Your estate matters! Common traps and how to avoid them

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Jamie Golombek
Managing Director, Tax and Estate Planning, CIBC Private Wealth

The term "estate" often evokes images of mansions, with acres of gardens, dozens of rooms and a pool house. The reality is that almost every adult has an estate, even if it's not elaborate. If you own investments, real estate, vehicles, or other personal effects, then you have an estate. To allow for your estate to be passed to your loved ones in the manner you choose, you need an estate plan.

Basic estate planning

Estate planning is the process of making arrangements for the management and transfer of your estate. By planning, you do the best to arrange for your estate to pass on according to your wishes, in a way that minimizes delays and costs.

A CIBC poll[1] found that almost half of respondents had not created a will, which is the most basic element of an estate plan. Furthermore, 46% of respondents without a will thought they were too young or didn't have enough assets to create a will. Interestingly, this included almost one-third of Boomers (aged 45 – 64) and almost 10% of seniors (age 65 and over), typically life stages when people have accumulated the most assets and are approaching a time when their wealth will transfer to the next generation. An estate plan is always recommended if you have any assets at all, and is essential if you plan to take care of any dependants, such as kids, elderly parents or others.

Common estate planning mistakes

Many estate planning mistakes are made through lack of knowledge. This report will help identify two of the most common mistakes people make with their estate plans, as well as some strategies to remedy them.

Mistake #1: Letting the government write your will

If you die "intestate", meaning without a will, your estate will be administered in accordance with provincial law. This essentially leaves crucial aspects of your estate to be dealt with based on what was decided by the government.

We'll use an example to illustrate how one couple would fare without an estate plan. Bill and his spouse[2], Lee, live in Ontario, along with their two children, Emily, age 18, and Tom, age 13. The family has not done any estate planning. They have $1.1 million in assets, as outlined on the next page, all held in Bill's name.

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1 Details about the CIBC poll, which was conducted in 2012 when this report was first published, are available at newswire.ca/news-releases/cibc-poll-nearly-one-third-of-baby-boomers-dont-have-a-will-510205181.html.

2 In this report, spouse refers to someone to whom you are legally married.

Family assets:

Asset	Value
Home	$700,000
Investments	$400,000
Total	**$1,100,000**

If Bill were to die intestate, Lee might not be entitled to all of Bill's assets. Under Ontario's provincial intestacy laws, Lee would receive the first $350,000 of Bill's estate, which is known as the "preferential share". This varies widely by province. The remaining $750,000[3] would be divided: one third to Lee and the balance equally among the children, Emily and Tom. This would mean Lee's maximum share of the estate would be $600,000 ($350,000 + 1/3 of $750,000), which would not even be enough for Lee to obtain ownership of the family home (worth $700,000). Emily, at the young age of 18, would receive $250,000 outright, when she may not be prepared to responsibly manage such a sum. Tom's $250,000 inheritance might have to be paid into court to be managed by a government office until he turns 18. Furthermore, Lee might not automatically be named as the estate administrator, or the trustee of the Tom's funds and would have to apply to the court for these roles to undertake them.

To add to the estate nightmare, taxes and probate fees could further erode the inheritances. Taxes on the investments could be up to approximately $214,000 if Bill is taxed at the highest marginal rate of 53.5% and holds his investments in Registered Retirement Savings Plans (RRSPs) that are not rolled over to qualified beneficiaries. Probate fees, where applicable, could also amount to $16,000 (estimated at the Ontario Estate Administration Tax rate of approximately 1.5% of the $1.1 million estate value). Fortunately, most of these pitfalls may be easy to avoid by preparing an estate plan.

For instance, in Bill's estate plan, he might have:

- Named Lee as the primary beneficiary in his will – by taking advantage of the spousal rollover, this would allow all income taxes, amounting up to $214,000, to be deferred until Lee disposes of the assets or dies;
- Named Lee as a direct beneficiary of his RRSPs and transferred their home into joint ownership – this generally would mean these assets pass outside his estate and avoid probate fees on these assets for additional savings of $16,000
- Named Emily and Tom as contingent beneficiaries in his will – this would mean his children would inherit if Lee did not survive him;
- Directed the inherited assets into a trust or trusts for planned or controlled distribution;
- Added insurance to supplement his estate – this might have better provided for his family's needs.

Mistake #2: Do-it-yourself planning

The CIBC poll showed that one in ten respondents did not have a will because they thought it would be too costly. Many people attempt "do-it-yourself" estate planning for this same reason.

Family, succession and income tax laws are very complex and vary from province to province. For example, a new marriage can invalidate your will or certain bequests in some provinces. Also, if you haven't provided sufficiently in your will for certain family members or dependants (such as your spouse or partner[4], child, or even a parent), that dependant may be able to challenge your will in court, which could be costly and delay estate administration. To make matters more complicated, the laws frequently change. Failing to understand and plan for applicable laws can have unintended consequences. You should always obtain legal, tax and financial advice when preparing your estate plan and documents. The cost of getting proper advice for your estate plan is most likely less than the cost of unnecessary taxes or fees if you make mistakes.

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[3] The impact of taxes and other estate liabilities have not been considered.

[4] In this report, partner refers to a common-law partner under the Income Tax Act, which means someone who cohabits with you in a conjugal relationship, provided the two of you have cohabited for the past 12 months or are jointly parents of a child.

At CIBC, we offer many services and solutions to assist you with your estate planning and administration, including:

- Wealth planning to determine strategies that can maximize your estate value;
- Customized financial solutions to enhance and preserve the value of your estate;
- Administering your estate through appointment of CIBC Trust as an executor, co-executor or contingent executor;
- Trust administration through appointment of CIBC Trust as a corporate trustee; and
- Assisting existing executors and trustees with their administrative, legal and tax obligations when CIBC Trust is appointed as agent for an executor or trustee.

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Jamie Golombek, CPA, CA, CFP, CLU, TEP is the Managing Director, Tax & Estate Planning with CIBC Private Wealth in Toronto.

jamie.golombek@cibc.com

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