



Protecting Your Legacy

Estate Planning: What you need to Know

“I want to give my kids enough so that they could feel that they could do anything, but not so much that they could do nothing”

- WARREN BUFFET

TACTICS | DECEMBER 2015 | BY PHIL TIPPETTS-AYLMER BA (HONS), CFP, CIM | & SOPHIA ITO | CFP, FMA, CIM

Mr. Buffett's will and estate planning is surely large in scale and complexity, however, you don't need to have his wealth to face the same challenges when organizing your affairs. Many people think of wealth transfer as: “you die I get it, I die you get it, we both die the kids get it.” The reality is not quite so straightforward.

Estate planning is a comprehensive process undertaken during one's life to ensure your assets are transferred to your chosen beneficiaries in the event of your passing. Most typically, estate planning focuses on ensuring that the surviving loved ones are provided for after the death of an individual and that the transfer of assets to intended beneficiaries takes place according to the deceased's wishes.

“In this world nothing can be said to be certain, except death and taxes.” - Benjamin Franklin

Estate planning is commonly used to minimize those taxes when a death inevitably occurs without compromising the deceased's intentions. So let's look at a typical process that we would expect to undergo with our clients.

Discussing death is difficult at the best of times. The more trust and communication between everyone involved, the better the result. This is

when involving your trusted financial advisor can be helpful. Your advisor will guide you through the following considerations:

1. Maximizing the “net” wealth being transferred to the beneficiaries.
2. Maintaining fairness and equality for the children.
3. Preparing financially unaware individuals for the task of managing wealth.
4. Keeping peace in the house.
5. Achieving significant philanthropic endeavors.

When broaching the subject of estate planning with clients we discuss the topic from a high level view. This conversation, more often than not, leads to a more in-depth review and a series of meetings dedicated to this area of planning, some of which will include additional advisors such as accountants and lawyers.

GATHERING INFORMATION AND FORMULATING THE PLAN

We guide clients through a series of meetings to assist them in deciphering the questions and issues that are raised by their lawyers when creating a Will. Our clients find that having a “friendly face” in those meetings reassures them when addressing the issues. Your advisor can also work with you prior to these meetings to proactively prepare information, such as your net worth.

Set the Stage: Current Net Worth

To plan the future you must understand where you stand today; this means determining your current net worth. All parties should become familiar with what and where all the major assets and liabilities are, who owns them, and how this affects final distribution. We carefully summarize everything of relevance including (but not limited to):

- A detailed accounting of all investment accounts
- Real estate assets
- Private company share ownership
- Insurance policies
- Any outstanding debts

Since we have already worked closely with our client families and their finances, we can easily provide their lawyer with the majority of the required information, alleviating this hassle for the family.

Taxes and Fees

With your current net worth, gross and net estate value tax estimations can be made allowing us to make recommendations on how to minimize any wealth erosion due to taxes or fees (such as probate). The following basic planning options can often be beneficial:

- **Registered Asset Planning:** Naming beneficiaries on a first death basis helps to avoid taxes and probate on all registered accounts (RRSP, Locked-in RRSP, TFSA & IPP) and the potential use of charitable gifting of registered assets minimizes taxation on the second death.
- **Life Insurance:** One of the most cost effective and efficient ways to solve an estate tax or liquidity problem is through the use of life insurance. If structured appropriately, insurance coverage can be combined to comprise part of a retirement income strategy, thus not only providing a benefit on death, but also providing a significant benefit to the insured while one is alive.
- **Alter Ego Trust or Joint Partner Trust.** In certain cases, trust structures can be used to impact control of assets both while alive and in death and to minimize taxation on transfer.

Key People

Appointment of Executors, Trustees, and Guardians

The executor appointed in your estate plan is someone who will have the legal responsibility to settle your estate after your death. It is important to ensure he/she has the right characteristics to be able to successfully see this through.

The ideal executor would typically have the following attributes:

- Lives in the same area as you. It can be challenging to deal with issues from a distance.
- Can deal with your relatives and beneficiaries objectively.
- Has experience managing money and dealing with financial institutions.
- Is comfortable dealing with lawyers and accountants.
- Is able to commit the time in settling your estate.
- Has the patience to deal with government agencies (especially tax departments).
- Is organized and willing to do a significant amount of paperwork.
- Is not afraid to ask for professional help when needed.
- Is familiar with your advisors (financial advisor, lawyer, accountant, etc.).

Similarly, where trusts are involved, trustees are required. This critical role acts in many respects as a gatekeeper to the wealth and should be someone who thinks of money and its use in a similar way to the deceased. Many of the same attributes which are required for an executor are desired in the role of trustee.

If you have children, it is important that you name a guardian to raise them in the unlikely event that both parents die before the children become adults. The person you name as guardian does not have to be a relative, so consider all of your options. You may, in fact, be very close with another family with whom your child is already comfortable.

When looking at candidates to fill these roles, your advisor can objectively ask the necessary questions to determine who is best qualified to set the family up for success in the future.

Powers of Attorney

In the event that one or both partners become incapacitated or incapable of making day-to-day decisions, a selection should be made via an enduring Attorney (POA) for someone to be able to act on your behalf with respect to your financial affairs.

Specific POA's may also be assigned to individual affairs (i.e. a limited POA for property or POA for personal care).

