

Separation and  
divorce planning

Disability planning

End of life planning

Incapacity planning

Retirement planning

Transferring a  
family cottage to  
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Charitable giving and  
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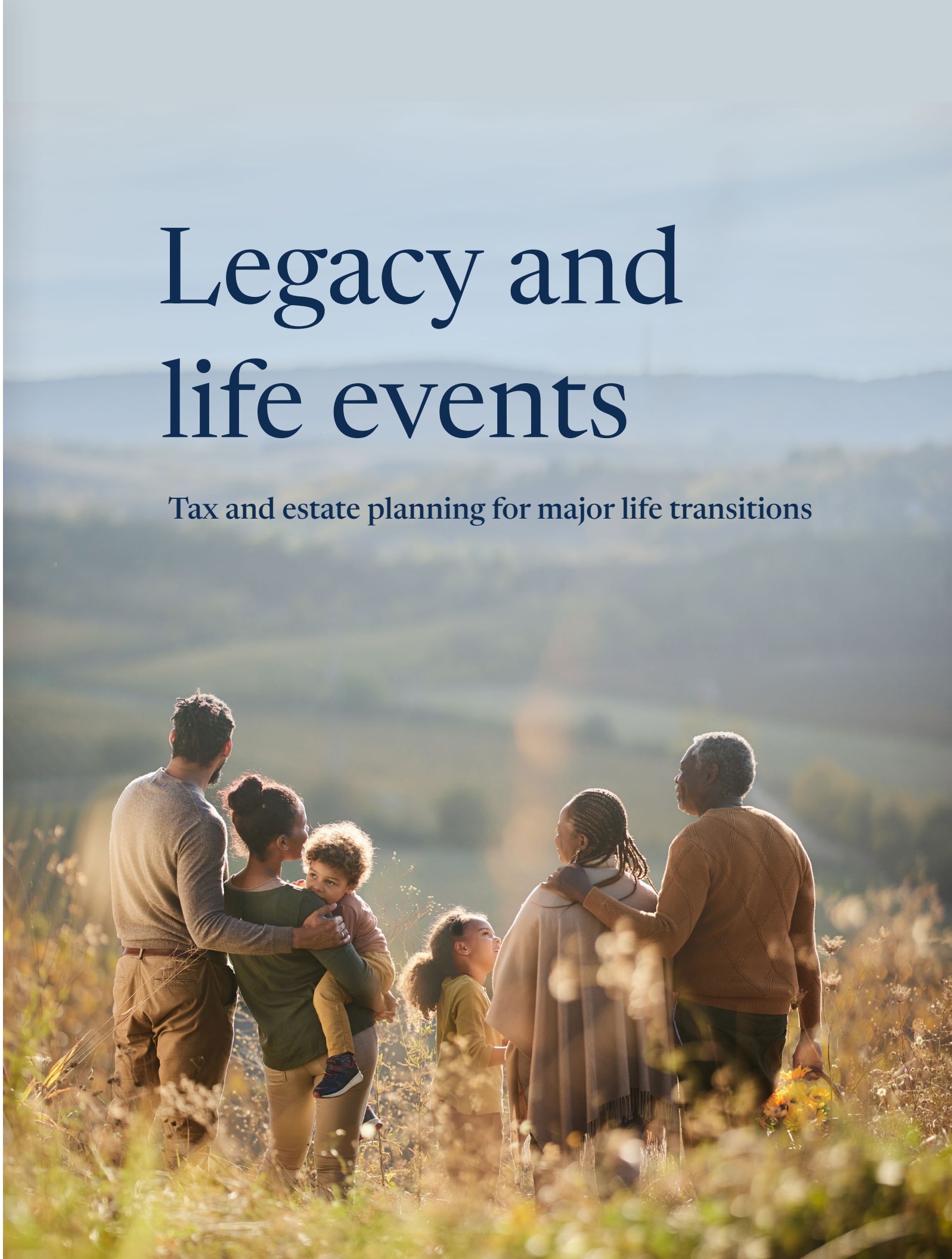
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# Legacy and life events

Tax and estate planning for major life transitions





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**Life is full of events that can have a major impact on a person's financial well-being and their loved ones.**

This guide highlights the essential need for proactive tax and estate planning both before and during significant life events. Valuable insights and strategies provided here will help navigate these transitions smoothly, ensuring financial security and legacy planning remain protected while minimizing potential liabilities and stress.



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# Separation and divorce planning

Separation and divorce are major life events that can have significant tax, estate and financial planning obligations. It is a difficult time with a lot of change, but it is important to be proactive in planning how to reduce the impact of potential liabilities.

It is important to inform CRA of a change in marital status — it may affect eligibility for benefits and tax credits. If marital status has changed, an individual is no longer eligible for spousal tax planning opportunities.

During divorce, transfers of property between spouses are generally tax deferred. Once transferred, selling an asset can shift capital gains implications.

When a tax-deferred rollover occurs, attribution rules typically don't apply, but there can be exceptions, so it is important to get tax and legal advice.

For tax purposes, spouses are considered to be separated if they have been living “separate and apart” for at least 90 days as a result of a breakdown in their relationship and have not reconciled during this period.

## Division of assets

The parties may need to consider how they will divide assets. Each person should obtain independent legal advice to understand the law in their jurisdiction, as it varies from province to province. These differences include, but are not limited to:

- Whether common-law partners are treated the same as married spouses.
- Which assets may be exempt from an equalization payment or division.

Typically, there is a written separation agreement confirming the division of assets prepared by a lawyer and signed by both parties. If the parties cannot agree, it may go to litigation for a judge to decide.

Assets include and are not limited to government pensions, registered plans (RRSPs, RRIFs, TFSAs, RESPs, RPPs, LIRAs, etc.), property, vehicles, personal effects and corporate assets.



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## Support payments

One spouse may be required to pay the other financial support payments, either as scheduled payments or as a lump-sum payout. Scheduled support payments are usually taxable for the recipient and deductible for the payor. Lump-sum payments are generally not taxable for the recipient and not deductible for the payor, but there are exceptions.

Note: Legal fees paid by the recipient relating to obtaining such support, may also be tax deductible.

## Estate planning

It is essential for an individual to review and update their estate planning documents, including:

- Their will.
- Trust deeds.
- Power of attorney.
- Health care directives.
- Beneficiary designations.

Although the separation agreement/court order may discuss beneficiary designations, it is crucial to ensure beneficiary designations on an individual's accounts reflect their current wishes. Failure to do so could result in litigation. It is also important to consider that the terms of a separation agreement may determine whether to change the beneficiary designation later. For example, an individual may be required to keep their former spouse as the beneficiary of a life insurance policy to cover future child support obligations if they die.

