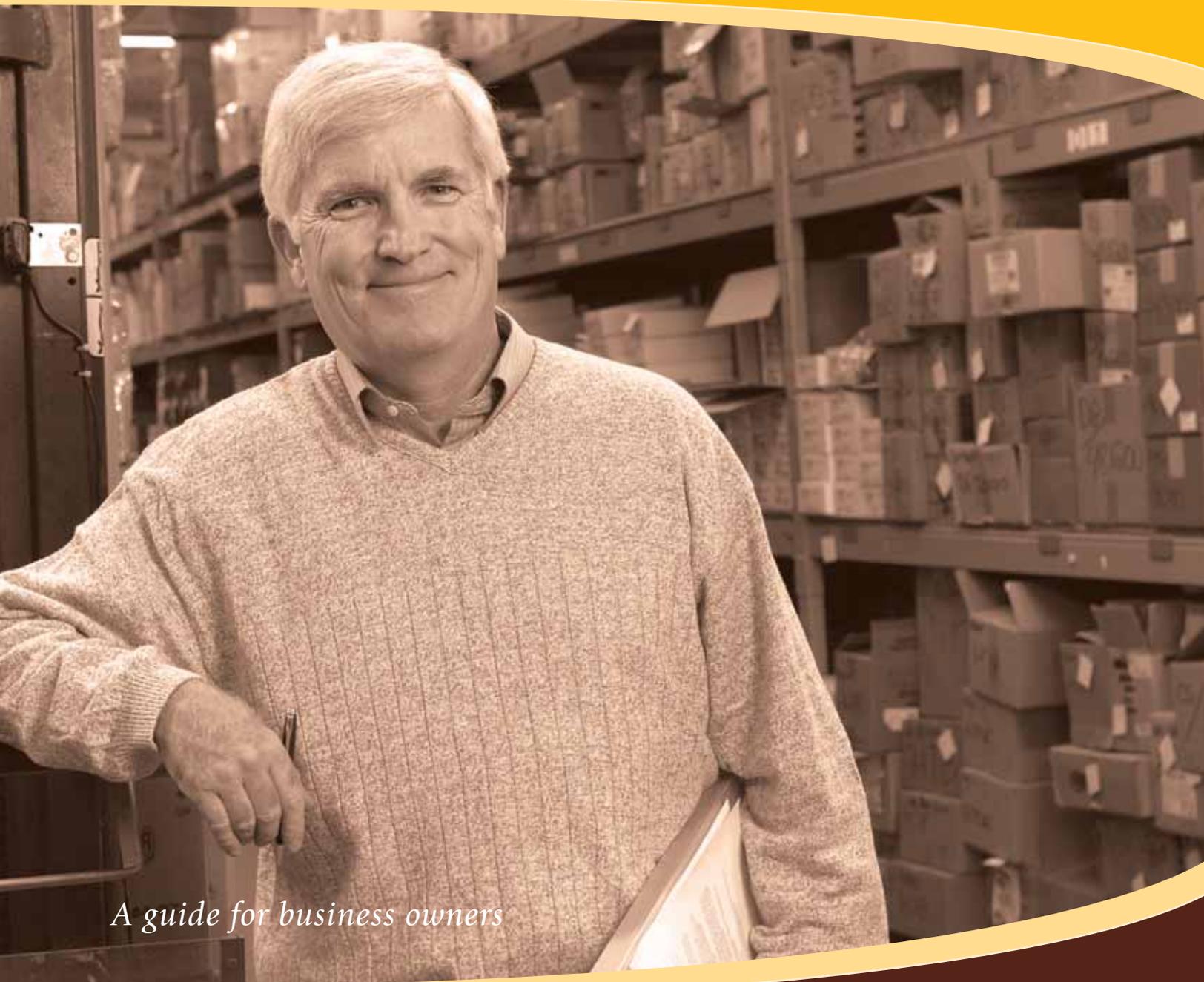


Estate planning guide

Plan an organized, tax-efficient transfer of your business and personal assets



A guide for business owners

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Financial planning goals

Our sales concept materials support six planning goals. The estate planning guide can be used for:

Business continuation planning

Retirement planning

Business succession planning

✓ Estate planning

Executive benefit planning

Planned giving

The importance of estate planning

This guide will provide you with an overview of the estate planning process and is intended for:

- family business owners – whether your business is a corporation, a partnership or a sole proprietorship
- family members of business owners.

The guide will help you:

- focus on your estate planning goals and any areas of concern
- develop an estate plan that meets your personal and business needs, or monitor your plan if you already have one
- understand different estate planning tools that you can use
- identify the decisions that may be difficult for you, so that you and your advisors can determine a satisfactory approach to resolving them.

Why do I need an estate plan?

If you're not sure whether you really need an estate plan, consider the following:

- If you die without an estate plan, the law will not assume you have made beneficiary choices, tax elections or financial planning decisions, no matter how advantageous they might be for you, your family, or your business.
- If you die without a plan, your surviving family members will be left to deal with your business as is and may not have the resources or experience to manage the financial decisions.
- You don't need a complex estate plan if you're comfortable with how your property will be disposed of with a simpler plan or even by law – and the tax effects that go with it. But first, make sure you fully understand who will receive your assets according to local laws.

Is estate planning different for business owners?

Your estate plan will cover both your personal and business assets. Estate planning for business owners is more complicated because it needs to address:

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



What if certain decisions are holding me back?

Uncertainty causes many people to hesitate. You may have delayed developing an estate plan because you feel unable to make all the decisions that are involved. If this is a concern, tell your advisors. They can often provide a solution once those challenging decisions are identified.

