THE ELEMENTS OF AN ESTATE PLAN

Whether or not we have things left to do, life ends when it will. People avoid the possibly expensive estate planning process because of the up-front cost despite the cost of ignoring it being far larger in the long run. Others avoid it because they do not wish to complicate family dynamics.
"Estate Planning" can be defined as accumulating and managing assets while alive, and providing for the transfer of those assets to others during your lifetime and afterwards. It concerns the remainder of your life and beyond. The following nine steps are key components of your Estate Plan.

1. **Assure that you have enough money to be able to live as you would like, now and in the future.**

   Providing sufficient income for retirement is a challenge. Account balances see slow growth, particularly on fixed-income investments with interest rates very low.
   Appropriate investments depend on your circumstances and stage of life, but here are general principles, understanding that specifics should be determined in consultation with your financial advisor.

   - Invest in an RRSP
   - Invest in other things like stock and real estate.
   - Spend only sustainable amounts in retirement.
   - Allocate assets appropriately and focus on dividends.
   - Diversify investments.

2. **Have a will (and possibly also a trust) to make sure your estate passes according to your intentions.**

   An up-to-date will is the highest priority of an estate plan. It enables you to arrange for the distribution of your estate according to your wishes and to choose the person(s) or institution to administer your estate. If you do not have a will, your assets will be distributed according to the intestacy laws of the province where you reside, and these may or may not coincide with your wishes. In the Province of Manitoba, your estate would be divided as follows:
   If you have a spouse and no issue, your spouse would receive everything.
   If you have issue but no spouse, your issue would receive everything.

If you have a spouse and issue, and all of the issue are also issue of your spouse, your spouse would receive everything.

If you have a spouse and one or more issue, and one or more of the issue are not issue of your spouse, your spouse would receive $50,000 or one-half of your estate, whichever is greater, plus one-half of any remaining estate, and your issue would receive the balance.

If you have no surviving spouse or issue, your father and mother, or the survivor of them, would receive everything.

If you have no surviving spouse, issue, father or mother, your siblings or their issue would receive everything in equal shares. If none of them survive, your estate would go to your grandparents, and if they are not living, then to their issue.

The term "issue" refers to children, grandchildren, etc. Any amount going to children would be equally divided among them, and a deceased child's share would go in equal portions to his or her children.

It should be noted that if you are not legally married but have a common-law partner, that partner will be treated like a spouse in the distribution of property. Legally adopted children are treated the same as biological children.

To expedite the will-drafting process, prior to meeting with a lawyer, think of your objectives, take inventory of your estate, list the beneficiaries of your estate, and consider your personal administrator and the guardian of any minor children.

A will is much more than a legal document. It is a testimony to your *inner will* – the central values and commitments from a lifetime of learning, growing, and working.

If you have a will, occasionally review it with your lawyer to make sure it still expresses your wishes. Circumstances change with respect to value of estate, children, named beneficiaries, listed property, administrators, additional persons, and charities.

3. Be aware of the process of administering an estate and carefully choose the person(s) and/or institution responsible for administration.

The process by which a court validates a will (if one exists), confirms estate assets, remaining debts and expenses, and distribution of assets is called "probate." This process is more smooth with a will and a named personal administrator (executor). Otherwise, the court will appoint the administrator. Many people name a relative or close friend (knows them well, likely an heir). Others designate a professional administrator, such as a trust company, with expertise in the administration of estates. A neutral administrator may avoid family strife. It is possible to name co-administrators – two family members or a family member and a trust institution. The latter combines expertise with knowledge of family dynamics.

Your probate estate - what your will governs - is only part of your total estate: Property owned in your name alone, owned by you and others as tenants in common, payments owed to your estate because of your death, and proceeds payable to your estate from life insurance policies and retirement plans.

Many other assets are part of your total estate because you had an interest in them, but are not governed by your will. Your interest in those assets passes to others by law or beneficiary designation. These assets include:

- Real estate and bank accounts held in joint tenancy.
- Bank or brokerage firm accounts payable or transferable at death.
- Life insurance proceeds payable to named beneficiaries.
- Retirement benefits paid to a spouse, children, or other beneficiaries.
- Property held in trust.
- Property given to a charity in exchange for a life income arrangement.

