

Estate planning guide for individuals and business owners

Sunlife

Estate planning affects all Canadians. Despite that, it's something many Canadians put off or even avoid. This may be because of knowledge gaps or being uncomfortable with the topic. Good intentions are not enough; neither is having a will alone, although that's a good step. Proper planning is required. This guide focuses on tax and estate planning as a fundamental step in an efficient plan, helping to utilize available tax efficiencies beyond what is available with a will alone.



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Estate planning basics

Estate planning is the process of organizing a tax-efficient transfer of assets to specific people or charities. While not strictly part of estate planning, incapacity planning is also part of a complete plan. It may be harder than estate planning, since the needs and prospects of an incapacitated person are often very difficult to predict.

In addition to determining who should receive assets and when they should receive the proceeds of an estate (during lifetime, at death, long after death or never), estate planning also considers:

- the financial and other needs of surviving family members in the event of death
- any financial, contractual or moral obligations
- tax minimization strategies and wealth transfers
- for business owners, a plan for orderly business succession

An estate plan does not stand alone. Well-built plans integrate with financial, tax, retirement and business plans. For a complete plan, also consider the plans of family members and the co-owners of assets or a business. If someone owns assets in more than one province, territory or country, an estate plan will need to reflect the different laws and layers of taxation that will apply.

An estate plan will change over time as personal and business circumstances change. As new pieces are added to the plan, review them to ensure they're consistent with the parts of the plan already in place. While a plan may never perfectly reflect someone's entire personal and business situation, it needs to be kept as current and up to date as possible so that it remains relevant.

The importance of estate planning

This guide will help you:

- focus on estate planning goals and any areas of concern
- develop an estate plan that meets personal and business needs, or monitor a plan already in place
- understand different estate planning tools available
- identify the decisions that may be difficult, so that individuals can work with their advisors and determine a satisfactory approach to resolving them

Consider the following when determining the importance of an estate plan:

- In all provinces and territories, if someone dies without a will, the law distributes their assets according to default rules that may not align with their intentions.
- If someone dies without an estate plan, the language in a will may not be enough to allow their family to take advantage of the tax opportunities available to them or a business.
- Further, if someone dies without an estate plan their surviving family members will be left to deal with the estate and business as is and may not have the resources or experience to manage financial decisions.
- In many cases, an estate plan helps the executor(s) and survivor(s) identify all the deceased's property and sources of income. This reduces stress during an already stressful time.

See our questionnaire in "Appendix A" for a more detailed list of questions to determine if your current estate plan requires review.

Dealing with uncertainty

Uncertainty causes many people to hesitate. You may delay creating an estate plan because you feel unable to make every decision today. That's normal. Tax, legal and financial advisors can help you explore options once you identify the key decisions.

In some situations, advisors will help you and your family weigh choices and make difficult decisions. Chances are advisors have dealt with similar problems with other clients. In other situations, they'll help you find a solution that provides flexibility so that someone can make final decisions later.

For example, if children are still in secondary school, it may be too early to decide if any of them will be capable of handling an inheritance or running a business. In such a case, a will could leave the inheritance to trusts for the benefit of children and a spouse. At their discretion and guided by your directions in the trust, trustees would determine how the inheritance is divided among children and a spouse, years after death.

Staying in charge of the estate planning process

Estate planning is an ongoing process that evolves as life changes. Not every question needs an immediate answer. Don't let unresolved issues prevent you from getting started. It's perfectly acceptable to defer some decisions and revisit them later. A partial plan is often better than having no plan at all.

Estate planning is more than your will

Most people need more than a will to adequately distribute their estate and provide for their family. In many families, the bulk of assets may be passed on by some other estate planning tool quite distinct from the will. Outside of Quebec, you can hold real estate, cash and investments in joint tenancy with right of survivorship. You can also designate beneficiaries for life insurance and registered plans. In both cases, these planning tools may effectively move most of the assets to the intended heirs and they occur outside of the will.

The will may, in fact, only control a small portion of someone's assets. In Quebec, joint tenancy with right of survivorship does not exist, but you can name beneficiaries on life insurance policies. Further, only registered plans that contain a life insurance product (e.g. segregated fund, insurance GIC or annuity) can take advantage of a valid beneficiary designation directly in the plan. For non-insurance products, individuals in Quebec name beneficiaries in their will.

Effective estate planning involves looking at all these aspects in conjunction with each other. This avoids a piecemeal approach and may reduce discrepancies in an intended distribution. An advisory team will help you choose and integrate planning tools to meet the estate's objectives. This guide also provides considerations of some estate planning strategies and cautions to watch for.

Estate planning motivations

Estate planning is guided by both rational and emotional motivations. It's usually an act of care, concern and generosity toward family. For some, it's a way to give lasting purpose to the wealth they've built over time. For business owners, it's good business that enhances the chances for those left behind, including employees, who will continue to benefit from years of accomplishments in the family business.

If the answer is "yes" to any of the following questions, an estate plan will provide the comfort of knowing your affairs and family members are looked after.

Are there concerns about:

- avoiding uncertainty, conflict or litigation about estate wishes?
- minimizing the taxes payable so that beneficiaries receive a larger share?
- ensuring the estate has sufficient funds to pay the taxes that will arise on death?
- satisfying creditors at the time of death?

Do you want to:

- know that your estate will be distributed as intended?
- minimize the stress to survivors by settling affairs in advance?
- continue support for charitable works that were important during life?
- provide security for employees, especially those with long service, if you're a business owner?

How advisors can help start the estate planning conversation

Encouraging family members to start the estate planning process can be a delicate task. Family members are often reluctant to initiate the estate planning process in case they're thought to be greedy. At the same time, parents may be reluctant to start the discussion in case it leads to disagreements among family members. Trusted financial advisors can assist in starting the discussion among family members for personal and business affairs.

Factor in the effects of grief

An estate plan helps protect family from the burden of making difficult decisions when they're grieving.

As family members move through the various stages of grief and approach acceptance, they're more likely to make decisions for rational rather than emotional reasons. In general, people are advised to wait six to twelve months after the death of a spouse or other family member before making any major decisions. Planning for an estate in advance of death can help protect family from the stress of making major decisions during that time.



Developing an estate plan

Estate planning involves balancing competing needs and goals to develop a plan that satisfies as many different objectives as possible. Someone's goals may not be the same as those of their family members – and family members may have different interests from each other.

For example, someone who has been married more than once may have to balance the competing interests of children from an earlier marriage with those of a current spouse.

The following steps can help design a plan that meets as many objectives as possible.

Step 1 – Consult advisors

A carefully chosen team of professional advisors can help identify, prioritize and implement estate planning goals. Start with a trusted advisor. For example, a lawyer, accountant or financial advisor. Ask for their assistance in selecting a team. Check the professional credentials and experience of everyone on the team to ensure they have the skills necessary to help.

Sunlife created this guide to help advisors and Clients work with their other professional advisors to create an effective estate plan. Each advisor will help in a specific area. In certain situations, there is a need for more than one advisor from a specific discipline. For example, both a corporate and tax lawyer. Also consider hiring a team leader whose sole responsibility is to coordinate the other team members and manage the entire process.