Estate planning basics

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

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

You're in charge of the estate planning process

Estate planning is an ongoing process, over a long period of time, with many changes along the way. Inevitably, there will be issues that you haven't resolved and questions you don't have the answers to at this time. Don't let that stop you from beginning the planning process. It's perfectly acceptable to have an estate plan in which some decisions are deferred to a later date. A partial plan is better than having no plan at all.

What is estate planning?

- Estate planning is the process of organizing a tax-efficient transfer of your assets to specific people or charities.
- While not strictly part of estate planning, incapacity planning is 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 your assets and when they should receive the proceeds of your estate (during your lifetime, at death, long after death or never), estate planning also considers:

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

Your estate plan does not stand alone. It should be integrated with your financial, retirement and business plans. For a complete plan, also consider the plans of family members and the co-owners of your business. If you own assets in more than one province or country, your estate plan will need to reflect the different laws and layers of taxation that will apply.

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

Is a will enough?

Whether or not you are currently a family business owner, you'll need more than a will to adequately distribute your estate and provide for your family. In many families, the bulk of assets are passed on by some other estate planning tool quite distinct from the will. Joint tenancy of real estate, joint accounts¹ for cash and investments, and designated beneficiaries for life insurance and registered plans² may effectively move most of the assets. The will may, in fact, only control a small portion of a business owner's assets.

On the other hand, especially after one spouse has died, the will of the surviving spouse commonly controls all the assets, both those already owned and those inherited by any of the common tools mentioned above. Your advisory team will help you choose and integrate planning tools to meet your objectives.

¹ In Quebec, joint tenancy with right of survivorship does not exist.

² In Quebec, only registered plans that meet the definition of a life or fixed term annuity, can take advantage of a valid beneficiary designation.

What motivates estate planning?

Estate planning is guided by both rational and emotional motivations. It's usually an act of care, concern and generosity towards your family. For some, it's also a method of providing lasting meaning to the material wealth that a successful career has provided. For others, it's simply good business that enhances the chances for those left behind, including employees, who will continue to benefit from years of accomplishments in your family business.

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

Are you concerned about:

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

Do you want to:

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

Estate planning basics

How can family members encourage estate planning?

If your parent is a business owner, encouraging them 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, your parents may be reluctant to start the discussion in case it leads to disagreements among family members. Various organizations such as the Canadian Association of Family Enterprise (CAFE)³ or a trusted business advisor can help family business owners start an estate plan.

³ See the CAFE website at www.cafenational.org



Is an estate plan the same as a succession plan?

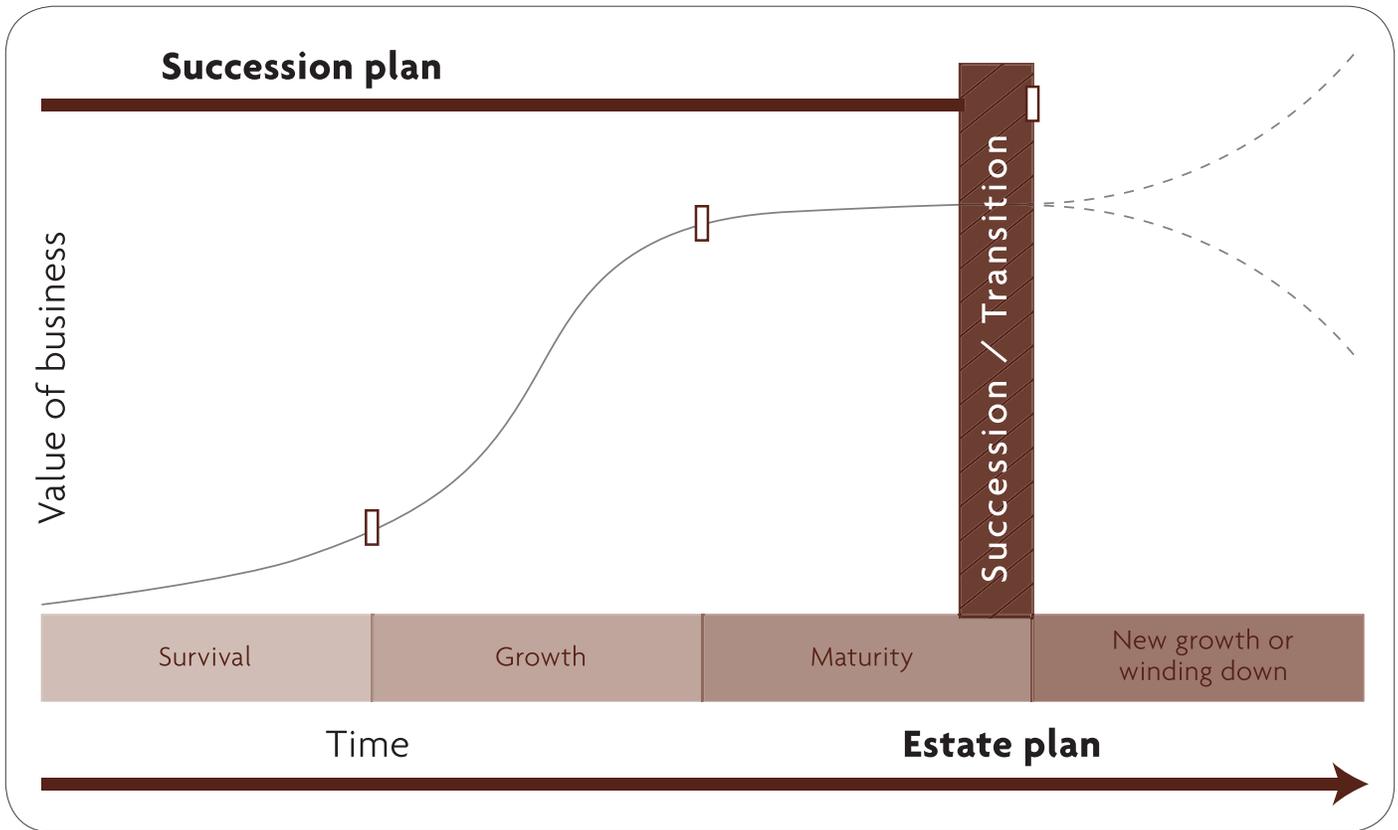
An estate plan includes all of your business and personal assets. A succession plan involves only your business assets. An estate plan is triggered by your death, while a succession plan may take effect during your lifetime or at the time of your death.

