

TRANSFERRING

Estate Planning Guide for Ontario Resident



The importance of assistance



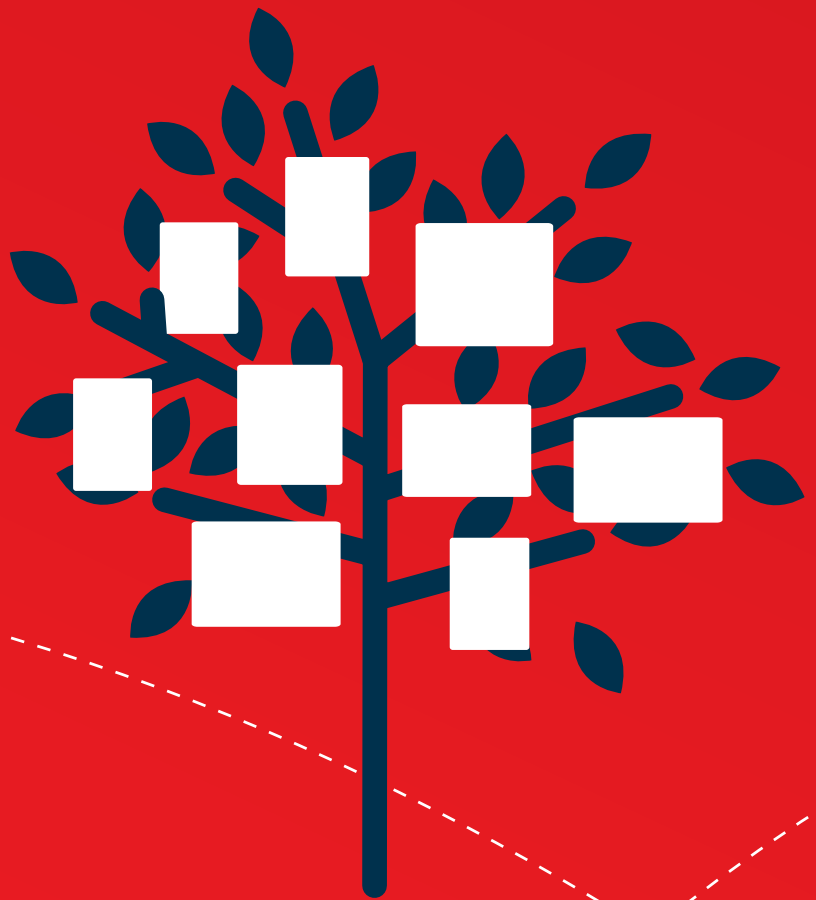
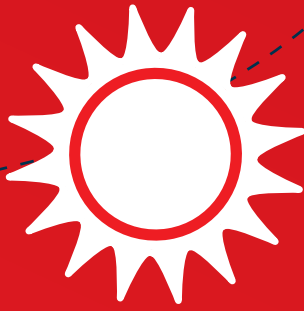


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Creating Your Legacy

Peace of mind and a happy family are common goals for estate planning. Estate planning is the ongoing process of managing, preserving and transferring wealth. You can eliminate uncertainties and ensure a smooth distribution of your estate by anticipating and planning for the transfer of your assets. With a properly structured estate plan, you can maximize the value of your estate by reducing taxes and other related costs as well as reduce the stress that may be incurred by your beneficiaries.

By creating an estate plan, usually with the assistance of an advisor, you can prevent complications in transferring assets due to unforeseen circumstances such as court costs, litigation between family members or unintended tax consequences. An advisor can assist you to ensure fulfillment of your financial and personal goals through a careful determination of your needs and priorities.

Incapacity planning is an important step to prepare for the reality that many Canadians suffer from some form of disability at some point in their lives. Plan for these events and provide guidance to your family members with the use of a variety of tools to appoint someone to make financial or personal care decisions on your behalf. Clear direction prevents your loved ones from suffering guilt and worry over decision making because you left them with a road map to follow.



Steps in Setting Up an Estate Plan

1. Gather Your Information

Complete a summary of your estate, with a list of your assets and liabilities. Include a description of the type of ownership and the approximate value. Properties may include real estate, bank accounts, investments, personal property, pensions and insurance policies. Also include information concerning any agreements made during your lifetime such as shareholders, partnership, cohabitation and separation agreements or divorce orders.