The advisor team may include some or all the following members:

Specialists

- **Lawyers** – Lawyers provide advice on legal issues that may arise out of the estate plan and draft the necessary documents and agreements. They may also consult with lawyers in other jurisdictions where assets reside.
- **Advisors** – Advisors cover a wide variety of expertise. They can provide strategies to maximize the value of an estate, help develop an investment strategy for non-business assets, provide insurance advice and may manage an investment portfolio. Consider a financial planner who has their Qualified Associate Financial Planner (QAFP®) or Certified Financial Planner (CFP®) designation, which means they have met the standards of FP Canada. In Quebec financial planners use the designation Pl. fin. and are licensed and receive a designation from the Institute of Financial Planning (IPF).
- **Accountants** – Accountants help develop strategies to reduce the taxes payable during lifetime and at the time of death. They also provide advice on the tax implications of the various components of an estate plan.

Advisors to a business

- **Chartered Business Valuator** (**CBV**) – Specialist expertise may be useful in quantifying the value of assets, especially the value of an ongoing business. Valuation of goodwill and income flow is especially difficult. A designated CBV specialist may be able to provide an expert opinion that may be required later by taxation authorities.
- **Family council** – Family businesses may have family councils that discuss the role of the business within a family context. A family council can help establish business and succession goals that reflect the wishes of both the business owner and family members.
- **Advisory board** – An advisory board is an outside group that may include other business owners, entrepreneurs, professionals, and friends, who provide the family business with knowledge, assistance, and a fresh perspective. An advisory board can assist in developing an ownership transition process and estate plan.
- **Family business advisor/facilitator** – Promoting understanding and communication within the family can make families more effective in business. Professionals with experience in family business and family dynamics can often provide insight, counsel, and advice that's not available from other sources. This includes advice on succession planning.

Non-traditional advisors

- **Life/leadership coach** – High performers in any field often rely on coaching from impartial outsiders. A life coach can help clarify personal goals and priorities so that they can be reflected in an estate plan.
- **Physician/psychiatrist** – Medical opinions, especially as to mental status and competence, are sometimes sought as part of an estate plan, especially in the case of elderly or seriously ill individuals. Timely medical opinions can have a powerful effect in bolstering or protecting estate plans, especially if the plan is unpopular with certain individuals.

Dispute resolution

- **Mediator or conciliator** – If the family is unable to resolve conflicts or competing claims, consider hiring a mediator or a conciliator with experience in family dispute situations. They can help resolve the outstanding family issues affecting an estate plan.

Independent advice

Family members may want to retain their own advisors. If any family members are asked to sign agreements (such as marriage contracts) in which they waive any of their legal rights, it's important they get independent legal advice. Avoid relying on the advice of one lawyer for both parties; otherwise, the documents may be open to challenge later.

Step 2 – Determine estate planning goals

After choosing advisors, start determining estate planning goals. At this stage, focus on identifying specific goals and what is a 'need' versus a 'want' in your estate plan. Some goals may revolve around tangible things, such as large assets or intangible things like family harmony.

Start with a plan for lifetime needs, including needs of a spouse and any financial dependents during lifetime. Some estate plans address responsibility for assisting both adult children and parents. Creditors and dependents of all sorts need to be considered, since they rank ahead of ordinary beneficiaries with respect to assets within an estate. Then start planning for how, and when, to divide and distribute an estate. Consider the following:

- Are there specific assets a certain family member is to receive? Or is dividing the value of assets more important?
- Does the plan involve gifting assets prior to death or beneficiaries receiving the assets at the time of death, or at some later date?
- Does the plan include directing how beneficiaries will dispose of the assets left to them when they die? Items such as family farms or cottages may be of concern.
- Is it important to provide ongoing support to any family members? If so, how long?
- For business owners, are there any family members who have the business skills necessary to run the business? Who will want to do so?
- Is leaving any portion of an estate to charity important to the plan?
- How important is minimizing income tax and probate fees?

Other planning issues faced by parents are sometimes more difficult.

- **Fair treatment or equal treatment.** When there is more than one child, consider whether the plan treats the children fairly or equally – two concepts that aren't necessarily the same. Treating children equally means dividing assets evenly between them. However, equal sharing of the ownership and management of an asset may be a recipe for disaster. If disputes arise or if a business fails, all family members may suffer. Assuming the estate contains assets of sufficient value, it may be fairer to transfer specific assets like the business to the child who is most likely to ensure its success and to give other children assets unrelated to the business of approximately equal value. Alternatively, you may choose a value you feel is fair under your circumstances. If an estate doesn't have sufficient assets, consider using life insurance to provide a fair distribution to other children.
- **Relinquishing or retaining control.** Consider whether transferring complete control over the assets or retaining some control over the assets fits within the plan. This decision applies whether the gift is made during lifetime or after death. For those who don't want to transfer control of the assets to the recipient, advisors can provide solutions (such as trusts) that allow some retention of control.
- **Publicity or privacy.** Consider the risk of financial affairs going public. All probated wills are public documents and can be reviewed by anyone. For those who want to protect privacy, consider tools that avoid the probate process, such as insurance, gifts during lifetime, or the use of inter vivos trusts (living trusts).

Tip!

Determining estate objectives is the most important step in the estate planning process and can take time. The rest of an estate plan will flow from the goals identified at this stage, so consider objectives carefully.

For those spending significant time determining estate objectives, consider preparing an interim will that sets out the dispositions already decided and leave the remaining assets to a discretionary trust. As more complete estate plans develop, revoke the interim will and prepare a new will that reflects the complete plan.



Step 3 – Weigh options and develop the plan

Part of developing an estate plan is determining how to transfer an estate. Once there is a list of all the estate planning objectives, advisors can begin setting out different options to consider. Some of the many tools available are listed later in this guide.

Step 4 – Share the plan

While developing an estate plan, consider involving family members in appropriate discussions. As much as possible, make sure beneficiaries want the assets left to them. Once an estate plan is finalized, determine who should be informed of its details. Consider the following:

- Who needs to know the estate plan? Uncertainty can be destructive. Providing information about an estate plan to the people affected by it can address any concerns. For example, appoint executors and trustees after you've discussed it with them and they agree to act in this important capacity.
- How much do they need to know? Beneficiaries, other family members, and close friends may only need to know the broader details of an estate plan. For business owners, key employees, lenders and customers will probably only need to know broader details relating to your plans for the business.
- When should they be told? Many people may not want children to know that they'll be inheriting a sizeable estate until they're older and have achieved their own successes.

Tip!

Take an integrated approach when developing the plan

A successful estate plan requires integration with financial, retirement and business plans, as well as with the estate plans of other people. For example, if one child will ultimately own all of the shares of a business, that child should be appointed as successor under a business succession agreement. Or, for any assets owned jointly with a spouse, both spouses' wills need to dispose of the assets in a way that is consistent with each other and with the overall estate plan.

Proper planning also integrates an estate plan with the plans of the recipients of gifts and considers worst-case scenarios, such as a beneficiary dying before receiving the intended gift. For example, an estate plan may include provisions to transfer assets to successive beneficiaries in the event one dies prior to the transfer. Or, an estate plan can contemplate equalization clauses (known as a hotchpot clause). This clause recognizes gifts made during lifetime when determining distribution of estate assets. However, it requires records to confirm gifts made during lifetime and cooperation of the beneficiaries.



Step 5 – Implement the plan

Advisors will help structure and prioritize the details of the implementation of the plan. The actions taken will depend on the details and objectives of the estate plan. This guide looks at the tools available for an estate plan in more detail in the "Tools for creating an estate plan" section of this guide.