Individuals should seek the advice of a lawyer when updating estate planning documents. In most cases, it is recommended not to wait until obtaining a divorce decree to update the documents. Most individuals would not want their former spouse to make decisions on their behalf should they become incapacitated.

*Note: There are risks when using online programs to generate wills without receiving advice from a lawyer.*

## Frequently asked questions

### Is an inheritance protected from the division of assets?

An inheritance is typically excluded from the division of assets, although each province rules. For example, in some provinces any increase in value of the property would be divided.

It is important to keep the money or assets separate from marital property in order to take advantage of the exclusion. This may include:

- Maintaining separate bank accounts.
- Keeping assets and title in sole name.
- Not mingling assets with the spouse.

When receiving a large gift or inheritance, it is recommended to obtain independent legal advice to protect the asset.

### How does divorce affect a family trust?

A family trust may need to be restructured, especially if a spouse was a beneficiary. If the trust structure was created for tax planning purposes, the strategy may need to be adjusted. In some cases, the court may reallocate trust assets during property division.

### Can support payments be modified after divorce?

Potentially, if there has been a material change in circumstance, such as a job loss or significant change in income or new health issues that affect the ability to pay. Another example is remarriage or cohabitation on the part of the recipient.

### Will I be taxed on child support?

Child support is not taxable to the parent receiving payment and it is not deductible to the parent paying child support.

### Which parent receives the Canada Child Benefit (CCB)?

The CCB is usually paid to the parent who is the primary caregiver of the child. If the parents were receiving the CCB jointly prior to the divorce, the parent who becomes the primary caregiver after the divorce typically continues to receive the benefit. The CCB can be split between the parents if they have shared parenting, which is defined by the CRA as each parent having the child at least 40% of the time.



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# Disability planning

Caring for a loved one with a disability involves proactive planning to ensure their well-being, financial security and legal protection.

## Qualifying for the Disability Tax Credit (DTC)

An individual must have severe and prolonged impairment (lasting at least 12 months) that affects one or more daily functions such as walking, hearing, vision, speaking, feeding, dressing, etc. A medical practitioner must complete Form T2201 to certify eligibility.

If an individual qualifies for the Disability Tax Credit (DTC), they are often receiving social assistance benefits from the government. The DTC is a non-refundable tax credit designed to reduce the tax burden for individuals with severe and prolonged disabilities or their supporting family members.

## Registered Disability Savings Plan (RDSP)

The RDSP is a long-term savings plan designed to help Canadians with disabilities save for their future. There is no annual contribution limit, but there is a lifetime limit of \$200,000.

Once qualified for DTC, the individual may be eligible to open an RDSP if they meet the additional requirements, as follows:

- Must be a Canadian resident.
- Have a valid Social Insurance Number.
- Be under the age of 60, as contributions must end after the year in which they turn 59.

RDSP holders can benefit from government assistance in the form of grants and bonds. Another benefit is that it does not affect most provincial disability benefits.

## Estate planning

It is important to have a proper estate plan when leaving an inheritance to a loved one with a disability, because it can ensure their financial security while preserving access to essential provincial benefits and programs.

If a parent dies without a will, their assets are distributed according to the laws of intestacy in their jurisdiction. Without proper estate planning, such as establishing a Henson Trust, the child's inheritance may count as an asset, potentially disqualifying them from essential support programs, such as provincial disability benefits.



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## Henson Trust

A Henson Trust is a fully discretionary trust designed to benefit individuals with disabilities, particularly those who receive federal and provincial government assistance. If drafted correctly, the named trustee has absolute discretion over distribution of funds to the beneficiary, including timing and amounts.

It is structured to ensure assets held within it do not count as assets for the purpose of determining eligibility for social assistance. Since the beneficiary does not have a vested interest in the trust's assets, they are not considered the beneficiary's personal assets.

If the beneficiary has qualified for DTC, the trust, under certain circumstances, can be taxed as a "Qualified Disability Trust" (QDT). This allows for income generated to be taxed in the trust at the lower graduated marginal tax rates that the beneficiary would be subject to and not a flat top rate in each province and territory.

Although Henson Trusts originated as a common law concept, they have been recognized in Quebec as a valid tool to benefit beneficiaries of RDSPs, similar to other provinces.

In Newfoundland and Labrador, social assistance benefits will be reduced if the trust's assets exceed \$100,000. Henson Trusts are not recognized in the Northwest Territories or Nunavut.

## Frequently asked questions

### How long does it take for a decision to be made with respect to Disability Tax Credit (DTC) eligibility?

The CRA aims to process the application and mail a notice of determination within eight weeks of receiving it.

### Can an individual claim the DTC retroactively?

Yes. If an individual was eligible for DTC in the previous years but did not apply, they can file an adjustment to their tax return for up to 10 years to claim the credit retroactively.

### How long does the DTC approval last?

Some approved DTC applications expire after a certain number of years and the individual must re-apply. The CRA will notify the individual one year in advance, as well as in the year it expires.

### How does the RDSP grow and get taxed?

The investments held in the RDSP grow tax deferred. Withdrawals are generally tax-free for the beneficiary; however, growth and government contributions are taxable when paid out.

### Do government grants and bonds need to be paid back?

If any government grants or bonds were deposited into the RDSP within the last 10 years, withdrawals will trigger repayment of some grants and bonds. The Assistant Holdback Amount (AHA) is the total amount of grants and bonds that are in the RDSP currently, minus any grants and bonds that had already been paid back in the previous 10 years.

The proportional repayment rule means that for every \$1 withdrawn from an RDSP, the client will lose \$3 of any grants or bonds paid into the plan in the previous 10 years. All personal contributions and investment returns are considered the property of the beneficiary and do not have to be repaid to the government.

### What happens to an RDSP if the beneficiary passes away?

The RDSP must be terminated by December 31 of the following calendar year after the beneficiary's death. Any government grants and bonds that have been in the RDSP for less than 10 years must be repaid to the government. After repaying any necessary grants and bonds, the remaining funds in the RDSP will be distributed according to the beneficiary's will. If there is no will, distribution will follow the rules of intestacy as set out by provincial law.

### Who can help me set up a Henson Trust?

Contact an estate lawyer who has experience establishing Henson Trusts.



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# End of life planning

The loss of a family member is one of the most difficult events in a person's life, with a mix of overwhelming grief and a sudden need to deal with practical affairs. The executor(s) of the estate must deal with a complex landscape of legal, financial and administrative tasks. Being proactive in planning ahead can help a person address the difficulties that will arise after their passing.