You must integrate all of these assets to avoid unintended consequences.

Consider a trust.

A trust is established when a person (trustor) either alive or by will, transfers assets to a person or institution (trustee) that manages the assets and distributes income and principal to beneficiaries pursuant to a written trust instrument.

A trust can be established either for a term of years or for the lifetime of one or more beneficiaries, and it can be established during your lifetime or at the end of your life by direction of your will.

A trust can offer the following benefits:

- Expert management of assets.
- Privacy because the contents of the trust are not available for public inspection as a will is.
- Avoidance of probate fees since the trust is not subject to probate.
- Convenient way to provide for a family member or friend to whom you would prefer to give a stream of income instead of a lump sum.
- In the case of a charitable remainder trust, provision for both individuals and a charity and tax savings.

Often, married individuals create spousal trusts, normally at the death of one spouse to benefit the surviving spouse. The deceased spouse would have made a provision in the will to place some or all of their property in trust. The surviving spouse would be entitled to all of the net income. None of the capital can be distributed to anyone other than the spouse during the spouse's lifetime. At the death of the surviving spouse, the remaining principal might go to the children, charity, or both.

A spousal trust has these advantages:

- Expert management of assets is provided for a spouse who may not have experience in financial matters.
- The deceased spouse controls the ultimate disposition of assets.
- Taxation of capital gain in property transferred to the trust can be deferred until the death of the second spouse or earlier sale by the trustee.

4. Provide for the possibility that an accident, serious health condition, or declining mental capacity will render you incapable of managing your affairs.

With a power of attorney you can delegate responsibility. The power can be limited and specific, such as power to sign for you at a real estate closing, or general, covering a wide variety of potential transactions and responsibilities.

An "enduring" (ie continues when you can no longer make your own decisions) power of attorney authorizes a person or an entity (such as a trust company) to make financial and legal decisions for you if you become mentally incapable.

You could also give a person a power of attorney solely for health care decisions. You make the decisions while you are still able and the power takes effect when you are no longer able. Some people put one person in charge of financial affairs and another, less likely to be preoccupied with saving costs, in charge of long-term care, etc.

With an Advance Health Care Directive or "living will", you can establish your choices for the medical treatment you want in the event you are unable to express your choices. This is different from a power of attorney for health care decisions. It pertains to your wishes regarding life-sustaining procedures, while the POA covers general decisions about your care.

5. Make a list of tangible property and indicate who is to receive each item.

This refers to all items other than real estate and investments. If these were in your will, it would have to be revised every time you bought or sold something or changed your mind about where it goes. To prevent this and preserve flexibility, you may prepare and sign a list of tangible property, indicating who is to receive each item at your death. You may alter the list, signing and dating each alteration. Reference this list in your will. You can also request the tangible property go to your spouse until their death, at which point the list is referred to.

6. Review the beneficiary designations of your life insurance policies and retirement plans and make changes if necessary.

Sometimes a person updates a will but neglects to update beneficiary designations of life insurance policies and retirement accounts. Those may not have been changed from when the policy or account began, but may no longer be appropriate. It might also be time to reassess your life insurance needs. When your family was young and you had not yet accumulated much of an estate, you probably purchased term insurance to provide maximum family protection at minimum cost. Later, you might have purchased life insurance to secure a business loan or to provide estate liquidity. Some of these policies may have been whole life or universal life, and they now have considerable cash value. Review them with your financial advisor or insurance agent to see what changes should be made at this stage of life, taking into consideration your other assets.

7. Leave a letter or other record to the person who will administer your estate listing all of your investments and indicating the location of all documents.

This will make it easier for your administrator to follow the wishes and keep track of your things. The letter may also contain instructions about your funeral arrangements. The latter should also be conveyed to family members. This letter amplifies wishes stated in the will and includes memorial service details. Stating the location of investments and documents will assure death benefits, bank accounts, and safe deposit boxes do not go unclaimed, and are distributed as intended.

8. Anticipate and prepare for payment of taxes that will be payable at the end of your life.

Canada does not have transfer taxes on gifts and bequests, but in Canada a person is deemed to have disposed of all property the moment before death. The includible portion of capital gain, with certain exceptions, is taxed on your terminal income tax return.