Letters of Wishes

Though non-binding, preparing various letter(s) of wishes can be very helpful in providing added clarity to your executor and beneficiaries. It is a means to provide additional guidance, such as:

- For your executor:
 - ◊ To share personal perspective and philosophy.
 - ◊ To explain governance arrangements of the Trust.
 - ◊ For the management of capital: how the testator would like the capital managed and eventually distributed.
- Information on people to contact upon death and for what purpose (such as accountant, financial advisor, lawyer, group benefits contact, etc.).
- Preference for funeral and burial arrangements.
- **Location of important documents such as:
 - ◊ Original wills
 - ◊ Birth certificates
 - ◊ Marriage certificate
 - ◊ Life insurance documents
 - ◊ Passport
 - ◊ Safety deposit keys
 - ◊ Point and loyalty programs
 - ◊ Digital file (listing of online accounts including passwords such as: email addresses, social media accounts, etc.)
- If appropriate, to explain why certain family members have not been included as beneficiaries, or why unexpected beneficiaries have been included.
- Listing or guidelines of preferred and acceptable charitable organizations (via a donor advised foundation) to donate to.

***NOTE: These items should be kept in a separate and sealed envelope, not be revealed prematurely.*

Distribution of Assets

The “how much” is always a focus, but the “how to” is often forgotten...

Indirect Distribution (Use of Trusts) or Direct Distribution

The *Family Law Act* can benefit and protect beneficiaries of an inheritance; however, trusts can be useful in providing additional protective measures against potential attack from creditors. Some unique circumstances may warrant the need for better insulation of assets and privacy to reduce or eliminate probate. Here are some examples of how your advisor can implement these measures:

First distribution: Upon the first death of the spouse, the surviving spouse would receive the remainder of the estate. Consideration may be given to distribute the assets directly or via the use of a spousal trust.

Second distribution: Assets to be given to the next generation can be done directly (i.e. upon reaching a certain age); however, this leaves the assets open to potential creditor and spousal attack beyond that age. Leaving the principal allocated to the trusts in place for an extended period may be appropriate, such as the use of a trust “for life” with principal assets being passed down to later generations.

Ultimate distribution: In the event of a “catastrophic disaster” how should the assets pass? These events present their own set of issues. Clients need to consider amounts being left to minors and young adults (discussed further below).

Upon reviewing their current Wills, many clients realize that simply naming a beneficiary is not sufficient. We help position the “how” so clients can make educated decisions about how to structure the fund transfer; for example, in a trust.

Fair and Equal Distribution

A Will can be equal but not fair, and fair but not equal.

In order to achieve a theme of fairness and equality, work with your advisor to determine what consideration should be given for the distribution or preservation of illiquid and “family use” assets (e.g. cottage). Such assets can be treated individually in terms of their use and ownership. Consideration for tax consequences of the deemed disposition of these assets should be taken into account before distribution to beneficiaries.

Asset Management

An important issue to address is how to manage the exposure of wealth to individuals who are unaccustomed to wealth. This is of particular concern when it comes to minors or young adults who have little knowledge of money or money management.

It is important to ask yourself, *what would my 19 year old do with this wealth if he/she was given cash tomorrow?* Before assets are given directly to the children you may wish to direct those children to work with the trustee and professional money manager in order to learn how to manage the funds/assets. Consider the use of a trust to implement a system of checks and balances.

Foundations for Charitable Giving

We frequently suggest clients create their own Private Giving Foundation (PGF). A number of desirable outcomes can be achieved through a foundation structure funded with assets from the estate or insurance proceeds:

1. An ongoing legacy is created which will endure. The children and future generations can become involved in philanthropic endeavors and learn about investment management in the process.
2. Donating can mitigate the taxes otherwise due on assets such as registered accounts, non-primary residence property, and capital gains on business values and other non-registered assets.
3. The use of an insured charitable giving strategy could provide both a tax deduction, as well as enhancing the future charitable giving levels in the estate, resulting in an increase in the distributable assets left to the beneficiaries.

The Business: Succession Planning & Shareholders Agreements

The details of how a business is to be dealt with in the event of a death(s) are often overlooked. The Will typically indicates that the trustee should deal with it but there are many scenarios under which this could be problematic. Significant consideration should be given to:

- Ongoing family involvement if desired, or exit strategies if not.
- Shareholders and buy-sell agreements to design a process of dealing with the business.
- Funding methods for any liquidation solutions or buyouts.

Beyond the Assets

Children

Prepare a letter of wishes specifically to your children or the guardian of the children (if applicable) to outline and cover matters such as your preferences for religious upbringing, education, lifestyle preferences, or even particular moral values that you would like your children to adopt.

Treatment of a “Caregiving” Child

Another issue that may not present itself immediately is how to ensure that caregiving children are treated fairly. Children may have to give up paying jobs in order to provide care to aging elders. Some parents may consider compensating a child who takes on the burden of caregiving.

Citizenship

It’s necessary to confirm citizenship of all family members and review the potential impact of any future changes. A Canadian beneficiary child adopting U.S. citizenship in the future has far reaching implications from a tax point of view. This would also apply to anyone appointed as an executor, trustee, or guardian.

“Out of intense complexities, intense simplicities emerge.”
– Winston Churchill

There is no doubt that Will and Estate planning can be a daunting task to begin, and a complex task to complete. Having spent a lifetime building wealth and security, the prospect of organising your affairs in death can be intimidating and overwhelming, resulting in procrastination, or worse, avoidance. At NWM we understand the challenges that our clients face and work tirelessly to simplify this often complicated matter.

Disclaimer: This material contains the current opinions of the author and such opinions are subject to change without notice. This material is distributed for informational purposes only and is not intended to provide legal, accounting, tax or specific investment advice. Information presented here has been obtained from sources believed to be reliable, but not guaranteed. Please speak to your advisor regarding your unique situation.