## Role of the executor

Choosing an executor is one of the most important decisions in estate planning. Selecting the right person will help reduce the risk of mismanagement and disputes.

Administration of an estate has many tasks and can be quite burdensome. It is important to appoint someone who is trustworthy and will act in the best interest of the person's estate. It is important to have a conversation prior to appointing an executor to ensure they would be willing to act as needed.

An individual should also appoint alternates in case their first choice is unable to act for any unforeseen circumstance. This may include predeceasing the testator, health issues or no longer residing in the country. In an ideal situation, the executor would reside in the same province. If the person does not have close family they would like to appoint, or if they want to choose an executor with the skill and resources to effectively administer an estate, then the person may want to appoint a lawyer, accountant or trust company for the role.

## Funeral arrangements

One of the first tasks an executor has to deal with is planning for the funeral. Differences in opinion among family members regarding how to honour the individual can lead to conflicts that make consensus difficult. Individuals can reduce the burden on their family and executor by preplanning or prepaying for their funeral.

It will be important for the executor to get multiple certified copies of the death certificate, as the lawyer, accountant and financial institutions will request copies.

## Probate

Probate is the legal process by which a person's estate is administered and distributed; it validates their will and appoints an executor or administrator. Before their will can go through probate, the executor needs a detailed list of their assets and debts. Some provinces will require executors to notify creditors before probate is granted.

Executors can face several roadblocks when trying to obtain probate. The first is if they are unable to locate the original will. This can be a challenge if the executor doesn't know if there is a will, where it is stored or if they are unsure of who drafted the will.

The executor also faces difficulty if they have no information regarding the individual's assets. Without an inventory of assets, the executor has to search through financial records, tax returns and personal files, which can cause significant delays.

There is also an increased risk of forgotten assets, such as bank accounts, life insurance policies or digital assets. Executors are also responsible for paying off outstanding debts from the estate before distributing the remainder. By having a complete inventory, the executor can assess liquidity to ensure there is enough to cover debts and taxes. This inventory should be updated annually.



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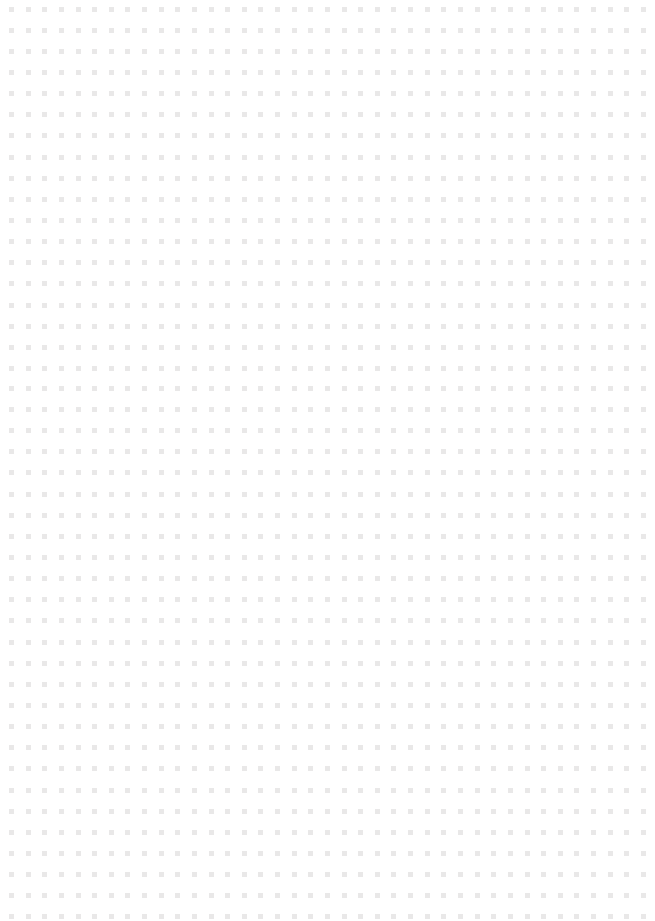
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## Executor's compensation

In Canada, an executor is entitled to fair and reasonable compensation, unless the will says otherwise. Compensation depends on the estate size, complexity of the estate, duties involved and time spent. A testator can choose to specify compensation in their will. If the will does not specify compensation, then provincial guidelines will aid in determining compensation.

Executor compensation is considered income and must be reported on the executor's tax return. An executor can choose to decline compensation, and this is often the case for close family members. Professional executors may charge higher fees due to their expertise and ability to settle the estate more effectively and efficiently. If there is more than one executor, they typically share the compensation.



## Frequently asked questions

### Where should an original will be stored?

Many law firms have fireproof storage and will store the original will. It will be important to inform the appointed executor(s) of which law firm drafted the will and that they are storing it. If the person chooses to leave it at home, it should be kept in a safe but still be accessible to the executor. It should be safe from damage, fire and water. Some provinces have a will registry.

### What can someone do to plan ahead and make things easier when they're gone?

Maintain up-to-date estate planning documents. An individual should review the estate planning every three to five years or if a major life event occurs. Keeping an asset inventory can be extremely helpful to the executor when they are trying to gather information about the estate in order to file the probate application. In addition, it can be helpful to establish a relationship between the financial advisor and the executor, so the executor has someone to go to as a starting point regarding asset information.

### Should the executor seek professional advice?

Yes. An estate administration is complex. By seeking advice, the executor will be able to ensure that they are complying with the relevant law and minimizing potential liabilities.

### Does an estate always go through probate?

An estate doesn't always go through probate. It depends on type and ownership of assets involved. Assets that are "joint with right of survivorship" will fall outside of the estate and won't go through probate. Assets with a designated beneficiary, naming someone other than the estate would go directly to that beneficiary and fall outside of the estate. This includes registered accounts, insurance policies and segregated funds with a designated beneficiary.

### What can be done in advance, in terms of digital assets?

Create a comprehensive document including a list of all digital assets and information on how to access those assets, including logins, passwords, etc. This should include, but is not limited to, email accounts, social media accounts, online banking, cloud storage and cryptocurrency. It is important to remember that cryptocurrency you cannot access is essentially cryptocurrency that does not exist.



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# Incapacity planning

Incapacity planning is an essential but often overlooked part of a well thought out and comprehensive estate plan. Many people neglect planning what happens if they become unable to manage their financial affairs due to an accident, illness, injury or cognitive decline. Without a proper plan, there can be a number of stressors for a family, including legal battles, financial hardship and anxiety.