The exceptions are capital gain in your principal residence and in property that goes directly to your spouse or to a trust for your spouse. In the latter instance, the gain will not be taxed until the property is sold by the spouse or trustee, or at his or her death.

Suppose that a single person dies on August 31, and her income for the year so far from investments and pensions was $50,000. She owned stock and real estate - beyond her home - worth $500,000 from a cost of only $200,000, and she had an RRIF of $275,000, which went to children by beneficiary designation. The taxable portion of capital gain would be $150,000 (50 percent of $300,000), and total income reported on the terminal income tax return would be $50,000 + $150,000 + $275,000 = $475,000. The tax payable would come from estate assets, reducing the amount for estate beneficiaries.

Here, the estate had sufficient liquid assets to cover the tax. Liquidity can be a problem if you own a lot of illiquid assets like real estate. Sometimes people purchase life insurance to provide liquidity for taxes, particularly if they want to pass the illiquid assets intact to heirs. Death proceeds from a life insurance policy are tax-free.

While your estate is in probate, an income tax return must be filed each year for the estate, reporting income earned on estate assets.

9. Think of charitable organizations that have been important in your life and embody your values to which you may want to make legacy gifts.

You should also consider what portion of your estate you want to give to charity. Your decision will depend on the size of your estate and the needs of your family. Some discover that they can provide for loved ones and still have something left for institutions they admire.

Sometimes it is possible to design a gift to not only help others, but also save taxes and provide for family security. Below are examples of ways to make legacy gifts. If any seem appropriate for you, discuss them with your legal and tax advisors in light of your estate plan. A representative of the Winnipeg Symphony Orchestra can answer your questions about any gift plan and provide a financial illustration tailored to your situation, which you may then discuss with your advisors.

If you have no family members to provide for, or if your estate is adequate to provide for surviving family members, consider a provision for charity in your will. If you have an up-to-date will, you can add a codicil (amendment) to it without the expense of drafting a new will. The bequest could be an amount, a piece of property, or a portion of what remains after taxes, expenses, and other bequests have been paid, and it will result in a tax credit on your terminal income tax return. To maximize tax benefits, empower your executor to select the estate assets to satisfy the bequest. The executor can then select the most highly appreciated listed securities for the gift, and none of the gain in those securities will be taxed. You may designate the purpose of the gift, and if it is a certain size you may create a named, permanent endowed fund that will memorialize your connection with the WSO.

If you want to leave bequests to both family members and the WSO, and you have an RRSP or RRIF, consider naming the WSO as a beneficiary of all or a portion of whatever assets remain. Your tax credit will offset the tax on the retirement funds paid to the WSO, and you will have made the gift tax-free, but in some instances, as noted above, it could be more advantageous to empower your executor to make the gift with appreciated securities.

If you have a life insurance policy you do not need for family protection or estate liquidity, consider naming the WSO as owner and beneficiary or as beneficiary only. If the WSO is owner, you will be entitled to a donation receipt for the value of the policy and any premiums you subsequently pay. If you merely make the WSO the beneficiary, retaining the right to change the beneficiary or access the cash value, you would receive no donation receipt now. However, if death proceeds are paid to the WSO, a tax credit is allowed on your terminal income tax return.

If you are at or nearing retirement age, and you would like to make a significant gift, but you can't afford to give up income from any of your investments, consider a life income plan. One such plan is a gift annuity. It pays a fixed amount to one of two persons for life. Another is the charitable remainder trust, which would pay the net income earned on trust assets to you and/or another beneficiary. With either plan you receive a donation receipt resulting in a tax credit. You may also create either of these plans under your will to provide for survivors.

If you have an adult child, who is not prudent with money, or a child with special needs who will always need support, and you would like to make a charitable gift, create a charitable remainder trust, either during your lifetime, or under your will, to provide for that child. The improvident child would receive a legacy in the form of life payments without the temptation of a large lump sum. In the case of the child with special needs, payments from the charitable remainder trust could supplement support from other sources.

There are other charitable estate planning arrangements not discussed here, but this list at least demonstrates that a legacy gift can be designed so that it not only advances the mission of the WSO but generates substantial financial benefits for you.