As a business owner, you need either an exit strategy or a succession plan to provide for the transfer of your business interests to help ensure the future success of your business.

Your succession plan may outline the sale or voluntary transfer of your business interest to your successor while you're alive, or it may provide for the disposition of your business interest on your death. In either case, your succession plan should include:

- a financial plan to make sure you and your spouse have the retirement lifestyle you want
- a management transition plan for your business
- an ownership transition plan for your business
- a contingency plan in case you're unexpectedly unable to run your business before the planned management and ownership transition occurs.

You need an estate plan whether or not you have a succession plan. The graph on the following page shows the growth of a business that is established when its owner is 35 years old and is transferred to his daughter when he is 65 years old. The graph shows that, although the owner always has an estate plan, he only has a succession plan during part of the business cycle.



Factor in the effects of grief

An estate plan helps protect your family from the burden of making difficult decisions when they're grieving. The death of a spouse is generally considered the most stressful life event that people suffer, the death of a close relative is the fourth most traumatic, followed by divorce and marital separation.⁴

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 12 months after the death of a spouse or other family member before making any major decisions. By planning for your estate in advance of your death, you can help protect your family from the stress of making major decisions during that time.

⁴ Statistics Canada, 1998 General Social Survey

Estate planning basics

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

If you already have an estate plan, here are some questions to help you determine if it's up-to-date. If you don't have an estate plan, the questions will help you identify what your plan should address.

	Yes	No
Wills and power of attorney		
1. Do you have a will?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you have a power of attorney (mandate in Quebec)?	<input type="checkbox"/>	<input type="checkbox"/>
3. If your province permits more than one type of power of attorney (for property and personal care), do you have both types?	<input type="checkbox"/>	<input type="checkbox"/>
4. 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?	<input type="checkbox"/>	<input type="checkbox"/>
Beneficiaries (successors in Quebec)		
5. 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?	<input type="checkbox"/>	<input type="checkbox"/>
6. 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?	<input type="checkbox"/>	<input type="checkbox"/>
Financial planning		
7. Have you determined the income needs of your spouse and any other family members who are financially dependent on you?	<input type="checkbox"/>	<input type="checkbox"/>
8. Have you considered steps to implement post-mortem income splitting?	<input type="checkbox"/>	<input type="checkbox"/>
Business issues		
9. 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?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the buy-sell agreement funded by life insurance, disability insurance and critical illness insurance?	<input type="checkbox"/>	<input type="checkbox"/>
11. Do you, your co-owners and potential beneficiaries who may inherit an interest in your business, have marriage contracts protecting the business assets?	<input type="checkbox"/>	<input type="checkbox"/>
12. Does your estate plan address creditor protection issues?	<input type="checkbox"/>	<input type="checkbox"/>
13. Do you have an emergency plan if you are incapacitated or die before transferring your ownership interest?	<input type="checkbox"/>	<input type="checkbox"/>

- | | Yes | No |
|--|--------------------------|--------------------------|
| 14. Have you appointed a successor or established a process for selecting a successor for your business? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Do you have a written plan for the transfer of your business interests? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. If you are leaving the business to one family member, have you made arrangements to leave assets of equal value to other family members? | <input type="checkbox"/> | <input type="checkbox"/> |

Advanced tax planning

- | | | |
|--|--------------------------|--------------------------|
| 17. Have you identified if your business or holding company shares are eligible, or could be made eligible for the \$750,000 lifetime capital gains exemption? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Are you ready to transfer the future growth of your business to someone else (an estate freeze)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. 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? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Have you calculated the tax liabilities that your estate will be responsible for at your death? | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. Will your estate be guaranteed to have enough cash to cover those tax liabilities? | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. If you have assets in the U.S., have you considered strategies to reduce and pay U.S. estate taxes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. Have you considered strategies to reduce probate fees, where probate fees are applicable? | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. Have you planned for charitable giving at your death? | <input type="checkbox"/> | <input type="checkbox"/> |

General

- | | | |
|---|--------------------------|--------------------------|
| 25. Have all the agreements that form part of your estate plan been prepared or reviewed in the last year? | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. 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? | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. Does your family know the details of your estate plan? | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. Does your family know where key documents, such as your will and insurance policies, are located? | <input type="checkbox"/> | <input type="checkbox"/> |
| 29. Does your family know your funeral and organ donation wishes? | <input type="checkbox"/> | <input type="checkbox"/> |

A no answer to one or more of these questions suggests that you need to do additional planning.

Developing your estate plan

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

For example, if you've been married more than once, you may have to balance the competing interests of your children from an earlier marriage with those of your current spouse. Or you may have to balance your desire to extend your retirement date with a successor's desire to take over the business.

The following steps will help you design a plan that meets as many of your objectives as possible.



Step 1 – Consult your advisors

A carefully chosen team of advisors can help you determine and implement your estate planning goals. You may want to start with an advisor you already trust, for example: your lawyer, accountant or financial advisor, and ask for his or her assistance in selecting a team. You'll want to check the professional credentials and experience of everyone on the team to ensure they have the skills necessary to help you.

