INTRODUCTION TO ESTATE PLANNING

A guide to creating an estate plan that will benefit you now, and help your family in the future.

PREPARING TO MAKE AN ESTATE PLAN

- [ ] Setting your priorities
- [ ] Taking inventory of your assets
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INTRODUCTION

Many people think estate plans are only for the very wealthy, but that is simply not true. If you have a home, investments, savings, or life insurance, then you need an estate plan. Your estate is more complicated – and potentially more valuable – than you might realize. Every spouse, parent, grandparent, business owner, and professional person can benefit from an estate plan.

An estate plan outlines how your affairs and finances will be handled after you die. It ensures that your estate will be settled according to your wishes. It can also help minimize taxes and leave more for your heirs. Without an estate plan in place, a government formula dictates what happens to your assets and who has the authority to administer your estate; that person will not necessarily be the person you would have chosen.

An estate plan is an essential part of your financial planning. In short, it is never too early to start. Although an estate plan is created with your family and heirs in mind, it can also identify tax savings opportunities that may benefit you during your lifetime.

This guide provides an overview of the things you should consider when making an estate plan. When you are ready, consult with professionals who can guide you through the process, provide you with options that suit your individual situation, and advise you on the legal, tax, and financial implications of your choices.

SETTING YOUR PRIORITIES

Understanding what is important to you and what you want to achieve will help you communicate with your professional advisors, so they can present practical options to help you meet your goals.

For example, when do you plan to retire and how do you want to spend your retirement? Do you want to leave as large an amount as possible to your family? Would you like to fund your grandchildren's education? Is someone with special needs dependent on your financial support?

It is not easy to speak with your family about your wishes, but sharing your estate plan with them is an important step in the process. Be clear with them, to avoid surprises after your passing. Let them know where all your important documents are kept, which financial institutions hold your assets, and which professional advisors helped you prepare the plan. Sharing that information will save them time and money, and will lighten the administrative burden associated with settling an estate.

PAUL MORTON, PARTNER

TAKING INVENTORY OF YOUR ASSETS

Knowing what you own is just as important as understanding how you own it. Identify everything that is part of your estate: your home, other properties, savings investments, pension plans, and insurance policies. Identify items you own jointly, as well as those with designated beneficiaries.

Gather all your personal, financial, and legal documents in advance of meeting with an advisor. These might include:

- Bank, loan, and investment statements
- Recent tax returns
- Insurance policies
- Real estate documents
- Will and Powers of Attorney
- Marriage contract or prenuptial agreement, and
- Separation agreements and divorce documents.

How can GGFL help?

- ✔ Review your current will
- ✔ Develop tax strategies for:
  - Investments
  - Minimizing taxes on death, and foreign property

IMPLEMENTING TAX PLANNING STRATEGIES

There are several strategies you can implement to reduce the taxes payable on your death. Some of these strategies are outlined below.

Incorporating investments

Incorporating your non-registered investments is one of the best strategies to reduce taxes payable today and on your death.

Some benefits of transferring non-registered investments to a company include:

- Your investment income (interest, dividends, and capital gains) is no longer subject to tax on your personal tax return, giving you more flexibility for personal tax planning;
- No taxes will be payable on the transfer to the company. You will receive a combination of loans and preferred shares on the transfer;
- By making family members or a family trust an owner of the common shares of the company, the future growth of the portfolio will accrue to the benefit of both you and your family. You can be a beneficiary of the family trust; and
- Over time, you can redeem the preferred shares you receive on the transfer in a tax-efficient manner, thereby reducing the taxes payable on death.

Annual tax planning strategies

On your death, you are deemed to have disposed of all your assets at their fair market value (FMV), which often puts you in a higher tax bracket. Therefore, annual tax planning can reduce your taxable estate upon death.

Such strategies include:

- Pension splitting
- Triggering capital gains
- Withdrawing additional funds from RRSPs/RRIFs
- Gifting assets to your beneficiaries while you are alive, and
- Donating securities during your lifetime that have accrued gains, thereby eliminating the taxes payable on the accrued gain.