Step 6 – Monitor the plan

It's important to review the plan at least annually, and whenever there is a major life, business or tax change, to ensure it still meets its objectives. Establish benchmarks to help measure progress toward your goals. An annual review also assists in responding to any changes in tax or other legislation that may affect the estate plan.

Reasonable benchmarks for progress in building or updating parts of the plan will help manage expectations. If a document is solely in one person's control, such as a will, it may be reasonable to expect it will be drafted and ready for signing a few days or weeks after finalizing your instructions. If a legal agreement requires negotiation, such as a shareholder agreement or marriage contract, it may take six months or more.

Whatever the expected timeline, monitor and update the estate plan like a project. Keep track of the plan, mark progress, and assign accountabilities for who is going to do what. This will help ensure that nothing is missed.

Tip!

Planning for the unexpected

Death is not the only contingency. While incapacity planning is not strictly part of estate planning, it's often done at the same time. For business owners, prolonged absence may also trigger the business succession plan.

Implementing an estate plan may require a significant amount of time, especially if it involves corporate reorganizations and tax planning. Provide a trusted individual with a power of attorney, along with written instructions setting out all of the steps involved in the estate plan and authorizing them to complete its implementation if necessary. The power of attorney could also contain restrictions preventing the attorney from changing the parts of the plan already implemented. Discuss this with your legal advisor.



Estate planning specific to business owners

Is estate planning different for business owners?

An estate plan will cover both personal and business assets. Estate planning for business owners is more complicated because it addresses:

- larger and more complex estates
- complex personal and business relationships
- issues relating to business succession
- more complicated tax issues

Is an estate plan the same as a succession plan?

An estate plan includes all of someone's business and personal assets. A succession plan involves the business assets. An estate plan is triggered by death, while a succession plan may take effect during lifetime or at the time of death.

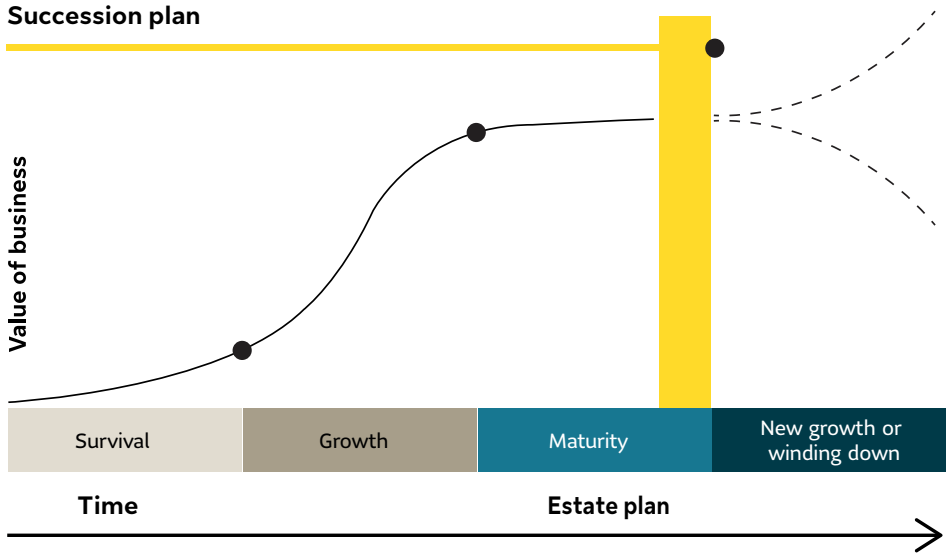
Business owners need either an exit strategy or a succession plan to provide for the transfer of business interests to help ensure the future success of the business.

A succession plan may outline the sale or voluntary transfer of a business interest to a successor while all business owners are alive, or it may provide for the disposition of the business interest upon death. In either case, a succession plan should include:

- a financial plan to make sure the current owner and their spouse have the retirement lifestyle they want
- a management transition plan for the business
- an ownership transition plan for the business and its shares
- a contingency plan – in case any key person is unexpectedly unable to run the business before the planned management and ownership transition occurs

A succession plan is a part of the global estate plan. The graph shows the growth of a business established when its owner is 35 years old and eventually transfers to their daughter after running it for 30 years.

The graph shows that, although the owner always has an estate plan, they only have a succession plan during part of the business cycle.



Business exit strategies

When preparing an estate plan, think about how long the business owner intends to actively run the business and in what capacity. Consider long-term goals for the business. Will it stay in the family? Is there a family member who is capable and wants to run it? Is there another successor in mind, other than a family member? Or, is the plan simply to sell the business to a third party for the best available price?

It can take time to develop an exit strategy, particularly if it involves preparing a successor, so planning starts long before a business owner intends to leave the business. There are two main types of exit strategies:

1. appointing a family successor
2. selling the business

See Sunlife's Business succession planning guide for detailed information on succession planning.

Appointing a family successor

When considering a family member as a business successor, objectively assess whether they have the interest, skills and commitment needed to successfully run the business. Family succession can be emotionally rewarding, but personal family dynamics often complicate the transition and can increase the risk of failure if not carefully managed. Timing is also critical: bringing the next generation into the business too early may limit their development, while waiting too long may lead them to pursue other careers. Business owners must be prepared to eventually transfer management authority, not just ownership, and should seek objective advice from external professionals to ensure business decisions take precedence over family considerations.

Selling a business

Some business owners decide they'd rather sell the business than appoint a family successor. The decision to sell may depend on whether someone sees their business as a commodity or a career. People often establish a business with the intention of running it for several years, then selling it for a large profit and retiring. This plan may change over time.

Even if someone would rather keep the business in the family, they may decide to sell because of a lack of interest or ability on the part of children. Or they may also decide to sell for purely financial reasons. For example, a business owner may be able to obtain a higher price from a third party and use the proceeds to provide for their children.

The importance of a buy-sell agreement

If the business has more than one owner, it's essential to have a buy-sell agreement, which sets out conditions under which one owner has the right to buy the ownership share of the other owner. Triggering events will usually include death, disability, retirement, and a non-resolvable dispute between the owners.

Some buy-sell agreements provide a method of valuing the shares being sold if one of the triggering events occurs. The method chosen will depend on the goals and objectives of the shareholders, the specifics of their situation and the industry. Since neither shareholder knows whether they'll be the buyer or seller, both will want to select a formula that's fair in either event.

See Sunlife's Business Continuation Planning Guide for detailed information on buy-sell and continuation planning.



Tools for creating an estate plan

A comprehensive estate plan may include several tools, each designed to address specific objectives and challenges. Used together, these tools can help support your family, reduce risk and transfer wealth efficiently. These include offering protection in the case of unforeseen events, such as disability or marriage breakdown, and providing the necessary capital investment growth to meet financial goals in retirement.

Some of the tools, such as a will, are essential to every estate plan. Others can be used on their own – or in combination with other tools – to address estate planning issues unique to each situation.

Here's an overview of some of the estate planning tools to consider using as part of a comprehensive estate plan.

Wills

A will is a legally enforceable document that outlines how property is distributed upon death. In the will, an executor (or liquidator in Quebec) acts on behalf of the deceased will maker to ensure the distribution takes place according to their wishes. A will only takes effect at death and can be amended at any time while the will maker remains competent.