An insurance company produced this guide, and chances are your financial advisor provided you with this copy. Each member of the team will provide you with assistance in a specific area. In certain situations you may need more than one advisor from a specific discipline. For example, you may need both a corporate and tax lawyer. You may also want to consider hiring a team leader whose sole responsibility is to coordinate the other team members and manage the entire process.

Your team should include some or all of the following members:

Advisors to your business

- **Family council** – Family businesses may have family councils that discuss the role of the business within a family context. Your family council can help you establish business and succession goals that reflect the wishes of your family members.

Developing your estate plan

- **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. Your advisory board can assist in the development of your ownership transition process and estate planning.

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 you own assets.
- **Financial advisors** – Financial advisors cover a wide variety of expertise, including financial planning. They will provide you with strategies to maximize the value of your estate, help you develop an investment strategy for your non-business assets, provide you with insurance advice and may manage your investment portfolio. Consider a financial planner who has his or her Certified Financial Planner (CFP) designation, which means they have met the standards of the Financial Planning Standards Council. In Quebec financial planners are licensed and receive a designation from the Quebec Institute of Financial Planning (IQPF).
- **Accountants** – Accountants will develop strategies to reduce the taxes payable during your lifetime and at the time of your death. They also provide you with advice on the tax implications of the various components of your estate plan.
- **Chartered Business Valuator (CBV)** – Specialist expertise may be useful in quantifying the value of your 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.

Non-traditional advisors

- **Life/leadership coach** – High performers in any field, including business, often rely on coaching from impartial outsiders. A life coach can help you clarify your personal goals and priorities so that they can be reflected in your 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.
- **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, not available from other sources. This includes advice on succession planning.

Developing your estate plan

Dispute resolution

- **Mediator or conciliator** – If you have a family business and you're unable to resolve conflicts or competing claims, you may want to consider hiring a mediator or a conciliator with experience in family business situations. They can help resolve the outstanding business/family issues that are hindering your estate plan.

Independent advice

Your family members may want to retain their own advisors. If any of your 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. They should not rely on the advice of your lawyer, otherwise the documents may be open to challenge later.

Step 2 – Determine your estate planning goals

Once you've chosen your advisors, you can start determining your estate planning goals. At this stage, you're not focusing on how to implement your goals, but on identifying specific goals. They may fall into different categories: needs, wishes and dreams. Some of your goals may revolve around tangible things, such as business assets, or on intangible things like family harmony.

You'll need to first plan for your own needs and the needs of your spouse and any financial dependants during your lifetime. Perhaps you're responsible for assisting both adult children and your parents. Creditors and dependants of all sorts need to be considered, since they rank ahead of ordinary beneficiaries. Then you can start planning for how, and when, you want to divide your estate. Some of the questions you may want to ask yourself are:

- Are there specific assets you want family members to receive? Or, are you more interested in dividing the value of assets?
- Do you want your beneficiaries to receive the assets during your lifetime, at the time of your death, or at some other date?
- Do you want to direct how your beneficiaries will dispose of the assets you leave them when they die? Items such as family farms or cottages are sometimes of concern.
- Do you want your estate to provide ongoing support to any of your family members? If so, for how long?
- What are your goals for the business once you are no longer actively involved with it?
- Are there any family members who have the business skills necessary to run the business? Who will want to do so?
- Do you want to leave any portion of your estate to charity?
- How important is minimizing income tax and probate fees?

Other planning issues faced by every parent are sometimes more difficult for the business owner.

- **Fair treatment or equal treatment.** If you have more than one child, consider whether you want to treat the children fairly or equally – two concepts that are not necessarily the same. Treating the children equally means dividing your business interest evenly between them. However, equal sharing of the ownership and management of your business may be a recipe for disaster. If the business fails, all of your family will suffer. It may be fairer to transfer your business to the child who is most likely to ensure its success. You can give your other children assets of equal value that are unrelated to the business.
- **Relinquishing or retaining control.** You need to consider whether you want to transfer complete control over the assets to your beneficiaries, or whether you want to retain some control over the assets. This decision applies whether the gift is made during your lifetime or after your death. If you don't want to transfer control of the assets to the recipient, your advisors can provide you with solutions (such as trusts) that allow you to retain control.
- **Publicity or privacy.** You'll need to consider whether you want to risk your financial affairs going public. All probated wills are public documents and can be reviewed by anyone. If you want to protect your privacy, you may want to consider tools that avoid the probate process, such as insurance, gifts during your lifetime, or the use of inter vivos trusts (living trusts).

Determining your estate objectives is the most important step in the estate planning process and may be a complex task. The rest of your estate plan will flow from the goals you identify at this stage, so think very carefully about your objectives.

If you're having trouble determining your goals, your advisors or an organization that provides support to family businesses – for example the Canadian Association for Family Enterprise (CAFE) – can help.

If you're spending more time than you'd like determining your estate objectives, you may want to consider preparing an interim will that sets out the dispositions you decided on and leaves the rest of your assets to a discretionary trust. As you develop a more complete estate plan, you can revoke the interim will and prepare a new will that reflects the complete plan.

Step 3 – Weigh your options and develop your plan

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

Developing your estate plan

Step 4 – Share your plan

While you're developing your estate plan, consider asking your family members for input. As much as possible, you'll want to make sure you're leaving your beneficiaries assets they really want. Once your estate plan is finalized, you need to determine who should be advised of its details. Ask yourself these questions:

- **Who needs to know the estate plan?** Uncertainty can be destructive. Providing information about your estate plan to the people affected by it allows you to address any concerns. For example, don't appoint executors and trustees without asking them first and securing their agreement.
- **How much do they need to know?** Key employees, lenders and customers will probably only need to know the broader details relating to your plans for the business.
- **When should they be told?** You may not want teenage children to know that they'll be inheriting a sizeable estate until they're older and have achieved their own successes.