## Power of attorney for financial matters

A power of attorney (POA) is a legal document giving another individual or entity the legal authority to make decisions about your financial affairs. The POA can be for a specified duration or for an unlimited period of time. An enduring or continuing power of attorney, can go beyond incapacity, permitting the individual or entity appointed to continue to act on your behalf for financial decision making.

An attorney for financial matters is typically able to do almost anything the individual can do, such as pay the bills, sell property and manage investments.

They cannot make a will on the individual's behalf or change beneficiary designations. A person can choose to put restrictions in their POA if they don't want the attorney to be able to make certain decisions.

As long as the individual has mental capacity, they can continue to make decisions about their finances. The individual may also revoke the POA as long as they follow the applicable rules for their province. There are risks to creating a limited POA. The restrictions may not allow the designated individual to handle all the necessary financial or legal matters they need to.

The individual has the right to appoint more than one attorney in the same POA and can also name alternates in case the original individual is unable or unwilling to act. If more than one attorney is named in the POA, the POA should specify whether it is a joint appointment (individuals must make all decisions together) or a joint and several appointment (decisions can be made together or separately).

The advantage of a joint appointment is that they share the responsibility and more than one person has oversight. There is a check and balance which can help avoid potential abuse. But since both individuals must be present for any signing, this may be problematic if one attorney is out of town.

For a joint and several appointment, one individual may sign without the other being present. While a joint and several appointment provides more flexibility, there is an increased risk of financial abuse, as one attorney could act without the other attorney's knowledge or consent. In addition, if the two co-attorneys don't agree, one is still able to make decisions without the other, which could result in a court application to remove one of the co-attorneys.

It is important that an individual has an extensive discussion with their lawyer on which appointment would be best, based on their particular situation.

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## Power of attorney for health

A power of attorney (POA) for health allows an individual to appoint someone to make medical decisions on their behalf should the person become unable to do so. This POA only comes into effect on incapacity. It covers medical and health care decisions such as treatment options, surgery, medications and life support choices. It works alongside a living will document which typically outlines the person's health care and end of life wishes.

Each province has its own name for this document. Similar to the power of attorney for financial decisions, an individual can have a joint appointment or a joint and several appointment.

## Multiple jurisdictions

The rules governing powers of attorney vary from jurisdiction to jurisdiction. If a person has property in multiple jurisdictions, it may be a good idea to have a financial POA for each jurisdiction where assets are located. It is a good idea to speak to a lawyer in the foreign jurisdiction to ensure the person's Canadian POAs are also valid there. If separate documents are required and drafted in a particular locale, it is important that these newly signed POAs do not include language that automatically revoke the individual's prior POA, unless that is their intention. The document should clearly state that it is complementary rather than to revoke the other.

## Frequently asked questions

### Does a lawyer need to draft the power of attorney documents?

It is recommended to consult a lawyer to ensure that the POAs are drafted correctly and that the documents address the individual's specific needs.

### Does a power of attorney expire?

The document can specify an expiration date. If not, it can also end on revocation of the document or on death.

### Who should be appointed under a POA?

For financial decisions, the named attorney should be well-versed on the individual's financial affairs. It should be someone that is financially savvy, trustworthy, has the time to dedicate to the role and be willing and able to take it on. A person may consider appointing a trust company. For health care decisions, the named attorney should be someone who the person fully trusts and who understands their values. It should be someone who is available to communicate their wishes.

### What happens if an individual doesn't have a POA?

Rules vary from province to province, but typically an individual would need to be appointed by the court. The process is both time consuming and costly. There may be ongoing costs including legal fees and reporting requirements. It is crucial to plan in advance for these reasons.

### Where should POA documents be stored?

An individual can sign more than one original POA document. They may choose to leave originals with their lawyer with instructions on when they can be released to the named attorney. An individual may decide to give an original to the named attorney knowing that would enable them to act, unless the document states otherwise. Keep in mind that it can be problematic to leave it in a safe deposit box if the appointed attorney does not have access.

### Is an "attorney" a lawyer?

The person does not need to be a lawyer. The term "attorney" refers to the person or entity an individual has chosen to act on their behalf.



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# Retirement planning

Retirement planning in Canada requires a thoughtful approach that integrates tax efficiency, government benefits, investment strategy and estate planning. A retirement plan acts as a roadmap for an individual's financial future, enabling them to make informed decisions, enjoy their retirement and confidently face uncertainties.

Determining how much you need for retirement is a crucial part of your strategy and depends on several factors. This includes your retirement age, retirement goals and retirement spending. When it comes to retirement spending, we first want to consider the sources of retirement income.

## Government retirement benefits

Canada Pension Plan/Quebec Pension Plan (CPP/QPP) provide monthly payments based on contributions and the age at which a person chooses to apply. The standard age to start an individual's payments is 65, but they can start payments any time after they turn 60. However, claiming CPP/QPP early can reduce their payments by up to 36%. Conversely, waiting until they are 70 could result in monthly payments that are up to 42% higher than if they start at 65.

Old Age Security (OAS) payments are available for Canadians over 65 who meet the residency requirements. An individual can also defer OAS for up to five years after 65 to receive higher monthly payments. However, if a person's taxable income reaches a certain level, they may be subject to OAS clawback.

The Guaranteed Income Supplement (GIS) provides a non-taxable monthly amount to low-income seniors aged 65 or older who are also receiving OAS.

## Employer pension plans

These can include defined benefit pension plans; defined contribution pension plans; pooled registered pension plans; and group Registered Retirement Savings Plans.



## Registered retirement plans

These are tax-sheltered accounts designed for retirement savings, such as Registered Retirement Savings Plans. Contributions may be tax-deductible and investment returns grow tax-free until withdrawal. By the end of the year that the individual turns 71, they generally must convert their RRSP into a Registered Retirement Income Fund (RRIF), which allows systematic income withdrawals. RRIFs offer similar investment options and tax-deferred growth as RRSPs, but an individual may no longer contribute and must make a minimum annual withdrawal.

## Personal savings and investments

These may include tax-free savings accounts (TFSA), non-registered accounts, annuities, etc. For a TFSA, contributions are not tax-deductible, but investment growth and withdrawals are tax-free.



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## Locked-In Retirement Accounts (LIRA)

If a person leaves a workplace pension before retirement, their pension funds might be transferred to a LIRA. By a certain age (often 71), LIRAs must be converted into a Life Income Fund (LIF) or an annuity to provide retirement income.

## Considerations for retirement

### Longer lives

People are living much longer than they previously were, so it is important to plan for a long life to reduce the risk of outliving the savings.