While it's usual to have one will covering all assets, there are some situations in which two or more wills working in conjunction with each other could be appropriate. The following situations are examples of when more than one will may be necessary:

- If the will maker has assets located in different jurisdictions. Some may want a separate will for each jurisdiction covering only the assets in that jurisdiction.
- In Ontario or British Columbia, preparing two or more wills can reduce probate fees and protect the privacy of the will maker's estate. One will covers the assets requiring probate (such as deposits held by financial institutions or real estate) and another covers all other assets (including shares of a company or other assets that don't require third party verification). A third will may cover assets that the will maker is unsure requires probate. Drafting multiple wills requires expert legal advice to ensure one will does not revoke another.

Descriptions of other types of wills outside of Quebec are found in "Appendix B" at the back of this guide. Types of wills in Quebec are found in "Appendix C."

If someone dies without a valid will, otherwise known as dying "intestate," provincial legislation will direct who receives the estate property. In all provinces and territories, a regime exists to determine how an estate is distributed to creditors, spouse and children.

Many laws include a preferential right for a spouse with division of the remaining estate among spouse and children. If no spouse or children exist, the rules provide for distribution among other family members based on blood relationship. In Quebec, where a person dies intestate leaving a spouse and children, the spouse general receives one-third of the estate and the children receive the remaining two-thirds, subject to rights arising from the family patrimony and matrimonial regime. This disposition is generally not what most people want. Relying on these rules can result in a loss of tax planning strategies and ability to direct the distribution of an estate.

The court will appoint an administrator to manage and distribute the estate. The people with the first right to be appointed as administrator are typically a spouse and children.

Powers of attorney (for Quebec residents see "Appendix C")

A power of attorney allows the donor to give another person (the attorney) the authority to make decisions on their behalf. By creating a power of attorney the donor doesn't give up the power to make decisions – it just lets someone else make them, too. The attorney does not need to be a lawyer.

A power of attorney helps plan for situations in which someone becomes physically or mentally incapacitated. However, it's important that the document say that it is valid for any period during which they're incapacitated. Without such language, a power of attorney becomes invalid upon incapacity even though that's the time when most people would want their attorney to be able to use it. A power of attorney can also be valid for a temporary period or indefinitely, but in any event, it is only valid during the donor's lifetime and terminates on their death.

Many people need a power of attorney that can be exercised in each jurisdiction where they own assets. This doesn't necessarily mean they need a separate power of attorney in each jurisdiction. Many jurisdictions recognize powers of attorney drafted in another jurisdiction. However, it's best to consult legal counsel to ensure all assets are covered wherever they are located. If someone doesn't have a power of attorney and becomes incapacitated, a judge can appoint a substitute decision maker to act on their behalf, but that can be an expensive, time-consuming, and stressful process. Descriptions of types of powers of attorney are found in "Appendix D" at the back of this guide.

Trusts (for Quebec residents, see "Appendix C")

Trusts are a very useful estate planning tool. They allow the will maker or settlor to transfer legal ownership of an asset to a trustee who holds the asset for the benefit of the beneficiaries. Subject to the limits set out in the trust document, the beneficiaries may use and enjoy the asset, but they don't have legal ownership of it. In an estate planning context, trusts are commonly used to:

- provide benefits to minor children or own property for minor children until they are old enough to own property themselves
- provide benefits to a second spouse following the will maker's death without disinheriting any children from the first marriage
- provide benefits to an incapacitated surviving spouse
- offer estate privacy
- minimize taxes

There are two main types of trusts:

- **Inter vivos trusts (living trusts)** – These take effect during the settlor's lifetime and pay tax on accumulated income at the highest marginal tax rate. Living trusts are often used as alternatives to flowing assets through an estate or to supplement a power of attorney. For business owners, a living trust is often used together with a planning technique called an estate freeze to save on future capital gains taxes. The technique freezes the value of the company at its current level (and the accompanying deferred capital gains tax liability) for the owner, while transferring the right to any future growth to the owner's successors.
- **Testamentary trusts** – These are generally created in a will and take effect at the will maker's death. Starting in 2016 most testamentary trusts also pay tax on accumulated income at the highest marginal tax rate, the same as inter vivos trusts. A limited exception applies to graduated rate estates (GREs) for the first 36 months and to qualified disability trusts (QDTs).

See "Appendix E" for a brief overview of how trusts can be used in an estate planning context.

Other agreements

There are a number of other legal agreements, such as cohabitation agreements/marriage contracts, shareholder agreements or partnership agreements that may form part of an estate plan.

See "Appendix F" for a description of some of these other types of agreements.

Insurance products

Insurance coverage, both during lifetime and upon death, will form an important part of an estate plan. Life insurance guarantees tax-free cash to:

- provide liquidity to your estate at a time when it is most needed
- create or equalize a legacy for family members
- cover the anticipated capital gains taxes that will arise upon death
- protect a business against loss caused by the death or disability of the owner or a key employee
- fund a buy-sell agreement
- fund charitable giving, either by donating an insurance policy to the charity or by designating the charity as a beneficiary of a policy

Other forms of insurance, such as disability insurance, critical illness insurance and long-term care insurance, may also be considered.

If the life insurance policy beneficiary designation is properly structured, the policy's cash values may be protected from claims of the policy owner's creditors during the insured's lifetime, and the death benefit will be protected against claims of the policy owner's creditors after the insured's death. This creditor protection is available where the beneficiary is an irrevocable beneficiary. It is also available where the named beneficiary is from the "protected class" prescribed by provincial law. All provinces (except Quebec) and territories include the spouse, child, grandchild and parent of the life insured as a "protected class". Northwest Territories, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia extend this to common law partners. In Quebec, the relationship must be between the owner and the beneficiary of the policy and extends to the spouse, civil union spouse and all ascendants and descendants of the owner.

Remember that creditor protection is not absolute. The Canada Revenue Agency, for example, may have greater rights in some circumstances than other creditors. Also, attempts to buy a life insurance policy and use it to shelter funds against creditors' claims when the policy owner is insolvent or on the eve of bankruptcy may not succeed.

How taxes can impact an estate plan

Taxes and an estate plan

The focus of many estate planning tools is tax minimization. Without proper planning, taxes can consume a significant chunk of estate capital. However, it's important that an estate plan not be motivated strictly by tax planning. There may be circumstances where meeting estate planning goals may require someone to pay higher taxes.

- For example, some individuals want to avoid probate fees by making gifts of property during their lifetime. However, some may want to retain control of the property while they're alive and decide they'd rather pay the probate fees on death.

Here is an overview of the Canadian taxes that may be payable on death.

Income taxes

- **Income tax.** The terminal return includes taxes on all income earned in the year of death generally up to the date of death.
- **Capital gains tax and recapture.** All capital property is deemed to be disposed when someone dies, and any capital gains or capital losses are included in the calculation of final income. Capital property includes assets like real estate and various investments like stocks, mutual funds, ETFs, and segregated funds, among others. The deemed disposition on death may also trigger recapture of depreciation, which is taxed as income. See our guide on taxation of personal investment income for more information. Taxpayers can defer these taxes by transferring assets to a spouse or qualifying spousal trust. Thereafter though, there are limited abilities to defer the tax. Note if your capital property includes segregated funds and you are the sole annuitant with no successor annuitant, the contract ends upon your death with capital gains triggered without a rollover to a spouse. Your capital property may include your principal residence or secondary personal use property like a cottage. You can reduce the capital gains tax using the principal residence exemption on one or more properties. See our guide on the principal residence exemption for more information.