Take an integrated approach when developing your plan

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

You also need to integrate your estate plan with the plans of the recipients of your gifts, and to consider worst-case scenarios, such as a child predeceasing you. For example, if you transfer shares of your family business to your daughter during your lifetime, your daughter should sign a family shareholders' agreement, funded by insurances, which provides for an appropriate disposition of her shares if she predeceases you.

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, and as part of a business emergency plan. Prolonged absence may also trigger the business succession plan.

Implementing your estate plan may require a significant amount of time, especially if it involves corporate reorganizations and tax planning. You may want to provide power of attorney to someone you trust, along with written instructions setting out all of the steps involved in your 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. You should discuss this with your legal advisor.



Step 5 – Implement the plan

Once you've completed these steps, your advisors will help you structure and prioritize the details of the implementation of the plan. The actions you take will depend on the details and objectives of your particular estate plan. We'll look at the tools you can use in your estate plan in more detail on page 15, under "Tools for creating an estate plan," of this guide.

Step 6 – Monitor the plan

It's important to review your plan annually to ensure it still meets your objectives. Establishing benchmarks allows you to evaluate the plan's success so that you can ensure it's on track to meet your goals. An annual review also allows you to respond to any changes in tax or other legislation that may affect your estate plan.

Reasonable benchmarks for progress in building or updating parts of your plan will help manage expectations. If a document is solely in your 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 you finalize your instructions. If a legal agreement requires negotiation, such as a shareholder agreement, it may take six months or more.

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

Estate planning and your business

Business exit strategies

When preparing your estate plan, think about how long you intend to actively run your business and in what capacity. You'll want to consider your long-term goals for the business. Do you want it to stay in the family? Do you have a family member who is capable and wants to run it? Do you have another successor in mind, other than a family member? Or, do you simply want to sell the business to a third party for the best price you can obtain?

It can take time to develop an exit strategy, particularly if it involves grooming a successor, so you should start planning long before you intend to leave the business. There are two main types of exit strategies:

1. appointing a successor
2. selling the business

For detailed information on succession planning ask your advisor for a copy of Sun Life Financial's **Business succession planning guide**.



Selling your business

You may decide you'd rather sell your business than appoint a family successor. The decision to sell may depend on whether you see your 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 you'd rather keep the business in the family, you may decide to sell because of a lack of interest or ability on the part of your children. You may also decide to sell for purely financial reasons. You may be able to obtain a higher price from a third party and use the proceeds to provide for your children.

The importance of a buy-sell agreement

If you're the co-owner of a business, it's essential that you 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.

Tools for creating an estate plan

There are a number of estate planning tools available to address a range of issues. 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 your particular situation.

Here's an overview of some of the estate planning tools you may consider using as part of your estate plan.

Wills

A will is a legally enforceable document that outlines how your property will be distributed upon your death. A will also appoints an executor (or liquidator in Quebec) who acts on your behalf in ensuring the distribution takes place according to your wishes. Your will only takes effect at your death and can be amended any time before then.

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

- if you have assets located in different jurisdictions, you may want a separate will for each jurisdiction covering only the assets in that jurisdiction
- in Ontario, if you want to reduce probate fees and protect the privacy of your business holdings, you can prepare two wills, one covering the assets requiring probate (such as deposits held by financial institutions) and the other covering all other assets (including shares of your company). Expert legal advice is needed to ensure one will does not revoke the other.

Descriptions of other types of wills are found in “Appendix A” at the back of this guide.

If you die without a valid will, otherwise known as dying “intestate,” provincial legislation will direct who is to receive your property. In most provinces, your spouse will receive an initial share of your estate, which will range from the first \$40,000 to \$200,000. The balance of your estate will be divided between your spouse and your children. A court appointed administrator will manage and distribute the estate.

Tools for creating an estate plan

Power of attorney (for Quebec residents see “Appendix B”)

A power of attorney gives another person (the attorney) the authority to make decisions on your behalf. The attorney does not need to be a lawyer.

A power of attorney allows you to plan for situations in which you become physically or mentally incapacitated. A power of attorney can act for a temporary period of time or indefinitely, but they are only effective during your lifetime and terminate on your death. You need a power of attorney in each jurisdiction where you own assets. If you don't have a power of attorney and you become incapacitated, the court can appoint a substitute decision maker to act on your behalf.

Descriptions of types of power of attorney are found in “Appendix C” at the back of this guide.

Trusts (for Quebec residents, see “Appendix C”)

Trusts are a very useful estate planning tool. They allow the willmaker or settlor to transfer legal ownership of an asset to a trustee who holds the asset for the benefit of the beneficiaries. The beneficiaries are able to use and enjoy the asset, but don't have legal ownership of it. In an estate planning context, trusts are commonly used to:

- provide benefits to minor children
- provide benefits to a second spouse following the willmaker's death without disinheriting the first family
- provide benefits to an incapacitated surviving spouse
- offer estate privacy
- minimize taxes.

There are two main types of trusts:

- **Inter vivos trusts (living trusts)** – take effect during your lifetime and are taxed at the highest marginal tax rate on accumulated income. Living trusts are often used together with a planning technique called an estate freeze to save on later capital gains taxes.
- **Testamentary trusts** – are created in your will and take effect at your death. Testamentary trusts are subject to the same graduated tax rates on accumulated income that apply to individuals, and are often used for income-splitting or other tax reduction strategies.

For a brief overview of how trusts can be used in an estate planning context see “Appendix D”.