### Increased living costs

The cost of living is rising, so it is important to have an investment strategy to provide long-term growth.

### Health care expenses

Having any expected needs covered is a start, but it's important to also plan for unexpected health care costs. It's important to prepare for costs associated with long-term care if needed, when planning retirement.

## Tax planning

Maximizing after-tax income will be important, as it can make retirement savings last longer. It is important to consider the following strategies:

- Timing of withdrawals from a person's registered accounts can help them manage marginal tax rates in different years.
- Tax-free withdrawals from a person's TFSA can be a great strategy if they are concerned about OAS clawback or other income-tested benefits.
- Pension income splitting involves the higher-income spouse allocating up to 50% of eligible pension income (such as from a RRIF or employer pension plan) to the lower-income spouse, potentially reducing overall household tax burden.
- Spousal RRSPs can be an effective way to equalize retirement income between spouses. Withdrawals by the lower-income spouse are taxed in their hands, potentially at a lower rate.

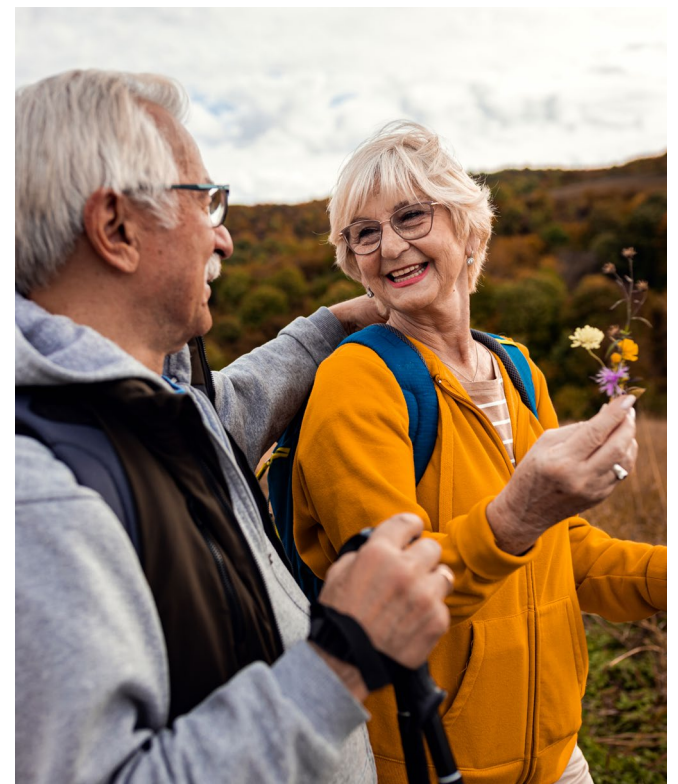
## Frequently asked questions

### What are some important actions to take when approaching retirement?

- Refine a budget that accounts for how an individual's expenses might change in retirement.
- Develop a withdrawal strategy for the most optimal drawdown strategy to save on taxes.
- Seek professional advice from an advisor, accountant and lawyer to ensure the plan aligns with an individual's goals and values.
- Prepare for unforeseen circumstances with a financial plan for unexpected events.
- Review the estate plan to ensure the documents are up to date.

### When is a good time to start thinking about retirement?

It is never too early to start. Individuals in their 20s and 30s can start laying down the foundation by making contributions to their registered accounts and focus on long-term investing. By 50s, it is recommended to start calculating expenses and exploring strategies for retirement.





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# Transferring a family cottage to the next generation

For many Canadians the family cottage is more than a vacation property. It holds sentimental value as it's filled with memories and traditions. However, passing the cottage down to the next generation creates many complexities and is often the cause of estate litigation.

## Planning strategies:

### Principal residence exemption

When a principal residence is sold, taxes are typically not paid on the proceeds. This holds true in the case of a “deemed disposition” when an individual passes away — for tax purposes, the person is deemed to have sold their assets, including their principal residence.

Canada Revenue Agency's (CRA) may consider a person's cottage to be their principal residence if it meets the following four requirements:

1. It is a housing unit.
2. The property is owned alone or with another person;
3. A person's current or former spouse or common-law partner, or any of their children lived in it at some point during the year; and
4. The property was designated as a principal residence.

The land on which the home is located can be part of the principal residence. Typically, the amount of land that can be considered as part of the principal residence is limited to half of a hectare (1.24 acres), but some exceptions exist.

### Capital gains tax

When ownership is transferred, there is usually a significant tax bill due to capital gains. An individual may reach a point where they no longer use the cottage property, but their children and grandchildren do. A person may consider selling the cottage to their children while they're still alive. This would be considered a taxable disposition and the increase in value since you acquired the cottage would be a capital gain. The capital gain would be based on the fair market value (FMV) of the property, regardless of how much cash changed hands.

An individual should be careful when selling the property to their children at less than FMV, as their tax bill will reflect the FMV for the property, but their children will have an adjusted cost base equal to the amount they actually paid. This could result in double taxation in the future.

Consider using a capital gains reserve strategy, in which the sale proceeds are spread out over a five-year period. This would allow a person to distribute the taxation over that five-year period, instead of having to pay it all in one year. It is wise to speak to an accountant if considering implementing this strategy.



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## Joint tenancy with right of survivorship

Many people choose to add their children to the cottage title as joint tenants with right of survivorship. This may seem like a good option, as the property would fall to the joint survivor(s), potentially bypassing the estate and avoiding probate. However, when transferring property into a joint tenancy, there is a partial disposition resulting in a capital gain for any increase in value.

The exception would be if the property is transferred to someone's spouse. There are two other issues with this change of ownership:

1. The property could now be subject to matrimonial claims and creditor claims as the children are true beneficial owners of the property.
2. There could be issues with claiming the cottage as the principal residence.

## Joint tenancy with gift of right of survivorship

This occurs when a parent adds their child as a legal owner only. Upon the death of the parent, the child assumes both legal and beneficial ownership of the property. At all times during the parent's lifetime, the parent maintains complete control of the property.

The CRA treats the parent as the sole taxpayer on the asset until their death, at which point the asset is transferred to the child and the child becomes responsible for its associated taxes going forward. Again, properly documenting this agreement is essential to prevent misinterpretation. Upon the death of a parent, there is a deemed disposition on the asset which is taxed on their terminal tax return. This prevents the assets from going through the lengthy probate process and avoids the associated estate taxes. An individual should speak to their lawyer if considering this option, as accounting fees associated with bare trust reporting rules may affect this plan.