  For business owners, you may be entitled to the lifetime capital gains exemption for qualified small business shares and/or qualified farm and fishing property. See our guide on business sale considerations and planning for farming and fishing property for more information. In addition, for business owners, there may be more complex planning required to reduce potential double tax. See our guide on post-mortem planning for more information.
- **Tax on Registered Retirement Savings Plan (RRSP).** Outside of Quebec, RRSPs allow the owner to name a beneficiary on the contract, whether an individual or their estate. At death, the entire value of the RRSP is included in the terminal tax return. However, RRSPs can be transferred to a registered plan for a spouse, or in some cases to a financially dependent child or grandchild (or Lifetime Benefit Trust), on a tax-deferred basis. The estate claims a deduction for the amount transferred. This can occur either by naming them beneficiary or giving them the RRSP through the estate. In the circumstance where the RRSP transfers to someone other than a spouse or dependent child on a rollover basis, the person who receives the RRSP money will receive the entire balance in the RRSP tax-free, but the value of the RRSP is still included as income on the final tax return. Both the estate and the recipient are liable for the tax. However, the CRA generally only looks to the recipient if the estate lacks sufficient funds to pay all the tax.
- **Tax on Registered Retirement Income Fund (RRIF) assets.** Like RRSPs, outside of Quebec, RRIFs allow the owner to name a beneficiary on the account. The tax results are the same as set out above for RRSPs. However, RRIFs also allow the owner to name a successor annuitant (who is a spouse or common law partner) in the contract. In Quebec, you can name a successor annuitant in your will. In this case, the entire value of the RRIF transfers to the spouse or common law partner on a tax deferred basis. There is no income inclusion in the final return.
- **Tax on Tax-Free Savings Account (TFSAs).** TFSAs lose their tax-free status when the account holder dies. However, tax deferral may be continued if the account holder names their spouse or common law partner as the successor account holder or provides for a transfer at death of assets in their TFSA to their spouse or common law partner as a beneficiary. Amounts in a TFSA, including earnings accumulated to the date of death, are not taxable in a beneficiary's hands. Amounts that accumulate in the TFSA from the date of the account holder's death are taxable in the beneficiary's hands unless they transfer to the spouse.
- **Tax on Tax-Free First Home Savings Account (FHSAs).** An FHSA allows the owner to name a successor holder or beneficiary like a TFSA. The value of the FHSA is not included in the terminal return of the owner. Instead, the recipient pays tax on the amount received. A spouse or common law partner may be able to defer the tax by transferring to their own FHSA, RRSP, or RRIF, if eligible. See our quick reference guide on FHSAs for more information.

Tip!

In Quebec, only RRSPs, RRIFs, TFSAs and FHSAs that qualify as life insurance (e.g. segregated funds or annuities) allow for a beneficiary designation and for the designation of a successor annuitant or account holder, known as a subrogated policyholder. Otherwise, the designation is made in a will for these accounts.



- **Tax on life insurance policies.** Insurance policies owned on the lives of someone else may incur a taxable policy gain on the policy owner's death. For example, life insurance policies held on a spouse or child's life. Insurance policies owned on the lives of a spouse or children can be transferred to them outside of the estate on a tax-free rollover basis. Consult with a tax advisor since the rollover is tax-free only if certain conditions apply. If the rollover doesn't apply, the policy owner will incur a taxable policy gain if the deemed proceeds of disposition exceed the adjusted cost basis. See our guide on life insurance transfers for more information.
- **Non-registered life annuities.** Life annuities can be taxed in one of two ways. For accrual annuities there's no relationship between annuity payments made and the amount included in income. Income accrues each year and is taxable to the owner. If the annuity payments exceed the rate of growth, the amount of annuity principal subject to tax will decline, as will the taxable amount. For prescribed annuities a part of each annuity payment is taxable annually to the owner, and that part doesn't change throughout the life of the contract.

  At death, taxation depends on the type of annuity and the effect on the contract at the time of death.

  If the contract terminates at death with no death benefit or continuation of income:

  – Accrual annuities - At death, the deceased policy owner includes any income accrued since the last policy anniversary in their terminal tax return.

  – Prescribed annuities - At death, the deceased policy owner includes the taxable amount of each annuity payment received from the beginning of the year until the date of death in their terminal tax return.

  If the contract pays a lump sum death benefit:

  – Accrual annuities - Same tax consequences apply as above; the deceased policy owner includes any income accrued since the last policy anniversary in their terminal tax return. There are no tax consequences to the beneficiary who receives the lump sum death benefit.

  – Prescribed annuities - A taxable gain may result. If it does, the deceased policy owner reports it in their terminal tax return. There are no tax consequences to the beneficiary who receives the lump sum death benefit.

  If income continues to a beneficiary:

  – Accrual annuities - Same tax consequences apply as above: deceased policy owner includes any income accrued since the last policy anniversary in their terminal tax return. After the transfer, the beneficiary pays tax on amounts accruing in the annuity contract each anniversary after the policy owner's death. As was the case with the original policy owner, there'll be no relationship between the annuity payments made and the amount that the beneficiary will have to include in income.

  – Prescribed annuities - The deceased policy owner includes the taxable amount of each annuity payment received from the beginning of the year until the date of death in their terminal tax return. The beneficiary continues receiving the same payments from the date of the policy owner's death and includes the same taxable amount of each payment they receive in income.

Probate and other fees

- **Probate taxes.** Provinces charge fees or taxes for court orders, commonly termed letters probate, confirming the will is valid and the executor has the authority to act. Manitoba and Quebec do not charge probate fees (although a court filing fee may apply). Alberta and the territories all charge a flat fee ranging from $30 to $525 for probate. All other provinces charge probate fees that are a percentage of the total value of the assets that flow through the will. These range from 0.4% to 1.695%. Ontario, New Brunswick, British Columbia, and Nova Scotia have among the highest charges of all the provinces at 1.5%, 1.5%, 1.4% and 1.695% respectively. The rates above are current as of the date of publication.
- **Executor's fees.** Although not a tax on the estate assets, executors may be entitled to charge a fee, typically up to five per cent of the value of the assets transferred under the will. In Quebec, the liquidator is entitled to the reimbursement of his expenses. If they're not an heir, they're also entitled to remuneration. If they're an heir, they may be remunerated only if the will provides or the heirs agree. If the remuneration is not fixed in the will, the heirs fix it or, in case of disagreement, the court does so. Note that executor fees are taxable to the recipient, unlike gifts under the will, so it is recommended you make the description clear.

Strategies for reducing taxes at death

There are a number of strategies someone can use to reduce the various taxes their estate will pay on death. If the assets involved with any of these strategies are subject to a foreign country's laws (like U.S. property) care must be taken to ensure that the strategy does not trigger unintended taxation under the foreign country's tax laws.