Other agreements

There are a number of other legal agreements, such as shareholder or partnership agreements, that may form part of your estate plan. See “Appendix E” for a description of some of these other types of agreements.

Insurance products

Insurance coverage for you and your business, both during your lifetime and upon your death, will form an important part of your estate plan. Life insurance guarantees tax-free cash at exactly the time it’s most needed to:

- protect your business against loss caused by the death or disability of you or a key employee
- fund a buy-sell agreement
- create or equalize a legacy for family members
- provide creditor protection
- cover the anticipated capital gains taxes that will arise upon your death
- fund charitable giving, either by donating an insurance policy on your life to the charity or by designating the charity as a beneficiary of a policy you own.

Other forms of insurance, such as disability insurance, should also be considered. See “Appendix F” for an overview of the different types of insurance coverage you may want to consider as part of your estate plan.

How taxes can impact your estate plan

Taxes and your estate plan

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

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

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

Income taxes

- **Income tax.** You'll be taxed on all income earned by you in the year of your death.
- **Capital gains tax.** All of your capital property is deemed to be disposed of when you die, and any capital gains or capital losses are included in the calculation of your final income. For some tax payers, this is subject to a \$750,000 lifetime exemption for capital gains from qualified small business shares and qualified farm property. Since there is no guarantee this exemption will always be available, many people choose to crystallize some or all of their capital gains by triggering a disposition during their lifetime. The deemed disposition on death may also trigger recapture of depreciation, which is taxed as income. All taxpayers can defer these taxes by transferring assets to a spouse or qualifying spousal trust.
- **Tax on RRSP and RRIF assets.** All registered assets such as RRSPs and RRIFs must be collapsed at the date of death, and their full value included on your final tax return. However, they can be transferred to a registered plan for your spouse, or in some cases a financially dependent child or grandchild, on a tax-deferred basis.



How taxes can impact your estate plan

Probate and other fees

- **Probate taxes.** Provinces charge fees or taxes for court orders, commonly termed letters probate, confirming that the will is valid and the executor has the authority to act. All provinces, other than Alberta and Quebec, charge probate fees that are based on the total value of the assets that flow through the will. Ontario has the highest charges, the top rate is 1.5 per cent of the value of assets passing through the estate.
- **Executor's fees.** Although not a tax, executors can charge a fee, typically up to five per cent of the value of the assets transferred under the will.

Cross-border issues – U.S. estate tax

You may also be subject to U.S. taxes if you are either considered a “U.S. person” or you hold “U.S. property.” U.S. persons include:

- people born in the U.S.
- U.S. citizens who live elsewhere, like Canada
- people with dual citizenship who may be unaware they hold U.S. citizenship
- permanent residents of the United States, people domiciled in the U.S. and people who hold green cards. You may be considered a U.S. resident for tax purposes even though you're also a Canadian resident and pay Canadian taxes.

U.S. property includes real estate, debts and shares of U.S. corporations. If you own shares of a U.S. corporation, either inside or outside your RRSP, you may be liable for U.S. estate taxes on that property, even if you're not a U.S. person.

The U.S. taxes that may apply if you are a U.S. person include:

- **Estate tax.** This is a federal transfer tax applied against worldwide assets. In 2007, it ranges from 18-45 per cent.
- **Gift tax.** This is also a federal transfer tax, also ranging from 18-45 per cent, payable on any taxable transfer of property during your lifetime.
- **Generation-skipping tax.** This a flat rate federal tax applied at the highest marginal rate on transfers that skip a generation (e.g., from a grandparent to a grandchild).
- **Stamp taxes.** These are taxes imposed by the federal government on the issue and transfer of stocks, bonds and deeds.
- **Inheritance tax.** Twelve U.S. states impose an inheritance tax on the value of property received by a beneficiary.

How taxes can impact your estate plan

- **Capital gains tax.** Capital gains on the sale of stocks, bonds, mutual funds or other investment assets held for more than one year are subject to tax at 15 per cent, but may be as high as 28 per cent on qualified small business stock.⁵

Your legal or tax advisors can help you determine whether you may be subject to any U.S. taxes, and if so, whether any exclusions, exemptions or credits will apply to you. Similarly, if you own assets in, or are a citizen of any other country, you should obtain professional tax advice as to whether that country's tax laws will apply to you.

Canadian death-tax reduction strategies

There are a number of strategies you can use to reduce the various taxes your estate will pay on your death.

Strategy	Benefit
Gifts during lifetime	<ul style="list-style-type: none">■ Allows you to transfer assets without paying probate fees. However, gifts of capital property (to anyone other than your spouse), are generally treated as a sale and will trigger capital gains or losses to you.■ Gifts to spouses or minor children will trigger income attribution rules and income earned on gifts will be attributed to you (other than capital gains received by a minor child).
Joint title to assets	<ul style="list-style-type: none">■ 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 will (this concept does not exist in Quebec). This may help to avoid probate taxes, but not capital gains taxes.
Beneficiary designations	<ul style="list-style-type: none">■ Naming beneficiaries for your registered plans and pension plans allows the beneficiary to receive the proceeds outside of your will so probate fees aren't payable. This associated tax burden needs to be planned for since it may fall on your estate and not the beneficiary.■ In Quebec, such a beneficiary designation is available only on life insurance products, including annuities, that meet the definition of life or fixed term annuities and pension plans.■ Life insurance beneficiaries generally receive the proceeds tax-free.

⁵ Tax rates were current at the time of printing, but are subject to frequent change. You should consult your tax advisor to determine current rates and regulations.