2. Set Your Goals

Important considerations include your choice of executors and trustees, beneficiaries and alternate beneficiaries, their life circumstances, their capacity to manage your gifts and the potential timing of those gifts. Also reflect on the appointment of guardians for minors as they may not be able to manage the assets until they attain the age of majority. Investigate the need for setting up trusts until those minors reach the age of majority.

3. Plan How to Achieve Your Goals

There are many methods available to transfer your assets. Suitable options depend on your personal, financial and tax situation. Tools available to transfer your assets include wills, testamentary and inter vivos trusts; charitable gifts; debt forgiveness; joint ownership; gifting during your lifetime; and beneficiary designations on registered vehicles such as pension plans, RRSPs, RRFs, TFSA's and insurance products.

4. Plan for Your Personal Well-Being in the Event of Incapacity

An individual may suffer from temporary or permanent incapacity for a variety of reasons. Without the proper planning, if you are no longer able to manage your property and/or make personal care decisions, your loved ones may need court approval to act on your behalf, which is expensive and stressful. Legislation in all Canadian provinces makes it possible to plan effectively for these events with several valuable tools.

5. Implement Your Plan: Consult the Professionals

An experienced professional can advise you on legal pitfalls, help to simplify your plan and create the structure to achieve your goals where possible. Your legal advisor may discuss ways to save on probate fees and protect your estate from potential family disagreements and challenges to your will. A smooth implementation of your plan includes drafting the documents according to your instructions, registering the documents where necessary and explaining the legal responsibilities to the attorney, representative and/or executor and trustee.

6. Review Your Plan Regularly

An estate plan review is warranted in the following situations: the birth or death of loved ones, illness, coming of age of beneficiaries, changes in your marital status, including entering marriage or marriage-like arrangements and separation or divorce, a material change in your financial situation, a sale of property, a sale of your business or need for succession planning, a change in your province or country of residence, or amendments to tax and estate laws.

Consider how any changes may affect you and review your plan with your advisor periodically

DID YOU KNOW...?

Less than one out of two Canadians has a will.

A survey conducted by the Angus Reid Forum showed that:

- ✘ 56% Canadians do not have a will;
- ✘ 71% do not have an Enduring Power of Attorney; and
- ✘ only 12% of young people between 27 and 34 years of age have a will.

The study revealed that it is often a life-changing event that makes people draw up a will:

- ✘ 30% created a will upon the birth of a child;
- ✘ 20% did so because their marital status changed; and
- ✘ 13% because they purchased a home.

http://www.clearfacts.ca/family/couples/less_than_half_of_canadians_have_drafted_a_will

If You Die Without a Will

If you die without a valid will, you are considered to be “intestate”. Not only will your assets be distributed according to provincial government rules, but you will not be able to decide who controls your assets. Your family will have to spend significant time and money with lawyers, working through the process to appoint someone to administer your estate. You will forego the opportunity to have your affairs arranged in a way that minimizes probate fees and tax, and the family members you thought would inherit your assets, may not.

In Ontario, a common-law spouse does not inherit any property under the intestacy laws. If John and Mary lived together for 30 years but were never legally married, upon John’s death, his assets would be divided among his beneficiaries. Mary would receive no property from him in accordance with the rules of intestacy, though she may have some entitlement to support under family law or dependant’s relief legislation.

If you die intestate, your estate will be distributed according to Ontario legislative provisions as outlined in the Tables (subject to the application of family law and dependant’s relief claims). In addition, if you have real property in a province other than Ontario, the distribution rules of that province will apply to the real property.

An unplanned estate could result in more expenses, delays and conflict for your beneficiaries

Table 1 • Dying without a will leaving a spouse and children

Spouse* only	All to spouse.
Spouse, relatives, no children or other descendants	All to spouse.
Child or children only	All to children in equal shares. If child is deceased, that child’s issue (i.e., grandchildren, great grandchildren of the intestate) take the child’s share.
Spouse and one child	First \$200,000 to spouse (preferential share); balance split between the spouse and child. If child is deceased, that child’s issue (i.e., grandchildren, great grandchildren of the intestate) take the child’s share.
Spouse and children	First \$200,000 to spouse (preferential share); balance split one-third to spouse and two-thirds to children in equal shares. If a child is deceased, that child’s issue (i.e., grandchildren and great grandchildren of the intestate) take the child’s share.
No spouse or children	See Table 2.