Strategy or estate planning concept	Considerations
Gifts during lifetime	• Allows someone to transfer assets without paying probate fees since they won't own the asset at death. However, gifts of capital property (to anyone other than a spouse) are generally treated as a sale at fair market value and will trigger capital gains when gifted. • Gifts to spouses or minor children will also generally trigger the income attribution rules, and income earned on gifts will be attributed to the original owner (other than capital gains received by a minor child). • Keep in mind this results in losing control of the asset.
Joint title to assets	• Allows two or more people to own an asset together. • If assets are held in joint tenancy with right of survivorship, when one owner dies, ownership passes to remaining owner(s) outside of the estate (this concept does not exist in Quebec). This may help to avoid probate taxes, but not capital gains taxes. • Adding someone as a joint owner on existing property is generally treated as a sale of a portion of the asset and will trigger capital gains or losses. • Caution is warranted when adding someone joint on existing assets because it could result in loss of control. Also, it could expose the asset to creditors of both joint owners. Finally, recent legal cases have challenged the validity of joint title passing outside of the probate process. Using this strategy requires advice from legal advisors to document intention of the joint ownership and gift. See our guide on joint ownership for more information.
Beneficiary designations	• Naming beneficiaries for registered plans and pension plans allows the beneficiary to receive the proceeds outside of the estate so probate fees aren't payable. Note the associated tax burdens remain as discussed above. This associated tax burden needs to be planned for since it may fall on the estate and not the beneficiary. • In Quebec, such a beneficiary designation is available only on life insurance products, segregated funds, annuities, including fixed term annuities, and pension plans. • Life insurance beneficiaries generally receive the proceeds tax-free. • Recent legal cases have challenged beneficiary designations in some provinces where the owner's intention is not clear. Individuals are encouraged to make their intentions clear and discuss with their advisors why they've named beneficiaries on these forms of accounts or insurance. See our guide on will, estate, and probate planning – avoiding the pitfalls for more information.

Strategy or estate planning concept	Considerations
Contingent / successor owner of life insurance policies (not including annuities or segregated funds)	• Insurance policies owned on the lives of someone else can transfer to another named person through contingent/successor owner designation. A policy on the life of a spouse or children, can be transferred to them outside of the estate on a tax-free rollover basis. Any other policy can transfer to the contingent/successor owner outside of the estate but may have tax consequences as outlined above.
Contingent / successor owner of non-registered annuity	• Annuity contracts owned on the lives of someone else can transfer to another named person through contingent/successor owner designation. A policy on the life of a spouse (not children), can be transferred to them outside of the estate on a tax-free rollover basis. Any other policy can transfer to the contingent/successor owner outside of the estate but may have tax consequences as outlined above.
Contingent / successor owner of non-registered segregated fund	• Segregated fund contracts owned on the lives of someone else can transfer to another named person through contingent/successor owner designation. A policy on the life of a spouse (not children), can be transferred to them outside of the estate on a tax-free rollover basis. Any other policy can transfer to the contingent/successor owner outside of the estate but may have tax consequences as outlined above.
Successor owner for Registered Education Savings Plans (RESPs)	• Any RESPs held at owner's death for another beneficiary (e.g. child or grandchild) will form part of their estate. • Name a successor owner to maintain the RESP to ensure the funds continue to be used for their intended purpose (child's education). • Without direction, the RESP may need to be wound-up and distributed as part of the estate
Successor plan holder for Registered Disability Savings Plans (RDSPs)	• Any RDSPs held at owner's death for another person must transfer to a qualified individual to be maintained for the beneficiary. This includes the beneficiary (if legally competent), legal parent or guardian of the beneficiary. • Name a successor plan holder to maintain the RDSP to ensure the funds continue to be used for their intended purpose.
Tax-deferred rollovers	• Process by which tax from disposition or deemed disposition of capital property is deferred. • Example: transferring capital property to an alter ego or joint partner trust or to a spouse. • Example: distributing trust assets to capital beneficiaries in satisfaction of their entitlement.

Strategy or estate planning concept	Considerations
Estate freeze	• Freezes the values of company's shares (or by transferring assets to a corporation) during lifetime, so that the tax liability that will arise on death equals the tax liability at the time of the freeze. • Future growth in the value of shares will accrue to successors (whether individual shareholder or a trust), who may be children or other family members. • Often accomplished by transferring shares of an operating company to a holding company. May also be accomplished by transferring assets to a holding company on a tax-deferred basis. • As consideration, the original owner receives in exchange fixed value preferred shares equal to the fair market value of the asset/shares at the time of transfer. • Beneficiaries, or a trust for their benefit, subscribe for common shares with a nominal value to which future growth in the value of the company will be attributed. • Can be structured so original owner retains voting control. See our estate freeze planning opportunities guide for more information.
Charitable giving	• Some estate plans include gifts to charity during lifetime and at death, which produce large charitable tax credits. Gifts may include cash, assets, or life insurance. • Life insurance gifts can be made by gifting an insurance policy or by naming the charity as beneficiary. Gifting an insurance policy provides tax savings during your lifetime. For individuals, naming a charity as beneficiary provides tax savings at death. Note that naming a charity beneficiary of a corporate-owned policy does not create tax savings like it does for personally owned policies. Further planning is required to ensure gifts from a corporation can maximize the tax savings. • Gifting appreciated marketable securities in-kind (e.g. stocks and mutual funds traded on a public stock exchange) eliminates the capital gain thereby reducing tax further. • Gifting RRSPs or RRIF can also reduce the tax associated with income included on the terminal return. You can either gift during your lifetime, or name the charity as beneficiary depending on when you need the tax savings. See our charitable giving strategies guide for more information.

Appendix A – Questionnaire – is your estate plan up-to-date?

Here are some questions to help determine if an existing estate plan is up-to-date. The questions will help identify what a plan should address if one doesn't yet exist. If you don't know the answer to a question, that's ok. Use this questionnaire as a starting point to ask further questions and dive deeper.

Wills and powers of attorney	Yes	No
Do you have a will?	☐	☐
Do you have a power of attorney (mandate in Quebec)?	☐	☐
If your province or territory permits more than one type of power of attorney (for property and personal care), do you have both types?	☐	☐
If you have assets in any other provinces or countries, have you considered whether it would be advantageous to have a will and/or a power of attorney in each of those jurisdictions?	☐	☐
If your province permits more than one will for probate planning, do you have multiple wills?	☐	☐

Cross-border issues	Yes	No
If you have family members or other beneficiaries who reside in other countries, does your estate plan take possible tax and other effects into account?	☐	☐
If you have family members or other beneficiaries who hold citizenship (including dual citizenship) of another country, does your estate plan take that into account?	☐	☐

Financial planning	Yes	No
Have you determined the income needs for you, your spouse and any other family members who are financially dependent on you?	☐	☐
Have you considered steps to implement splitting income after your death?	☐	☐
Do you have individuals you support with a disability?	☐	☐

Advanced tax planning (personal)	Yes	No
Have you calculated the tax liabilities that your estate will be responsible for at your death?	☐	☐
Will your estate be guaranteed to have enough cash to cover those tax liabilities?	☐	☐
If you have assets in the U.S., have you considered strategies to reduce and pay U.S. estate taxes?	☐	☐
Have you considered strategies to reduce probate fees, where probate fees are applicable?	☐	☐
Have you planned for charitable giving at your death?	☐	☐

General	Yes	No
Have all the agreements that form part of your estate plan been prepared or reviewed in the last year?	☐	☐
Have you or anyone affected by your estate plan experienced any major life changes since the agreements were prepared (e.g., divorce, marriage) that may affect your estate plan?	☐	☐
Does your family know the details of your estate plan?	☐	☐
Does your family know where key documents, such as your will and insurance policies, are located?	☐	☐
Does your family know your funeral and organ donation wishes?	☐	☐

If your estate plan doesn't include a business, you can stop here.

