

Practical Perspectives on Estate Planning

Why estate planning?

Estate planning is about life – in the present and in the future. Most importantly, estate planning is about the life of your family, your loved ones and the peace of mind you get from helping to provide for their financial security. A well-prepared estate plan will also help uncover alternative solutions you hadn't considered or didn't know were available.

Whether your estate is of large or modest value, your estate plan should be part of your total financial strategy and based on solid financial planning principles. In its essence, estate planning addresses the establishment or continuation of a tradition, one that involves the accumulation, conservation and distribution of assets in a tax-efficient manner. It requires a complicated interaction of various disciplines and laws.

Working with a knowledgeable team of professionals from across the Scotiabank Group is an effective way of developing an estate plan that addresses your goals and objectives.

A HOLISTIC APPROACH

Estate planning means preparing an account of your assets, identifying what they mean to you based on how you use them and who you want to benefit from them. You need to provide this direction, rather than leaving it to others to interpret. It should also be revised as the circumstances of your life change.

There are a number of vehicles that can be considered as part of a holistic estate planning solution that a professional can assess as part of your plan.

	Trusts	Medical Consent	Power of Attorney	Will	Pension Products	Insurance Products	Domestic Contracts	Holding Company	Estate Freeze
Provide for Family	✓		✓	✓	✓	✓	✓		✓
Minimize Tax During Life	✓				✓	✓		✓	✓
Plan for Retirement	✓		✓		✓	✓		✓	✓
Protect Assets During Life	✓		✓			✓		✓	
Plan for Transition of Business	✓		✓	✓	✓	✓	✓	✓	✓
Provide for Incapacity	✓	✓	✓			✓			
Minimize Tax On/After Death	✓			✓		✓			✓
Protect Assets After Death	✓			✓		✓			
Distribution of Estate	✓			✓		✓			✓

WHERE TO START

SPECIFICALLY, YOU NEED TO:

1. **Work with a professional to ensure your estate plan is integrated with your overall financial strategy including business succession if applicable.**
2. **Have a properly drafted Will prepared and update it regularly.**
3. **Prepare Powers of Attorney.**
4. **Consider appointing a corporate executor/trustee to ensure your wishes are carried out.**
5. **If you have been named as an executor, consider if you need assistance.**
6. **Consider insurance as part of your estate plan.**
7. **Consider if trusts are appropriate and whether they will be settled partially during your lifetime or on your death.**
8. **Consider if charitable gift planning should be part of your strategy.**

1. Examine all aspects of your life to ensure your estate plan is integrated with your overall financial strategy

A formally documented financial plan prepared by a professional is essential to ensure that your goals are planned for and progress is monitored proactively. Consider a professional with expertise to develop comprehensive strategies that reflect your personal situation and your goals for the accumulation, conservation and distribution of assets.

Business owners have special considerations as part of their estate planning. Succession planning is critical if one or more family members or a key employee are to inherit the business interests.

- Holding companies can be used to separate the ownership of investment assets (ie. real estate, marketable securities, cash, etc.) from other personal assets or from active business operations. The separation of assets under different corporations will help protect the assets of one company from

the claims against the other company. A holding company is commonly used to hold investments, newly acquired life insurance and any excess cash that is not required for use in an operating business.

- An estate freeze can be used to transfer the future growth in the value of a business, investments or other assets into the hands of subsequent generations. Typically, an estate freeze is implemented to maximize the value of the estate that will ultimately be transferred. A properly planned and implemented estate freeze will occur on a tax-deferred basis and permit the current owners to maintain control over the assets during their lifetime.
- **Some additional considerations are:**
 - Shareholders' agreements (or their equivalent) to provide specifically for the effective continuation of the business on death or disability.
 - Implementation of an effective business structure to minimize corporate and personal tax and to protect business assets from creditors.

2. Have a properly drafted Will prepared and update it regularly

A Will is the cornerstone document in any estate plan, providing for the orderly distribution of assets upon death. In making a Will, an executor is appointed to administer your affairs and to carry out your instructions.

If you die and a Will cannot be found, a full search must be made including advertising. If there is no Will, a family member or other interested person must make an application to the court for authority to administer your estate. Until an administrator is appointed, no one has the authority to deal with your affairs. Family members may be without access to monies and creditors may go unpaid. Assets, such as real estate, business interests, and other investments may go unattended. Finally, there is no certainty the court will appoint the same estate administrator as you would have chosen.

Without a Will, your estate is distributed based on relevant provincial regulation. Where monies are inherited by a minor child, they must be paid into court to be held in trust until the child reaches the age of majority. Accessing these funds will require the approval of a court.