## Alter ego/joint spousal trust to bypass probate

Another option is to transfer the property to an alter ego or joint partner trust if the titleholder is at least 65 at the time of creation. The transfer of ownership to these types of trusts would not be considered a deemed disposition. The terms of the trust must include that the settlor has the right to enjoyment and use of the trust, and they would be named its capital beneficiaries. There would be a deemed disposition on the death of the surviving spouse. Alter ego and joint partner trusts are eligible trusts for the purpose of claiming the principal residence exemption if they meet the criteria.

## Cottage agreement

It is important to have a cottage agreement in place as a framework for how the cottage will be shared. This can help avoid disagreements and allow the cottage to remain a place of good times and laughter. The cottage agreement should cover the following:

- **Cottage schedule:** When will family members have access to the cottage and when will this be decided? Is everyone allowed to use it at once or will there be a designated schedule created for the year?
- **Costs/expenses:** How will the maintenance costs be divided? Will each family member contribute equally or based on use? There may be some proactive planning and a life insurance policy in place to cover costs once the parents are gone. It may be prudent to have a reserve fund in place, into which everyone contributes in case a major repair is needed.
- **Guests:** Are guests permitted? When? Can guests be permitted without family members present?
- **Chores, repairs and heavy lifting:** There are many chores that need to be done around the cottage, like landscaping, dock repairs, opening and closing the cottage, etc. There should be terms in the agreement with respect to how this will be taken care of.
- **Succession planning:** How will the children pass the cottage property on to the next generation? Can a child leave their share to their spouse, or should it be passed to the children? What if a family member wants to sell their share of the cottage?



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## Frequently asked questions

### What documentation should be maintained with respect to the cottage?

Cottage owners may want to include language in their will regarding the cottage property. Other documents that should be readily available include:

- The cottage agreement, if multiple family members are involved.
- Mortgage paperwork
- The deed of title.
- Insurance paperwork.
- Maintenance records.

### Should any language be included in the will if one child uses the cottage property significantly more than another?

Provisions can be included such as a right of first refusal, which would give the child who uses the cottage property, the first right to purchase. There may be language to include a discount, since there wouldn't be realtor fees if a child purchases the property from the estate.

### Should the cottage property be discussed in advance? If so, what should that conversation look like?

There should be a family meeting to discuss the plan for the cottage. This will allow everyone to give their feedback with respect to use, maintenance and long-term plans. Litigation often takes place when planning is a surprise. By having a family meeting, families can work together to come up with an agreement. Communication should be open and ongoing to address concerns.



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# Charitable giving and legacy planning

Strategic charitable giving transcends traditional donations by emphasizing thoughtful planning, clear objectives and measurable impact. Depending on a person's goals and objectives, there are a number of ways to go about fulfilling charitable intentions.

## Why people donate

### Desire to make a difference

People donate to create a lasting impact, whether it's to help fund medical research, alleviate global poverty, support education, etc. Giving is often driven by personal values, life experience or a sense of responsibility to the next generation. There are many ways to achieve this, including direct donations, donor-advised funds, estate donations.

### Desire to create a legacy

Parents may want to provide a framework for future generations and to help guide them with principles that help shape the family's identity.

### Tax savings

Charitable giving provides a number of tax-saving opportunities and estate planning benefits. It is important to work with an accountant in order to navigate what would work best for an individual.

### Social acceptance and relationship building

Engaged donors often build networks with like-minded individuals. Regular engagement allows donors to develop a stronger commitment to the causes they support.

### Estate planning

Donors may choose to designate a portion of their estate to causes of their choice. This is becoming more common, especially with some donors not having direct heirs.

## Tax savings

A charitable donation can dramatically reduce the tax liability. A gift of \$100,000 or more will reduce a tax bill by about \$45,000 (actual savings differ by province).

This may be the simplest way to significantly save on taxes. Spouses are also able to share the credit to ensure that the household is able to maximize the benefit of the donation tax credit. If the credit cannot be fully used in the year of the donation, it can be carried forward up to five years.

## Donor-advised funds

A donor-advised fund (DAF) is a philanthropic vehicle that allows a person to make a charitable contribution and receive an immediate tax receipt for the donation. The individual can then recommend grants to their favourite charities over time.

The funds are invested, and the donor can decide the timing and amount to be distributed to the causes they care about. This can simplify charitable giving, provide flexibility and help a person manage their philanthropic impact strategically.



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### Who would benefit from a DAF?

1. Individuals receiving a large one-time asset transfer.
2. Individuals who already give to charities but are looking to simplify their charitable giving.
3. Individuals looking for a long-term, flexible and strategic approach to charitable giving.
4. Individuals seeking to set up a private foundation but cannot afford the time or money.
5. Individuals carrying unrealized capital gains they would like to minimize.

## The Mackenzie Charitable Giving Program

The Mackenzie Charitable Giving Program was established to promote philanthropy by offering Canadians an easy and convenient way to manage their ongoing charitable giving and potentially leave a lasting legacy. It offers the following benefits:

1. **Tax efficiency:** donors receive a tax receipt for their donation, which they can apply against other income tax liabilities.
2. **Low-cost:** compared to a private foundation, the Mackenzie Charitable Giving Program is an inexpensive way to manage a sizeable gift.
3. **Flexibility:** The donor may recommend grants to any number of eligible charities or other institutions each year.
4. **Convenience:** The program simplifies the donor's charitable giving experience by handling administrative tasks for each account.
5. **Lasting legacy:** Clients can name their account to honour a family member or cause. When a grant is made, the account's name is cited as the donor unless they choose to remain anonymous.