* In Ontario, for distributions under the Intestacy Rules, the definition of spouse refers only to legally married spouses (including same-sex legally married spouses).

Table 2 • Dying without a will leaving no spouse or children

One or more parent (including if they are also survived by any other relative)	100% divided equally between the surviving parents.
One or more sibling (including if they are also survived by any other relative other than parents)	100% divided equally between the surviving siblings (where a sibling dies before the deceased but has children or grandchildren, they receive the share that would have gone to the deceased sibling).

This table continues to benefit next of kin. Where there are no ascertainable heirs, the estate escheats to the provincial government.



Administering the Estate

Manoeuvring through probate and estate administration is a complex process with significant responsibilities and consequences. The executor or trustee has personal responsibility for administering the estate and any missteps may lead to personal liability and litigation. The role of executor or trustee requires impartiality and dedication to complete the estate administration in an efficient and effective manner. Often it is important that the executor/trustee has sound knowledge of investments, taxation and the law as well as the ability to manage the potential strife among your beneficiaries. Trained professionals are available to assist and support your executor and trustee through this challenging process. Some of the key tasks include:

- ❑ Locating the will and, if necessary, obtaining a grant of probate
- ❑ Identifying assets and creating an inventory of assets and liabilities
- ❑ Determining the impact of spousal or other claims on the estate
- ❑ Consolidating and managing assets temporarily, including, in some cases, the sale of real estate and liquidation of other assets
- ❑ Contacting the beneficiaries, heirs and intermediaries
- ❑ Settling debts and specific bequests
- ❑ Assessing tax consequences and considering potential roll-overs to defer taxes
- ❑ Preparing accounts and tax returns
- ❑ Obtaining clearance certificates from the Canada Revenue Agency
- ❑ Finalizing the distributions to beneficiaries

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Take charge of the transfer of your estate and make sure that it goes to the people of your choosing
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Trust Administration

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A trust is a legal relationship between a person holding and administering property (the trustee) for the benefit of another person(s) (the beneficiary). A trust can be set up during your lifetime or through your will. In some cases where the trust is established through a will, the trustee may be the estate trustee of the will. The trustee has a fiduciary responsibility to the beneficiaries and must administer the trust in accordance with the terms set out in the trust instrument (including where the trust instrument is the will). Trusts are often a workable solution to many estate planning needs such as:

- ❑ Centralizing management of assets and ensuring continuity upon the incapacity or death of the person setting up the trust
- ❑ Holding assets for minor children until they reach the age of majority or later
- ❑ Managing assets for beneficiaries who lack the ability or interest to do so
- ❑ Protecting assets from spendthrift beneficiaries (and their creditors)
- ❑ Protecting assets from disgruntled family members
- ❑ Providing for children from a previous marriage
- ❑ Providing tax savings for beneficiaries

Administering a trust is complex and requires expertise in several areas. An important option is to secure the services of trust professionals such as Natcan Trust Company to ensure proper and timely administration, active management and peace of mind for your beneficiaries. In this way, you can rest assured that you are fully realizing your estate and trust objectives.



Incapacity Management

In Ontario, incapacity planning includes Powers of Attorney both for financial matters and for personal and health care.

The Power of Attorney for Property entitles the attorney to do anything with the property of the donor that the donor could do if capable except make a will; provided, of course, that any action taken by the attorney is in the donor's best interest. This gives the attorney a great deal of power. It is important that the attorney be someone you trust and who has the skill to manage your property. In addition, for older donors, it is essential to appoint a younger person, possibly as an alternate. In some cases, it may be best to appoint a trust company.

Similarly, a Power of Attorney for Personal Care gives the authority to your attorney to make health and personal care decisions on your behalf. Usually the attorney is someone who respects your

philosophy of life and who you trust to honour your wishes. In return, the attorney agrees to uphold your wishes and stands in your place for any personal care decisions.