A Will can name the individual you wish to be the guardian for any minor children. Ultimately the guardian is determined by the court according to what it believes to be in the child's best interest. Although not binding, the naming of a guardian in a parent's Will is taken into consideration by the court and is likely to be very persuasive.

The making of a Will is also the occasion for some critical tax planning. A tax planned Will can help reduce probate and income taxes otherwise payable upon death, and can further minimize income tax payable by surviving family members.

Wills need to be reviewed regularly and updated when personal situations change e.g. if there is a significant change in wealth, additional children or grandchildren are born, or an intended executor or beneficiary predeceases you or becomes incapable.

A Will is automatically revoked upon marriage (unless expressly made in contemplation of that marriage), but it is not automatically revoked upon matrimonial breakdown or divorce.

3. Prepare Powers of Attorney

If you become incapacitated and don't have a power of attorney in place, the provincial government assumes the management of your affairs. A surviving spouse or other interested party could apply to the court to be appointed instead of the government appointee, however it is best to select a decision-maker in advance.

For Property – A Power of Attorney for Property is a legal document appointing a person or persons to act on your behalf to deal with or dispose of your property. It may be a general power of attorney covering all your assets or it may be limited to a specific purpose like the sale of a home.

For Personal Care – A Power of Attorney for Personal Care is a legal document appointing a person or persons to act on your behalf in making decisions regarding health care and related matters of a personal nature.

4. Consider a corporate executor

An executor is an individual or trust company (known as a corporate executor) named in a Will to settle the estate. They are legally accountable to the beneficiaries and creditors of the estate.

An executor has many duties and the skills needed are varied. The main duties of an executor are:

- To make sure that the deceased's wishes are carried out exactly as stated in the Will.
- To meet all the legal and financial requirements of settling an estate.
- To identify, collect and manage the assets until they are distributed or placed in a trust.

An executor is also responsible for securing and valuing the assets of the estate and filing the required tax returns.

An executor should:

- Be impartial and respectful of your wishes.
- Be conversant with the intricacies of taxation, estate and trust law and administration.
- Be competent in business.
- Have the time and willingness to carry out these duties.

YOU MAY WISH TO CONSIDER A CORPORATE EXECUTOR IF YOU HAVE:

- Ongoing trusts to be managed.
- A private company/family business.
- Significant real estate holdings or assets out of province or out of country.
- Any charitable foundations or trusts to be established and/or administered.
- A stock portfolio to liquidate.
- Beneficiaries resident outside of Canada.
- Beneficiaries with special needs.
- Minor children as beneficiaries.
- Complex family circumstances.

5. If you have been named as an executor, consider if you need assistance

If someone has named you as an executor, a specialist in estate and trust administration could be of valuable assistance in helping you meet your obligations, especially if the estate is complex or distance precludes you from attending fully to your duties.

If you retain a corporate executor to act for you, a professional trust officer will perform some or all of the duties involved in the administration of the estate. The trust officer reports regularly to you and the beneficiaries while you remain responsible for making the key decisions. They are highly skilled in the legal, taxation and financial complexities of estate administration, as well as being sensitive to the needs and concerns of the beneficiaries.

The trust officer works with you to:

- Identify, secure and prepare an inventory of the assets of the estate.
- Arrange collection and transfer of assets into the estate account.
- Arrange payment of all debts and liabilities outstanding.
- Provide advice on the estate investments.
- Arrange payment of cash legacies from the estate account and for transfer and delivery of the assets to the beneficiaries and trusts as per the terms of the Will.
- Prepare and file the deceased's tax returns.
- Prepare a full accounting of the estate, detailing all transactions.
- Prepare forms of receipt, approval and release to protect you as an executor.

6. Consider how insurance strategies can contribute to a sound estate plan

When structuring your estate plan there are a variety of insurance strategies that can help you achieve some of your objectives.

1. Protecting your estate from taxes

You may lose significant value because of taxes that may become payable at death. To help ensure that your beneficiaries enjoy the full value of your estate, your final tax bill can be estimated and available monies redirected to an insurance contract. The insurance replaces the value of your estate lost in taxes, greatly reducing the overall tax burden on your estate and on your heirs.

2. Enhancing estate value

Reallocating a portion of your assets into a tax-exempt life insurance strategy can greatly enhance the value of your estate by leaving more assets than through a taxable investment strategy. Depositing a lump sum once or over a number of years means premiums will be withdrawn to cover insurance and policy costs, while the remainder can grow tax-sheltered. As your policy grows, your ultimate estate benefit builds too and the proceeds are distributed tax-free to your beneficiaries at death.

3. Creating a comprehensive business succession plan

Life insurance is an important tool for business owners' succession planning, providing funds to address tax liabilities, creating tax efficiencies, and possibly reducing taxes upon the ultimate transfer of the company. And if you wish to leave your business to only one child, purchasing a life insurance policy naming your remaining non-involved children as beneficiaries can be a way to provide for them, equalizing inheritances without having had to remove capital from the business.