Minimizing Estate Administration Tax (EAT)

An estate plan should not only minimize income taxes on death, but also minimize Estate Administration Tax (EAT), formerly known as probate. EAT is a percentage of the value at date-of-death of the deceased's assets being distributed under the will. This can result in a significant cost to the estate.

Designation of beneficiaries

Certain assets that have a designated beneficiary can be passed outside of your will to avoid attracting EAT.

These assets include:

- Jointly held assets (such as joint bank accounts)
- Life insurance policies
- Registered Retirement Savings Plans (RRSP)
- Registered Retirement Income Funds (RRIF), and
- Tax Free Savings Accounts (TFSA).

Trusts

Using tax strategies involving trusts while you are alive can also minimize EAT on your death.

Alter ego trusts and joint partner trusts are for individuals over the age of 65. Individuals can transfer assets into a trust without triggering tax. The individual who transferred the assets is the only person entitled to the income from the trust during their lifetime. At death, the assets transfer outside of the estate and are not subject to EAT.

CASE STUDY

Mary, a 75-year-old widow, currently has $400,000 in her RRIF, with no named beneficiary, and a portfolio worth $1,000,000 with a cost base of $400,000. Her average portfolio growth is 7% per annum. She has under $50,000 of taxable income per year. If Mary were to pass away today, her tax liability would be approximately $350,000. Her total EAT on these assets would approximately be $20,000.

However, if Mary increased her annual RRIF withdrawals to utilize her low tax brackets (in Ontario, the highest tax bracket starts at $220,000) then her RRIF income would be taxed at a lower rate than it would be at death.

As well, if Mary incorporated her non-registered investments:

- She would receive a loan from the company equal to her cost of $400,000;
- She would receive preferred shares of the company equal to her unrealized gain on the portfolio of $600,000;
- A family trust (or other family members) could own the common shares of the company to ensure any future growth in the value of the portfolio will not be subject to tax on Mary's death; and
- Mary will then be able to utilize her low tax brackets to redeem the preferred shares over time, reducing her tax liability at death.

If Mary designates a specific beneficiary for her RRIF (e.g., a child), that would cause it to fall outside of her estate, protecting the entire value from EAT. If Mary had dual wills, she could put her preferred shares of her corporation and her shareholder loan in a secondary will, which would not be subject to EAT. Assuming she has no other assets, Mary's EAT bill of $20,000 would be eliminated completely.

How can GGFL help?

- ✔ Review the assets that will be subject to income tax on your death
- ✔ Review/update annual planning to minimize taxes
- ✔ Assess if incorporating investments would be beneficial
- ✔ Discuss potential use of trusts, such as family trusts, alter ego trusts, and Henson trusts
- ✔ Review philanthropic goals for tax efficiencies

CHOOSING AN EXECUTOR

Your executor is legally responsible for distributing all of your belongings and handling all of your estate's obligations. Selecting an executor is a big decision.

Executor's responsibilities

You should have a discussion with the person you would like to name as your executor about the role and the time commitment. Do you trust them? Are they financially responsible?

Your executor is responsible for:

- Locating the Last Will and Testament
- Making the funeral and burial arrangements
- Determining what assets you own, where they are located, and what their value is
- Having the will probated and filing an Estate Administration Return
- Collecting the assets
- Closing all accounts, memberships, and other commitments
- Filing the necessary tax returns
- Fulfilling the wishes of the will, and
- Paying the estate liabilities and obligations, and distributing the assets to the beneficiaries.

Whom should you choose to be your executor?

This is the million-dollar question. More often than not, you would appoint your spouse. However, your will should also name someone who would assume the role if your spouse predeceases you, or is incapable of handling the responsibilities.

Hire a trust company if you are having difficulty finding someone who fits the bill.

Your executor does not have to do the job all by themselves. It is within their rights to enlist any professional advisors they deem necessary, and those fees are collected out of the estate. Let beneficiaries know that the executor can seek and pay for professional advice, and is entitled to compensation for their time and expenses.

Having a discussion with your family to explain your choice of executor and communicate your wishes may help the beneficiaries accept your decisions. This will ease the executor’s role, and help to prevent any disputes after you are gone.

How can GGFL help?