Business issues	Yes	No
Do you know how much your business is worth?	☐	☐
Do you have a buy-sell agreement (it may be part of a shareholders' agreement or partnership agreement) with the co-owners of your business?	☐	☐
Is the buy-sell agreement funded by a sinking fund, life insurance, disability insurance and/or critical illness insurance?	☐	☐
Do you, your co-owners and potential beneficiaries who may inherit an interest in your business, have marriage contracts protecting the business assets?	☐	☐
Does your estate plan address creditor protection issues?	☐	☐
Do you have an emergency plan if you're incapacitated or die before transferring your ownership interest?	☐	☐
Have you appointed a successor or established a process for selecting a successor for your business?	☐	☐
Do you have a written plan for the transfer of your business interests?	☐	☐
If you are leaving the business to one family member, have you planned to leave assets to other family members in a value you consider to be fair?	☐	☐

Advanced tax planning (business)	Yes	No
Have you identified if your business or shares are eligible, or could be made eligible for the lifetime capital gains exemption?	☐	☐
Are you ready to transfer the future growth of your business to someone else (an estate freeze)?	☐	☐
Have you considered the use of a capital gains rollover to your spouse, or to a spousal trust, to defer the taxes that will be payable at your death?	☐	☐

If you answer 'No' to one or more of these questions, you may need to do more preparation to ensure you have an effective estate plan.

Appendix B – Wills (outside of Quebec)

Type of will	Description
Will in common or solemn form	• Traditional format drafted by a lawyer or the will maker. • Signed by will maker in presence of two witnesses who also sign and who are not beneficiaries or related to beneficiaries. • Although a will doesn't have to be drafted by a lawyer, do-it-yourself wills may result in errors or challenges. A lawyer's role in drafting the will includes reviewing the entire situation and ensuring the will maker has capacity and understands the effect of distribution choices.
Holograph will	• Some provinces permit wills written and signed entirely in the will maker's own handwriting without the formality of witnesses. • Although possible, these wills are not recommended. They can create problems since signed notes, letters and postcards may be given legal effect whether intended or not. Some people have tried to use electronic media like DVD and video to express their last will. This is a risky process since only a judge can decide whether the electronic media can be enforced as a person's last will. As a result, the classic will written on paper with the assistance of a lawyer is always a safer choice.



Appendix C - For Quebec residents

Quebec estate tax laws differ from the laws of other Canadian provinces and territories. If you live in Quebec, the tools set out below can be used as part of the estate planning process.

Estate law concept or document	Description
Will made in the presence of witnesses	• In Quebec only and requires probate. • The testator acknowledges their signature in the presence of two witnesses.
Notarial will	• In Quebec only and doesn't require probate. • Made before a notary, in the presence of a witness or, in certain cases, two witnesses. The will is signed by the testator, the witness(es) and the notary.
Holograph will	• A will written and signed entirely in the will maker's own handwriting without the formality of witnesses. • Like outside of Quebec, these wills are not recommended. They can create problems since signed notes, letters and postcards may be given legal effect whether intended or not. As a result, a notarial will or will made in the presence of witnesses made with the assistance of legal counsel is always a safer choice.
Protection mandate (formerly mandate given in anticipation of incapacity)	• Notarial or witnessed document that allows individuals chosen as mandatary to make decisions on your behalf if you become incapacitated. A mandatary fulfills a role like an attorney's in the common law provinces. • Can combine instructions as to property and personal care. • Multiple mandataries can be appointed and duties split between them, which is useful for business owners who want to separate their business and personal affairs. • To enter in force, this document must be homologated by the court. The term, "homologated" refers to the process whereby a Court verifies the existence and validity of the mandate before allowing the mandatary to use it on behalf of an incapacitated individual. • A power of attorney for property (called mandate in Quebec) can continue in case of incapacity but it needs to be homologated.
Trust	• Trust is established by contract, by will or, in certain cases, by law. Where authorized by law, it may also be established by judgment. • Legal ownership of trust property differs in Quebec from common law provinces – the settlor of a trust transfers property to a separate patrimony, which is segregated from the settlor, trustee and beneficiaries, none of whom have any real right to it. In the common law provinces a person's "patrimony" would be their estate - everything they own. A separate patrimony would then be assets that they have separated from the rest of their estate, by using a trust, for example.

Tutor	• A tutorship is similar to a guardianship for a child in the common law provinces. A tutor is appointed to manage a child's property and to make decisions affecting the child's care, health, and civil rights. • With respect to the property of the minor, the tutor acts as an administrator charged with simple administration. • In administering the property of their minor child, fathers and mothers are not bound to make an inventory of the property, furnish security for their administration, render an annual account of their management, or obtain any advice or authorization from the tutorship council or the court unless the property is worth more than $40,000 or the court so orders upon the application of an interested person. • Two types of tutorship exist – legal (automatically conferred on parents) and dative (if parents die or are dismissed as tutors). A dative tutor can be appointed by the last surviving parent in a will or a mandate given in anticipation of mandator's incapacity or by filing a declaration to that effect with the public curator
Tutor to an adult person	• Since November 1, 2022, Quebec law provides for a court supervised protective regime known as a tutorship to a person of full age. The tutorship is tailored to the individual's needs and level of autonomy. • An incapacitated heir can have a tutor designated by the court. • Quebec law also provides temporary representation orders and assistance measures in appropriate circumstances.
Civil union	• Since 2002, civil union is a commitment by two persons 18 years of age or over who express their free and enlightened consent to live together and to uphold the rights and obligations that derive from that status. • Composed of two persons of the opposite or same sex who publicly celebrate a marriage-like union. • For most property, family law and succession purposes, spouses in a civil union are treated similarly to married spouses under Quebec law.
Family patrimony	• Marriage or Civil Union entails the establishment of family patrimony. • The value of family assets is subject to mandatory partition at death, except in the case of formal renunciation by the surviving spouse. There is partition of the family patrimony also when there is separation from bed and board or dissolution or nullity of the marriage. • Family assets are limited to the value of the following property owned by one or the other of the spouses: – family residences. – furniture (the movable property with which they are furnished or decorated and which serves for the use of the household). – motor vehicles used by the family.

Estate law concept or document	Description
Family patrimony	– benefits accrued during marriage under a retirement plan (this includes RRSPs, among other things). For the purposes of the rules on family patrimony, a retirement plan is any of the following: a plan governed by the Supplemental Pension Plans Act (chapter R-15.1) or by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) or that would be governed by one of those Acts if one of them applied where the spouse works; a retirement plan governed by a similar Act of a legislative jurisdiction other than the Parliament of Quebec; a plan established by an Act of the Parliament of Quebec or of another legislative jurisdiction; a retirement-savings plan; or any other retirement-savings instrument, including an annuity contract, into which sums from any of such plans have been transferred. • Property devolved to one of the spouses by succession or gift before or during the marriage is excluded from the family patrimony.
Matrimonial regime	• Any kind of stipulation may be made in a marriage • contract, subject to the imperative provisions of law and public order. • Partition of the matrimonial regime on death is part of the estate planning process. • Three types of matrimonial regime still exist: 1. Community of property is the default regime if married before July 1, 1970. 2. Partnership of acquests is the default regime if married on or after July 1, 1970. 3. Separation of property is a contractual regime
Parental union	• Since June 30, 2025, when de facto spouses give birth to a child, they enter into the parental union rules. You can also enter into a parental union on a voluntary basis by written agreement. • Under these rules, a parental union patrimony includes family residences, furniture and vehicles the family used. • The value of patrimony is shared between the spouses when a parental union ends. • Parental union ends upon death, marriage, or separation.