## Frequently asked questions

### What are the advantages of a donor-advised fund?

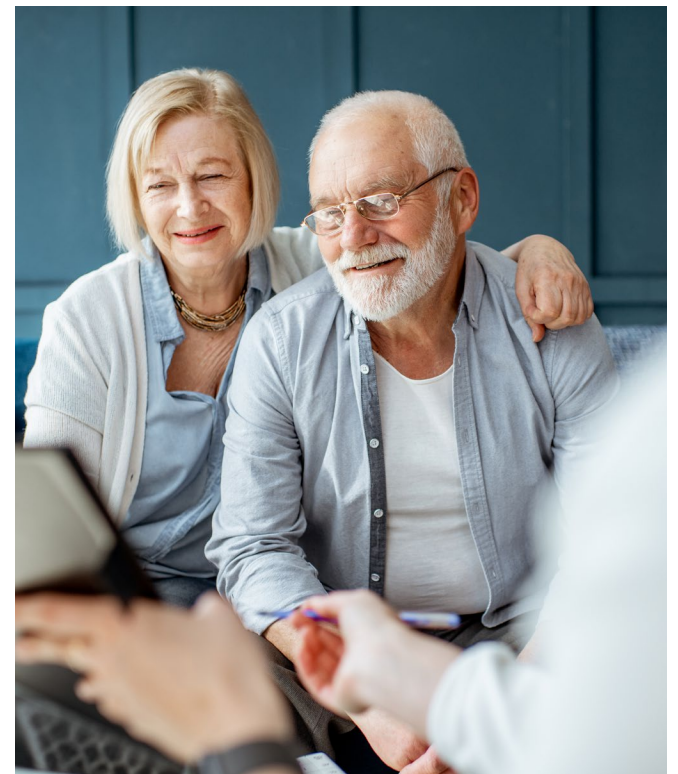
A person can still receive an immediate tax receipt for the donation, even though the funds may be distributed to charities later. Assets in the fund are invested and grow tax-free, increasing the amount available for future donations. Since DAFs allow donors to distribute to charities over time, they can decide when and how much to give. In addition, a DAF consolidates all charitable donations into one account, reducing paperwork and making tax reporting easier.

### Can a person support multiple charities at once through a donor-advised fund?

Absolutely. It is a great way to simplify multi-charity giving.

### What is the best way to create a charitable giving strategy?

It is recommended to start by setting out giving goals, including the person's areas they want to support and the impact they want to make. The donor will set out their preference in terms of gifting methods and then work with their advisor to learn how to optimize tax benefits.





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# Business succession planning

Business owners need to be empowered to make informed decisions throughout the process of a sale or transition to the next generation for a successful transition to take place. The new owner can be a family member, third party or key employee(s). Proper planning can help ensure that the business will continue to operate when the business owner retires, allowing them to sell the business or transition it to family members.

## Why create a business succession plan?

### Survival of the business

It is important to identify key successors, as they will preserve the company's legacy, but also drive future growth. In identifying the successor, the business owner will need to look at the future goals of the business and if they want to maintain family ownership, transition to key employees or look for an external buyer. If the business owner wants the family to take over the business, it will be extremely important to have those discussions with their children and potentially grandchildren. There may be some family members involved in the business while others are not. It is important to ensure family harmony by transitioning the business in a fair way.

### Maximizing family wealth

It will be crucial to work with a lawyer and accountant to ensure the business owner is maximizing their wealth and minimizing taxes on the transfer or sale. There are a number of strategies that can be implemented when clients seek advice early.

### Maintaining family harmony

Identify potential successors based on skills and conversation. It is also important to recognize that treating family members fairly doesn't always mean equally. Perhaps some family members receive ownership shares while other family members receive financial compensation. It can also be helpful to allow the next generation to take on increasing responsibilities for a smoother transition.

## Tax planning considerations

### Asset or share sale?

When selling a business, the owner must decide how to structure the transaction, as either an asset sale or share sale. Each method has distinct implications for the buyer and the seller.

**In an asset sale**, the purchaser buys specific assets and liabilities of a business rather than the company itself. The purchaser typically prefers this type of sale because they select which particular assets they would like to purchase (such as equipment, inventory, etc.). The seller retains ownership of the legal entity and assets and liabilities not acquired. This can be seen as a better option for buyers because of the flexibility it offers.

**In a share sale**, the buyer acquires ownership of the company by purchasing its shares. The buyer assumes control of the entire business. Sellers prefer this type of sale as they can transfer the entire business and potential liabilities to the buyer.



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## Lifetime capital gains exemption (LCGE)

This could apply to business owners selling their company through a share sale. The LCGE is a key component for sellers of qualified small business corporation shares, but it does not apply to asset sales.

The LCGE can provide significant tax relief for individual shareholders, not corporations.

To qualify for the LCGE, a business must meet certain conditions:

1. The shares must be shares of a qualified small business corporation;
2. The shares must have been held by the shareholder for at least 24 months leading up to the sale;
3. At least 50% of the business assets must have been active business assets during that two-year period; and
4. On the date of the sale, 90% of the assets must be active business assets.

For business owners in a situation where a prospective share sale is not eligible for the LCGE, because it does not meet the 90% test, then assets may be able to be restructured through a “purification” process to eliminate some of the passive assets. Business owners will want to work closely with their tax advisors to ensure this is done properly.

## Estate freeze

An estate freeze is a financial and tax-planning strategy used primarily by business owners or individuals with appreciating assets. Its purpose is to lock in the current value of an asset, so that any future appreciation is attributed to new shares or ownership interests, typically transferred to heirs or a trust.

The owner converts common shares into preferred shares, which are valued at the current level. This “freezes” the value of the owner’s interest in the business. New common shares, which will capture any future growth in the business’s value, are then issued to family members or held within a trust. This ensures that subsequent appreciation benefits the new owners rather than the original owner.

## Frequently asked questions

### When should the succession planning process begin?

As early as possible and it should be done well before retirement. It is important to have time to mentor potential successors and address any issues.

### Who should be involved in the business succession planning discussions?

Key stakeholders including family members, key employees, advisors, legal and tax team, potentially a consultant, etc.

### How can conflicts be managed in a family business?

It is important to maintain transparent communication with clear roles and expectations. Decisions should be formalized with legal documents such as shareholder or family agreements.

### What if there is no clear successor?

It is important to think of alternative strategies, such as selling the business to an external party or key employee. It might be important to engage professional advisors to help aid in the process.

By freezing the current value, the owner limits the taxable capital gains that will accrue upon death or sale. Future growth is taxed in the hands of the next generation, who may be in a lower tax bracket.

An estate freeze facilitates a smooth transition of wealth by shifting future growth to heirs, while allowing the original owner to maintain control during their lifetime.

Overall, an estate freeze is a valuable tool for succession planning and can help manage the tax burden associated with the transfer of a business or valuable assets.



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# Agricultural succession planning

Farm succession planning is one of the most important yet challenging aspects of running a family farm. With the average age of Canadian farmers increasing and many farms being family-run, transitioning the farm to the next generation or an external party requires careful legal, financial and tax planning. Without a well-structured plan, farms can face financial strain, family disputes and even forced sales.

## Why a farm succession plan is important

### Ensuring business continuity

A well-structured plan can help to ensure that the farm continues to remain operational, financially stable and profitable. It can allow for a mentorship opportunity, a gradual handover and for all parties involved to take part in the decision-making process.