7. Consider if trusts are appropriate

A trust is created by an individual through a Will or document known as a Deed. A trust company, such as Scotiabank Trust, is appointed as Trustee and administers the trust. Trusts are used in estate planning to allow you to transfer the benefit of assets to family members or other valued persons while maintaining a degree of control over the transferred asset. Depending on your goals and objectives, funds can be put in a trust during your lifetime, on your death or a combination of both.

Trusts as Part of your Estate Plan

Trusts are an extremely valuable estate planning consideration and can be used to achieve a variety of objectives. The major advantages of a trust as part of an estate plan are:

- Transferring property for the benefit of others while maintaining a degree of control over the transferred asset.
- Administration of property for beneficiaries who are incapable of proper management of property for reasons such as minor age, infirmity or lack of business experience.
- Protecting assets from the claims of creditors of the transferor and the beneficiaries by giving the trustee discretion over the distribution of the trust property.
- Income and capital gains splitting among family members subject to certain restrictions.
- Passage of future growth to the next generation on a tax-efficient basis when combined with an estate freeze.
- Deferral of tax on accrued capital gains.
- Providing for future administration of assets to protect against future incapacity.
- Providing for charitable purposes.
- Reduction of probate fees on death as trust assets are not part of a deceased's estate.
- Enhancing privacy on death as a trust is not subject to public probate like a Will.

8. Determine if charitable gift planning is a consideration

For individuals who are committed to making a meaningful legacy, planning a charitable gift is part of a comprehensive philanthropic plan. The plan should be driven by your values to create the most lasting contribution in the future.

The most comprehensive philanthropic plans are provided by professionals who can provide:

- Management support for foundations.
- Investment management.
- Consulting in gift planning and granting.
- Establishment of private foundations.
- Trusteeship of private foundations.

There are a variety of charitable services that you can discuss with a professional:

- **Establishing a private foundation either as a Trust or a Corporation.**
- **Charitable Remainder Trusts.** Establishment and administration of ongoing trusts for individuals and charities.
- **Gifts of Publicly-listed Securities.**
- **Charitable Bequests.** Guidance on the benefits associated with specific gifts.
- **Charitable Lifetime Gifts.** Guidance on providing gifts to national and local charities.
- **Charitable Life Insurance Gifts.** Set up of charitable gift annuities, life insurance and wealth replacement plans.

The following chart outlines some of the major charitable giving options available. Your personal goals, tax planning, and values should be the foundation for any charitable giving.

Charitable Giving Options			
\$ Gift Amount	Method of Giving	Timeframe	Charitable Vehicle
1 million plus	Charitable Remainder Trusts, Securities, Pledge, Bequest, Life Insurance, Gift Annuities, Real Estate	Immediate, multi-year and future/estate	<ul style="list-style-type: none"> • Private foundations • Public charities for operating or endowment • Donor Advised Funds
100 to 999 thousand	Charitable Remainder Trusts, Securities, Pledge, Bequest, Life Insurance, Gift Annuities, Real Estate	Immediate, multi-year and future/estate	<ul style="list-style-type: none"> • Public charities for operating or endowment • Donor Advised Funds
10 to 99 thousand	Securities, Pledge, Bequest, Life Insurance, Gift Annuities	Immediate, multi-year and future/estate	<ul style="list-style-type: none"> • Public charities for operating or endowment • Donor Advised Funds
1 to 9 thousand	Cheque, Credit Card, Public Securities, Pledge	Immediate and multi-year	<ul style="list-style-type: none"> • Public charities for operating purposes
Up to a thousand	Cash, Cheque, Credit Card, Pre-Authorized Payments	Immediate	<ul style="list-style-type: none"> • Public charities for operating purposes

We draw on specialists from across the Scotiabank Group who have helped generations of Canadians in the creation and administration of customized estate plans.



TM Trademark used under authorization and control of The Bank of Nova Scotia. ScotiaMcLeod is a division of Scotia Capital Inc., Member CIPF. All insurance products are sold through ScotiaMcLeod Financial Services* companies. ScotiaMcLeod Financial Services companies are the insurance subsidiaries of Scotia Capital Inc., a member of the Scotiabank Group. When discussing life insurance products, ScotiaMcLeod Investment Executives are acting as Life Underwriters (Financial security advisors in Quebec) representing ScotiaMcLeod Financial Services. "ScotiaMcLeod Financial Services" includes:
* "ScotiaMcLeod Financial Services (Ontario) Inc."
* "ScotiaMcLeod Financial Services (Quebec) Inc."
* "ScotiaMcLeod Financial Services Inc."