How taxes can impact your estate plan

Strategy	Benefit
Contingent owner of life insurance	<ul style="list-style-type: none">■ Insurance policies that you own on the lives of certain other persons (such as your spouse), can be transferred to them outside of the estate on a rollover basis, using the contingent owner mechanism in the Insurance Act.
Tax-deferred rollovers	<ul style="list-style-type: none">■ Process by which tax from disposition or deemed disposition of capital property is deferred.■ Example: transferring capital property to alter ego or a joint partner trust.■ Example: distributing trust assets to capital beneficiaries in satisfaction of their entitlement.
Insured annuity owned by a corporation	<ul style="list-style-type: none">■ Reduces the value of private company shares for capital gains tax purposes by pairing a life annuity with a life insurance policy, neither of which may have high values for tax purposes.
Estate freeze	<ul style="list-style-type: none">■ Freezes the values of your company's shares during your lifetime so that you can provide for the tax liability that will arise on your death.■ Future growth in the value of your shares will accrue to your beneficiaries.■ Often accomplished by transferring shares of an operating company to a holding company.■ You receive back fixed value preferred shares equal to the fair market value of the operating company at the time of transfer.■ Your beneficiaries, or a trust for their benefit, subscribe for common shares with a nominal value to which future growth in value of company will be attributed.■ Can be structured so you retain voting control.

Appendix A

Wills

Type of will	Description
Will in “solemn” form	<ul style="list-style-type: none">■ Traditional format■ Signed by willmaker in presence of two witnesses who also sign and who are not beneficiaries or related to beneficiaries
Will made in the presence of witnesses	<ul style="list-style-type: none">■ In Quebec■ Written by the testator or a third person and signed by the testator. Or, the testator acknowledges his or her signature in the presence of two witnesses.
Notarial will	<ul style="list-style-type: none">■ In Quebec■ Made before a notary, en minute (recorded in minutes) in the presence of a witness and the testator. Or, in certain circumstances before two witnesses.
Holograph will	<ul style="list-style-type: none">■ Some provinces permit wills written and signed entirely in the willmaker’s own handwriting without the formality of witnesses■ Can create problems since signed notes, letters and postcards may be given legal effect whether intended or not

For Quebec residents

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

Tool	Description
Mandate in anticipation of incapacity	<ul style="list-style-type: none"> ■ Notarial or witnessed document that allows individuals chosen as mandatory to make decisions on your behalf if you become incapacitated ■ 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
Trust	<ul style="list-style-type: none"> ■ Legal ownership of trust property differs in Quebec from common law provinces – settlor of trust transfers property to a patrimony by appropriation, which is separate from settlor, trustee and beneficiaries none of whom have legal title to it ■ The rights of the beneficiaries are established by the acceptance of the property by the trustees
Tutor	<ul style="list-style-type: none"> ■ Tutors make decisions affecting minors and their property ■ 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.
Curator and tutor to an adult person	<ul style="list-style-type: none"> ■ A person appointed to act as the legal representative for an adult who is either totally or partially incapable of taking care of themselves and their property ■ An incapacitated heir can have a curator or a tutor designated by the court through a family council

Appendix B

Tool	Description
Matrimonial regime	<ul style="list-style-type: none">■ Partition of the matrimonial regime on death is part of the estate planning process■ Three types of matrimonial regime still exist:<ol style="list-style-type: none">1. Community of property is the default regime if married before July 1, 19702. Partnership of acquests is the default regime if married after July 1, 19703. Separation of property is a contractual regime.
Civil union	<ul style="list-style-type: none">■ Composed of two persons of the opposite or same sex who publicly celebrate a marriage-like union■ For Quebec legal purposes (property and civil rights) equivalent to married
Family patrimony	<ul style="list-style-type: none">■ The value of predetermined family assets is subject to mandatory partition at death, except in case of formal renunciation by the surviving spouse■ Family assets are limited to the value of:<ol style="list-style-type: none">1. family residences2. furniture3. motor vehicles used by the family4. RRSPs accrued during marriage.

Power of attorney

Type of power of attorney	Benefit
Power of attorney for property	<ul style="list-style-type: none"> ■ Allows the attorney to manage your property and make financial decisions on your behalf if you become incapacitated ■ May be limited to specific activities or assets (a limited power of attorney) or may provide complete control over your financial affairs (a general power of attorney)
Power of attorney for personal care (advance health care directive, living will – different provinces use different names)	<ul style="list-style-type: none"> ■ Allows the attorney to make medical and health care decisions on your behalf if you become incapacitated and unable to state your wishes ■ Can include specific instructions about the treatment you do or do not wish to receive
Representation agreement (British Columbia residents)	<ul style="list-style-type: none"> ■ Allows B.C. residents to appoint representatives to make decisions about their legal affairs, financial affairs, personal care and health care needs if they lose mental capacity, similar to a power of attorney

Appendix D

Trusts

Type of trust	Description
Discretionary trusts	<ul style="list-style-type: none"> ■ Trustees of this type of trust have absolute power to allocate capital and income from the trust and determine the timing of distributions ■ Are very flexible tools for transferring business ownership to the next generation and are often used as part of an estate freeze, because they let trustees decide the ultimate beneficiaries at a later date
Fixed interest trusts	<ul style="list-style-type: none"> ■ Terms clearly set out who should receive what property, when and in what manner
Alter ego trusts (or self-benefit trusts)	<ul style="list-style-type: none"> ■ Are used as a will substitute and are a superior method for asset management during incapacity ■ Are established for your sole lifetime benefit if you're over age 65 ■ Income and capital gains are taxable in your hands while you're alive ■ When you die, the trust document functions as a will governing the distribution of assets ■ Used to avoid probate and to protect privacy
Joint partner trusts	<ul style="list-style-type: none"> ■ Similar to self-benefit trusts but are established for the joint lifetime benefit of spouses (or common-law or same-sex partners).
Spousal trusts	<ul style="list-style-type: none"> ■ Set up during life or upon your death for the exclusive benefit of your spouse ■ Your spouse must receive all of the income ■ No person, other than your spouse, can have access to the capital while your spouse is alive ■ 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 your spouse dies ■ Useful for providing for children from an earlier marriage (spouse receives income and has access to capital during your lifetime; your children inherit the remainder on your spouse's death), for providing care for an incapacitated spouse after you die, and for reducing taxes by income-splitting if a spousal trust is set up as a testamentary trust

