-tax value of your estate. Understand, though, that assets left outside of your estate (i.e. through direct beneficiary designations or, in common-law jurisdictions, joint ownership with right of survivorship agreements) may not be available to be distributed according to your will. If you are in a situation where you have a number of beneficiaries (e.g. a new spouse plus children from a previous relationship), ensure that the value of your estate is sufficient to meet everyone's needs, primarily those dependent upon your support.

INSURE THE GAP

If you discover that the after-tax value of your estate will not be sufficient to achieve your desired objectives, consider ways to fund the difference. For the most part, life insurance is the most effective way to do this, assuming that you are young and healthy enough to buy insurance at a reasonable rate. Do not delay in completing this part of the process, as you may reach a point in your life where this funding solution is no longer available.

Once you have decided how you would like your estate to be distributed, you will also need to speak to an experienced estate lawyer or notary to help you draft a will that is appropriate for your needs. You should also consider signing a power of attorney (in Quebec, mandate in case of incapacity or protection mandate) in the event that you become incapable of managing your assets. Be sure to research the credentials of your chosen legal advisor carefully to ensure that you have an estates expert to advise you on these issues.

There are many things to consider when starting the estate planning process. Your IG Consultant can help you gain peace of mind and focus on what's best for your family and loved ones.

ABOUT THE AUTHOR

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Christine is Head of Financial Planning at IG Wealth Management, leading our financial planning strategy to ensure that our clients have access to the most advanced expertise. Christine is a member of the Canadian Tax Foundation, has her Certified Financial Planner designation and is a Registered Retirement Consultant and Trust & Estate Practitioner, certified by the Society of Trust & Estate Practitioners (STEP). She is also the recipient of the prestigious STEP Founder's Award. Christine is the author of Wealth Planning Strategies for Canadians, which is published annually by Thomson Carswell and is currently in its 17th edition. Christine has given lectures to numerous professional associations and is a regular media spokesperson for IG Private Wealth Management. Christine has been appointed a King's Counsel for the Province of Manitoba, awarded to lawyers in recognition of exceptional merit in their profession.

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