

Because you don't have 9 lives to figure it out

An experienced estate lawyer will tell you that estate planning provides people with comfort, confidence and certainty. For some however, the mere mention of it causes anxiety.

Perhaps this comes out of a superstitious belief that by contemplating your mortality, you might somehow bring it about. Or maybe it's the anticipation of having to deal with tough decisions that may have no clear right or wrong answer, where logic and emotion must be delicately balanced.

Whatever the reasons, it is an area where people tend to procrastinate, and that's risky both for you and for the people you care about. By instead tackling the process with a constructive mindset, you are able to de-stress it, and can turn it into a positive, reaffirming journey.

A people perspective

Estate planning is more than simply 'who gets what'. It gives you a chance to think about who you are, what matters to you, and most importantly who matters to you. That means taking care of yourself, both now and in the future, and taking care of the people closest to you: now, in future and when you are no longer around.

Viewed through the principal lens of benefiting people and only secondarily as a distribution of things, estate planning emerges from the cold shadow of legality into the warmth of personal relationships.

As you may expect, this adds complexity to the decision-making, often calling for input from professionals beyond a lawyer alone. Commonly these will be financial professionals, but also may include guidance of a spiritual nature. The key is to have such advice coordinated so that the people are kept in focus, and the ultimate plan is legally sound.

The estate planning process

At least part of the concern for those anxious about estate planning is the prospect of dealing with paperwork. Undeniably, material must be reviewed and documents eventually executed. Along the way, however, there is much to ponder, to appreciate and to learn from. To turn a phrase from Marshall McLuhan – who famously said that the medium is message – here, the method is the message.

The most effective estate planning involves you as a full participant. Just as your lawyer is an expert in the law, you are the expert ... in you. Working cohesively, you will be able to uncover what is relevant, gauge significance, prioritize among issues, and explore options.

But the starting point is back with that candid look at where you are now, before you can decide where you are going. In a sense it is that simple, while at the same time not easy. It takes effort.

What's up (with the) docs?

In due course, that effort leads to the creation of documents that make it clear who is to benefit from your planning, and who has responsibility to carry it out.

Most people are aware that a Will allows you to direct who is to receive your estate property: your beneficiaries – and who is to manage or 'execute' the instructions in the Will: your executor. The formal term for an executor varies across provinces, but the duty remains the same. This person is required to manage the property as a trustee who is legally bound to protect the best interests of your beneficiaries.

And while you're still around to enjoy that property yourself, you can name someone as your attorney – meaning a decision-maker – to manage it for you if and when you can't. Similarly, you can name someone to make personal decisions if you are incapacitated, like where you live, when you receive health care, or how you give medical consent. Again, the formal terms vary by province. The key point is that your decision to prepare these documents does not affect your ability to decide for yourself, but rather shares authority with someone you trust.

Shortcuts, and short circuits

Once you are confident that the intended plan fits your needs, your attention may turn to cost savings. But take care that you don't short-circuit that plan in pursuit of a financial shortcut.

The classic cost savings target is the probate fee or tax, with each province once again having its own terminology, processes and costs. It ranges from a small filing fee of a few hundred dollars, up to about 1.5% of the value of estate assets.

Familiar techniques to reduce probate include keeping beneficiary designations on life insurance and registered plans current, holding property in joint ownership with right of survivorship, and making gifts to people now rather than later. While each of these may result in reduced probate tax, they are not without their own costs and potential drawbacks, so again professional advice is critical.

Getting it all going

The best of intentions can be the worst of planning if you don't get started. That's what's meant by the title of this article, going from estate planning to estate do-ing. Make the commitment to consider and record what you have, who you care about, and how the two intermix.

While you are not required to use a lawyer, it's the best way to be confident that you are operating with current legal information, guided by a professional who has the necessary expertise and experience. If you don't know a lawyer, check with the referral service of the provincial law society regulating lawyers, or get a recommendation from someone whose professional opinion you respect.

Once underway, be sure that your lawyer is aware of all your professional advisors so their input can be included where and when appropriate. As well, to the extent that you are comfortable with it, it can be helpful to communicate with your family and others you care about that you are actively working on your estate planning. The decisions are yours to make, but their perspectives can help you determine if your plan will (or should) carry out as initially intended, or if adjustments may make sense.

Finally, once you have put the planning into place through the decisions and documents, you need to monitor it. That runs along three lines:

- A prudent course is to schedule a follow-up with your lawyer no more than five years down the road to check whether changes in the law or other events outside your control might affect your plan.
- As well, having made an inventory of your property, you will now have a better sense of the implications if there are changes to it.
- Lastly, and most importantly, if there are changes in the people or your relationships with them, it may be time to revisit things to be sure you are taking best care of you and the people who matter most to you.

For more information, please consult your advisor.

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