Type of trust	Description
Family trusts	<ul style="list-style-type: none"> ■ Usually has family members as beneficiaries, but may also include non-family members ■ Often used for income splitting among family members, for reduction in probate fees and to avoid challenges to your will. Are very useful in the succession process for family-owned business (see Discretionary trusts above).
Offshore trusts	<ul style="list-style-type: none"> ■ 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 ■ Still used by wealthy immigrants and foreign benefactors of Canadian residents ■ Obtain professional advice before establishing an offshore trust
Alberta trusts	<ul style="list-style-type: none"> ■ Residents in Alberta (the majority of trustees must live there) to which investment properties are transferred ■ Taxed at Alberta's lower marginal tax rates ■ Useful for reducing taxes if you're a resident of a province other than Quebec, are in the highest tax bracket and won't need to withdraw the funds for current needs
Insurance trusts	<ul style="list-style-type: none"> ■ A trust that receives the proceeds of a life insurance policy ■ Separate from the probate estate ■ Useful for minor or special needs beneficiaries or to establish a trust for income splitting

Appendix E

Legal agreements

Type of agreement	Description
Buy-sell agreement	<ul style="list-style-type: none"> Some businesses have stand-alone buy-sell agreements which addresses the death, disability or retirement of one of the owners, and includes a formula for business valuation
Shareholders agreement	<ul style="list-style-type: none"> Sets out the rights and obligations of the shareholders of a corporation, including buy-sell provisions
Partnership agreement	<ul style="list-style-type: none"> Sets out the rights and obligations of partners in a partnership
Marriage contract or domestic agreement	<ul style="list-style-type: none"> Agreement between you and your spouse dealing with the rights to support and to ownership or the division of property on marriage breakdown or death Spouse who is not involved with the business may agree not to make any claim against the business Called a prenuptial agreement if entered before marriage May also have a similar agreement with a common-law partner
Separation agreement	<ul style="list-style-type: none"> Similar to a marriage contract An agreement you enter into with your spouse on separation, which includes provisions addressing the support and division of property
Shared ownership insurance agreement (also known as split-dollar agreement)	<ul style="list-style-type: none"> An agreement governing the relationship between two or more parties who share the ownership of a universal life insurance policy, so that one party pays for and receives the death benefit, and one party pays for and receives the benefit of the fund value
Shared benefit insurance agreement	<ul style="list-style-type: none"> 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.

Insurance products

Type of insurance	Description
Temporary: Term	<ul style="list-style-type: none"> ■ Provides protection for a fixed period, ranging from one year to a specific age ■ Some plans are renewable at higher premiums ■ May be convertible to permanent products
Permanent: Term to 100 and non-participating whole life	<ul style="list-style-type: none"> ■ Simple form of permanent insurance ■ Guaranteed level death benefit ■ Usually without the additional features available with other plans ■ Less flexible ■ Low cash values ■ Some guaranteed limited pay options, e.g. 10, 20 pay
Participating whole life	<ul style="list-style-type: none"> ■ Permanent insurance with some flexibility on design of both the death benefit and the cash surrender value ■ Participates in a product's investment and claims experience through policy dividends, that can be applied in several different ways ■ More guarantees, but less flexibility than universal life plans
Universal life	<ul style="list-style-type: none"> ■ Permanent insurance with maximum flexibility over death benefit and cash surrender value design ■ Investment of policy deposit in excess of cost of insurance under the policy owner's control ■ More flexibility but less guarantees than whole life plans
Critical illness insurance	<ul style="list-style-type: none"> ■ Pays a lump sum benefit if you are diagnosed with a specified serious medical condition and survive the diagnosis for 30 days ■ Your business should have critical illness insurance on its owners, managers and key employees to protect it from financial loss

Appendix F

Type of insurance	Description
Disability insurance	<ul style="list-style-type: none">■ Pays a monthly benefit to replace income if you're unable to work as a result of illness or injury■ Your business should consider disability insurance on its owners, managers and key employees. Consider:<ul style="list-style-type: none">■ monthly income plans for sole owner protection or for key person coverage, business overhead expense insurance (provides a benefit to cover overhead expenses if you or a key person is disabled) or business loan protection.■ lump sum plans for shareholder/partner buyouts.
Long-term care insurance	<ul style="list-style-type: none">■ Pays a benefit to cover the cost of long-term care if you develop a chronic illness or disability that prevents you from caring for yourself■ Protects you from depleting your estate to cover those costs

This guide is a tool to help with the important task of planning your estate. As mentioned, you may want to begin the estate planning process by talking to your financial advisor. He or she can help you identify your objectives and any areas of concern so you can prioritize before you bring in other professional advisors.

You may also want to contact an organization like CAFE, The Canadian Association for Family Enterprise. CAFE is dedicated to promoting the health and success of family business and offers many excellent resources. They can be contacted online at www.cafenational.org.

While the use of professional advisors is a valuable part of the estate planning process, it's important to remember that their role is to outline and explain the different choices available to you. Your advisors will help you implement your decisions – not make them for you. That way, your estate plan will always reflect your personal priorities and choices.

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