### Minimizing tax liabilities

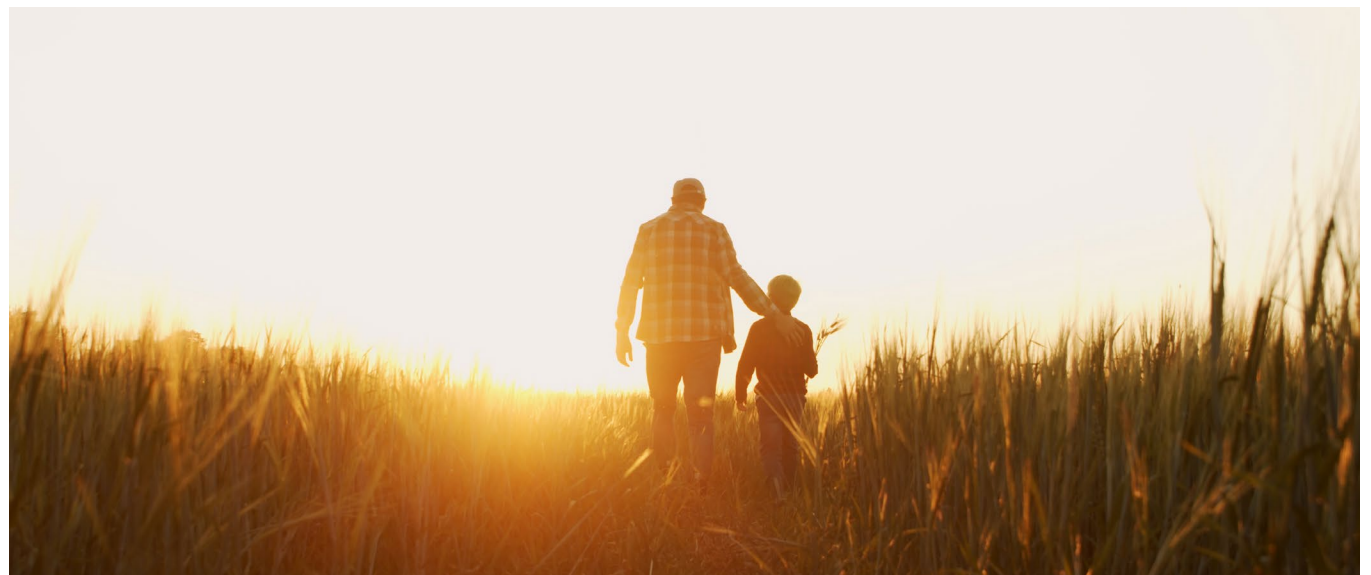
Speak to an accountant early to develop the best way to plan, as there are special tax provisions for an intergenerational farm transfer to a child or grandchild. Farm business owners will also want to utilize the lifetime capital gains exemption (LCGE) if they qualify.

### Maintaining family harmony

It is important to have the conversation early in order to adjust the plan and avoid pressures in a crisis situation. Surprise planning leads to catastrophic situations, so it best to be transparent early on.

### Protecting the farm's legacy

It will be important for the family to have routine meetings and to determine what the long-term vision is for the farm. Is it to remain in the family or is to be sold to a third party?



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## The importance of a written plan

A family conversation is not enough, a plan needs to be in writing. The plan should evolve with changes in life including the health of family members, changes to tax rules, farm operations, etc. A formal document provides clarity and avoids misunderstandings. It will outline who is to take over the operations and should clearly define who owns what. This can help avoid confusion and disputes. A written plan can also ensure that there is fair treatment of all heirs and reduce the risk of litigation.

### Considerations when looking at tax planning for farm succession

- 1. Lack of planning for capital gains:** There can be a deemed disposition on the transfer of farm property or on the sale resulting in a capital gain. Working with an accountant to take advantage of any rollover opportunities for transfers to a spouse, child or grandchild is advised.
- 2. Using the lifetime capital gains exemption (LCGE):** As of June 25, 2024, the LCGE increased to \$1.25 million. This means farm owners are able to shelter up to that amount of realized capital gains when they sell. It has to be considered a qualified farm property that is used in a farming business. This amount will be indexed to inflation starting 2026.
- 3. Updating the plan:** Failure to update the succession plan based on changes in tax rules can have detrimental consequences. Consult an accountant to see if any changes are needed.
- 4. Income splitting:** Work with an accountant to structure the farm to take advantage of income splitting opportunities, if available. While there are “tax on split income” rules that limit splitting certain types of income with family members, there is the option to pay a reasonable salary to family members who are in a lower tax bracket for the services they provide, allowing them to take advantage of their lower marginal tax rates.
- 5. Estate freeze:** This is a transaction to “freeze” the value of appreciating assets. The goal is to transfer the future growth of the asset — and the associated tax liability — to family members or the next generation. It is important to consider incorporating the farm to freeze the value of the farm at a certain point. This will allow for future growth to be in the hands of future generations, thereby limiting tax liabilities.



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## Other benefits of a succession plan

A succession plan gives the opportunity to get advice on the tax implications and see what the best next steps are based on the owner's long-term goals:

- How to structure ownership of the farm.
- How to pass the farm to the next generation with the least tax liability.
- What the associated risks are with respect to the transfer.
- How to protect the farming business.

It can reduce the risk of litigation, sibling rivalries and a forced sale. Without a plan in place or a will, it could completely change the outcome of the farm owner's goals, as provincial legislation applies. If children are involved in the farming business and other children are not involved, the non-farming children could force a sale in order to receive their share of inheritance. This could create lifelong conflict for the children.

A succession plan can ensure the farm owner's business continues in the event of incapacity or death. It can help preserve the legacy of a farm property that has been passed on from generation to generation.

## Frequently asked questions

### What are some effective strategies for managing conflict during a farm transition?

- **Start conversations early:** When conversations don't take place it leads to a lack of planning and surprises. Early discussions can help prevent misunderstandings. It also allows the parties to speak up and provide their thoughts and concerns.
- **Fairness:** Fair doesn't necessarily mean equal. When conflict arises, wishes and expectations from the family should be clearly outlined.
- **Control:** Start relinquishing some control so the next generation can do what they need to. Take more of a support role rather than a decision-making role.
- **Have a contingency plan:** One reason for litigation is not having a contingency plan in place. It is important to plan for unforeseen events and possible issues during this transition process.

### What role does life insurance play in farm succession planning?

Life insurance can be a great way to provide liquidity to the estate and provide cash to the beneficiaries who are not involved in the farm or farm business. This way they still receive an inheritance, without selling the farm property. It can help balance the inheritance received by the farming children and can help avoid litigation and disruption to the operation of the farming business. It can also help cover a tax liability on death.



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