Appendix D - Power of attorney (outside of Quebec)

Type of power of attorney	Benefit
Power of attorney for property	• Allows an attorney to manage the donor's property. It may come into effect immediately, or, if specified, upon incapacity. For it to be effective upon incapacity, or for it to continue during incapacity, it also must state that it remains in effect on incapacity. Otherwise it is no longer effective on incapacity. • A general power of attorney is generally considered to be one which imposes no restrictions on the activities of the attorney, whereas a limited power of attorney limits the property dealt with or the powers of the attorney to act. It is possible to have a general power of attorney which ceases on incapacity or at a specified time.
Power of attorney for personal care (advance health care directive, personal care directive – different provinces use different names)	• Allows the attorney to make medical and health care decisions on behalf of someone who becomes incapacitated and unable to state their wishes. • Can include specific instructions about the treatment someone does or doesn't wish to receive.
Representation agreement (British Columbia residents)	• Allows B.C. residents to appoint representatives to make decisions about their legal affairs, routine financial affairs, personal care and health care needs if they lose mental capacity, similar to a power of attorney.

Appendix E - Trusts

Type of trust	Description
Discretionary trusts	• Trustees of this type of trust have power to allocate capital and income from the trust and determine the amount and timing of distributions. • Are very flexible tools for those who want to set aside assets for other persons but may not want to give up control or provide authority to someone else to determine distribution. They are also used in the business context to transfer business ownership to the next generation and as part of an estate freeze.
Fixed interest trusts	• Terms clearly set out who should receive what property, when and in what manner.
Alter ego trusts	• Are used as a will substitute and can be a superior method for asset management during incapacity. • Are established for someone's sole lifetime benefit if they're over age 65 (the "settlor"). • Capital assets can be transferred to the trust at their original tax cost and capital gains/losses are deferred until the trust disposes of the property or the settlor dies. • Income and capital gains are taxable in the settlor's hands while they're alive. • When the settlor dies, the trust document functions as a will governing the distribution of assets. • May be used to avoid probate and to protect privacy.
Joint partner trusts	• Like an alter-ego trust but is established for the joint lifetime benefit of spouses (or common-law partners).
Spousal trusts	• Set up during life or upon death for the exclusive benefit of someone's spouse (or common law partner). • The spouse must receive all of the income during their lifetime. • No person, other than the spouse, can have access to the capital while they are alive (although capital distributions are not mandatory and can be restricted). • Capital assets can be transferred to the trust at their original tax cost and capital gains/losses are deferred until the trust disposes of the property or the spouse dies. • Useful for providing for children from an earlier marriage (spouse receives income and has access to capital during a spouse's lifetime; children inherit the remainder on the spouse's death), or for providing care for an incapacitated spouse.

Type of trust	Description
Family trusts	• Usually has family members as beneficiaries, but may also include non-family members. • Often used for income splitting among family members (subject to tax on split income rules), for reduction in probate fees and to avoid challenges to a will. Are very useful in the succession process for family-owned business (see Discretionary trusts).
Offshore trusts	• Used primarily to protect assets from creditors and to protect the confidentiality of information about the trust. Not tax advantageous. • Rules on governing offshore trusts are very complex and many tax opportunities have been closed in recent years. • Obtain professional advice before establishing an offshore trust.
Graduated rate estate (GRE)	• A testamentary trust that comes into being on an individual's death. • It pays tax at graduated rates for the first 36 months after the individual's death, after which the highest marginal rate applies. • There can be only one GRE per deceased individual.
Qualified disability trust (QDT)	• A testamentary trust used for beneficiaries who qualify for the disability tax credit. • If all conditions are met, the trust pays tax at graduated marginal tax rates rather than the top marginal tax rate. • To qualify, a QDT elects, with one or more trust beneficiaries, to be taxed as a QDT. The trust must be resident in Canada, each electing beneficiary must be eligible for the disability tax credit, and an electing beneficiary must be a named beneficiary (not a member of a class of beneficiaries referred to in the trust document). • There can be only one QDT election per year per disabled person. • Other limited circumstances may allow accumulated income to be taxed in the hands of a beneficiary with a disability. See our guide on planning for someone with a disability for more information.

Type of trust	Description
Henson trust (absolute discretionary trust)	• Used as a planning tool for beneficiaries with a disability to preserve access to provincial or other benefits and programs that determine eligibility on assets and/or income. Note, each benefit program may define assets and income for eligibility purposes. • May also be a QDT but doesn't have to be. See our guide on planning for someone with a disability for more information.
Lifetime benefit trust	• A specific form of trust that can receive an RRSP or RRIF on a tax-deferred rollover basis for a beneficiary with a mental infirmity. The beneficiary must also be the spouse/common law partner or child/grandchild who is financially dependent on the RRSP/RRIF annuitant. • The trust purchases an annuity on the life of the beneficiary. • May also qualify as a Henson trust or QDT if conditions are met. See our guide on planning for someone with a disability for more information.
Insurance trusts	• A trust that receives the proceeds of a life insurance policy. • Separate from the probated estate. • Useful for minor or special needs beneficiaries or to establish a trust for income splitting. See our guide on leaving life insurance proceeds to a minor beneficiary or trust for more information. • In Quebec, an insurance trust may be difficult to implement. Consult a legal advisor to effect a beneficiary designation or, if needed, to implement a creditor protection strategy using life insurance. See our guide on life insurance proceeds for the benefit of minors (Quebec version) for more information.

Appendix F - Legal agreements

Type of agreement	Description
Buy-sell agreement	• Some businesses have stand-alone buy-sell agreements which address the death, disability or retirement of one of the owners and include a formula for business valuation.
Shareholders agreement	• Sets out the rights and obligations of the shareholders of a corporation, and may include buy-sell provisions.
Partnership agreement	• Sets out the rights and obligations of partners in a partnership, and may include buy-sell provisions.
Marriage contract or domestic agreement or cohabitation agreement	• Agreement between spouses or common law partners dealing with the rights to support and to ownership or the division of property on relationship breakdown or death. • Called a prenuptial agreement if entered before marriage.
Separation agreement	• An agreement entered into between spouses or common law partners on separation, which includes provisions addressing support and division of property.
Co-ownership agreements for real estate	• An agreement between parties to set out rights to property. The agreement may divide legal or beneficial ownership, or both between two or more individuals, trusts, or corporations.
Prescribed rate loan agreement	• An agreement generally between spouses or a parent and adult child for purposes of income splitting. • Make sure to review the terms of the agreement to determine the effect upon death of one of the parties. See our guide on prescribed rate loans for more information.
Personal debt or loan agreement	• An agreement between two or more persons setting out a debt owed and may include personal loans between family members. • Make sure to review the terms of the loan and whether forgiveness provisions or 'hotchpot clauses' in the will deal with how the debt is to be handled by the estate.

Type of agreement	Description
Shared ownership insurance agreement (also known as split-dollar agreement)	• An agreement governing the relationship between two or more parties who share the ownership of an insurance policy. The parties agree on how they will share or allocate the premium payment obligation, policy cash values (if any) and policy benefits.
Shared benefit insurance agreement	• Agreement to share the benefits of a life insurance policy, but not the ownership of the policy. • Can be used by a key employee/shareholder who is the sole owner of the policy and designates the company as the irrevocable beneficiary of the death benefit portion of the policy. • On retirement, the employee changes the beneficiary in accordance with the agreement. The employee can then make withdrawals from the policy or pledge it as collateral for loans to create retirement income.



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