- ✔ Discuss your choice of executor
- ✔ Help the executor step by step with the estate administration
- ✔ Help the executor identify all assets of the estate
- ✔ Prepare the bookkeeping for the passing of accounts
- ✔ Help with all dealings with CRA including filing of tax returns
- ✔ Calculate executor compensation

SEE THE OPPORTUNITY BEHIND YOUR NUMBERS

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CREATING YOUR WILL AND POWERS OF ATTORNEY

Will

A valid, up-to-date will is essential in estate planning.

Dying "intestate" means there is no valid will upon death. Consequently, the courts will determine how your assets will be distributed, which may not always adhere to your intended wishes. Not having a will also incurs greater costs to the estate.

What does a will cover?

A will should cover the majority of your assets. However, items with a named beneficiary, such as life insurance policies, pass outside of the will. You can also pass jointly held assets to the joint owner(s) outside of the will.

Dual wills that cover different assets is another option. This can be beneficial for probate planning.

Your will can also determine guardianship of your children. If there is no surviving parent and there is no will naming a guardian, then government agencies will become involved. Family members can petition for custody, but ultimately the court will decide.

Updating a will

Review your wills on a regular basis to ensure they are up to date and reflect your current wishes. Name an alternate executor in case your first choice is unable to fulfil his or her responsibilities.

You may want to review your will in light of any significant life events, such as marriage, children, or grandchildren.

Marriage voids any existing wills. In the event of a divorce, your will remains valid and all clauses related to your former spouse become invalid, including their appointment as executor. While any clause related to your former spouse becomes invalid, the divorce does not affect situations where you have designated your former spouse as a direct beneficiary, such as RRSP/RRIF, TFSA, and life insurance.

Power of Attorney

You should have a Power of Attorney (POA) in addition to a will. A POA is a document that gives power to an appointed individual(s) to act on your behalf in certain circumstances, including absences and mental incapability. It is important to have this in place before something happens that makes you incapable of acting for yourself.

The difference between a POA and a will is that a POA addresses matters while you are alive, while a will deals with matters after you have passed away. Your POA can differ from your executor.

You may have a POA for your property, which would govern your finances, and a POA for Personal Care, which will govern decisions over your health. These can be the same person or you can appoint separate people.

How can GGFL help?

- ✔ Review your will
- ✔ Advise of income tax implications relating to your will
- ✔ Monitor any changes to your financial situation that affect your will
- ✔ Work with your lawyer to ensure that your will reflects your intentions
- ✔ Discuss if a special trust for disabled beneficiaries may be required
- ✔ Calculate POA compensation

DEVELOPING STRATEGIES FOR BUSINESS OWNERS

If you are a business owner, your plan will be more complex and should include your business succession plan and additional business-related documents. There are several points to consider.

- You may be eligible to use the capital gains exemption of approximately $800,000 if you own shares of a private company.
- You should review your current business structure to ensure the shares are held in a tax efficient manner.
- Over time, you can redeem your preferred shares of your private corporation, thereby reducing the taxes payable on death.
- Consider dual wills, another commonly used technique to minimize EAT. You only have to submit one will for authentication by the court in Ontario. The primary will covers all assets subject to EAT. The second will deals with assets that do not require EAT, such as privately held shares and loans to privately held corporations.
- Identify who will run your business after you have passed away.
- Consider business succession planning that allows a transition of your business in a very tax efficient manner. Strategies such as estate freezes and corporate reorganizations are just some of the mechanisms available to achieve your business succession goals.

For a more details, consult our “Business Succession Planning” guide, which is available on our website at www.ggfl.ca.

How can GGFL help?

- ✔ Review your current business structure
- ✔ Discuss potential use of a family trust to own your company
- ✔ Ensure that you will qualify for the capital gains exemption
- ✔ Advise of income tax implications relating to your will
- ✔ Assess the need for dual wills
- ✔ Discuss business succession planning

ESTATE PLANNING TEAM

Our estate planning team has years of experience helping people create effective estate plans. We work with you to understand your goals and gain a deep understanding of your financial situation, so we can advise you on the best estate planning tools and tax strategies for you and your family.

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ACTION PLAN

OPPORTUNITY IN NUMBERS

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