If you become incapacitated without a Continuing Power of Attorney for Property, an application to the court to have a guardian appointed to look after your financial affairs may be necessary. A similar process must be followed with respect to appointing a guardian of the person if you become incapacitated without a Power of Attorney for Personal Care. These are complex, time-consuming and expensive processes that may result in lengthy delays and untold frustration, and, until your guardian is appointed by the court, your close family and friends may not be able to make medical or personal care decisions on your behalf in accordance with your wishes.

Probate Facts

An Application for a Certificate of Appointment of Estate Trustee, more commonly referred to as obtaining probate, is the process whereby the court pronounces a will to be the last will and testament of a person. The grant from the court certifies that the will was duly proved and registered in the court and that administration of the testator's property was granted to the executor(s) named in the will. Probate provides protection to the executor and third parties who are paying out assets in accordance with the will provisions. It confirms that the will is the valid will and the executor is authorized to complete his or her duties. The application for probate includes fees payable on the value of assets passing under the will.

In Ontario the probate fees are as follows:

Table 3* • Probate Fees in Ontario

Estate Value	Fee
Under \$1,000	N/A
\$1,000 to \$50,000	\$5 for every \$1,000 (or part thereof)
\$50,000 plus	\$15 for every \$1,000 (or part thereof)

These fees can be minimized in a variety of ways, including:

- Gifting during your lifetime
- Designating beneficiaries on registered plans such as RRSPs, RRIFs, TFSAs, life insurance policies or products and pension plans
- Transferring property into joint ownership
- Transferring property into a trust

There are significant advantages and disadvantages with each of these techniques. If you focus too much on avoiding probate, your plan may have unintended consequences that are not positive. For example, you may set up trusts in your will and also designate beneficiaries on your major assets such as your RRIF and insurance policies. The end result is that your estate avoids probate on these assets but there may be insufficient assets with which to establish the trusts. In many of these cases, the probate fees saved will be less than the potential income tax savings available through appropriate trust planning and proper will drafting.

We strongly recommend that you discuss these options with your advisor before implementing.

Other Issues

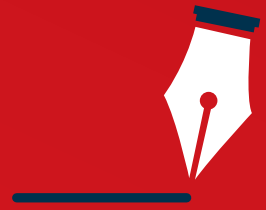
- Family obligations – All provinces recognize duties and obligations to family members upon your death. What constitutes “family” varies from province to province. Same-sex partners, common-law spouses and adult interdependent partners have different rights and obligations throughout Canada. Ensure that you understand how the law in your province affects you by consulting your legal advisor.
- Tax planning is an important component of the estate planning process.
- The rules relating to US gift and estate tax are constantly changing. If you own US property, if you own any other US situs asset, if you were born in the US, if you are the son or daughter of a US citizen, or if any of your beneficiaries may be a US citizen, ensure that you speak with your advisor about the effect this may have on your estate plan.
- Business succession planning is an important component of the estate planning process. Explore your options and finalize your goals with the help of your advisor so that you can develop an appropriate exit strategy through orderly succession or liquidation.
- Planning for physically or mentally disabled beneficiaries may be challenging. Help is available to guide you through the process of creating a plan that would benefit your loved ones and give you peace of mind.
- If you own property or are the beneficiary of a trust in a foreign country, you should seek legal counsel.

The information presented here is for your information only and does not constitute legal, accounting or tax advice. We strongly encourage you to seek professional legal and financial advice if any of these issues or circumstances relate to you.

In conclusion

Estate planning requires time and careful consideration, but it is a testimony to your vigilance and care for your loved ones. It is important to be well supported in this process. Together, we'll review the situation and find the solutions that are right for you. In partnership with you or with your family, we will ensure that you benefit from the ongoing support of an active, multidisciplinary team that will oversee the administration of your and your loved one's assets and investments. When choosing Natcan Trust Company, you can count on a partner who knows the ins and outs of fiduciary responsibilities.

*As of December 2012





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TRANSFERRING

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DOING BUSINESS

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Should you have any questions, do not hesitate to contact us.

514-871-7240

nbc.ca/estate



28934-062 (2013/01)

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