



Estate Planning Guide



The purpose of this guide is to provide general guidance and information on estate planning topics and relevant estate documentation. This should not be used to provide specific legal or accounting advice. This is meant to cover strategies and issues for Canadian Citizens who are not US Citizens.

ESTATE PLANNING

What is an estate?

An estate is the sum off all assets and liabilities that an individual owns, generally at the time of death or incapacity. This includes but is not limited to financial assets (bank accounts/investments), real estate, vehicles, household items, jewelry, antiques, art work, pets and digital assets.

WHAT IS ESTATE PLANNING AND WHY IS PLANNING IMPORTANT?

Estate planning is the process by which an individual determines how their assets will be managed, preserved and distributed upon death. A detailed estate plan should also include planning for mental incapacity as to one's financial affairs and personal health care decisions. Most people do not wish to consider their own death or deal with such uncomfortable areas, however, a quality estate plan is a key pillar of your overall financial plan. A well-thought-out estate plan is something your loved ones will not only appreciate, but also greatly benefit from as it can help save them time, effort and added stress, during an already difficult time.

As with most areas of financial planning, there is no "one size fits all" approach and not every person has complex needs or requires an extremely multifaceted estate plan. There are a few basics that should be considered regardless of your financial situation which we will cover in this guide.

IMPORTANT ELEMENTS OF AN ESTATE PLAN:

An estate plan can be simple or comprehensive based on your personal circumstances and level of wealth, however, generally all plans go beyond simply having a valid Will in place. The following are various elements that may make up your estate plan:

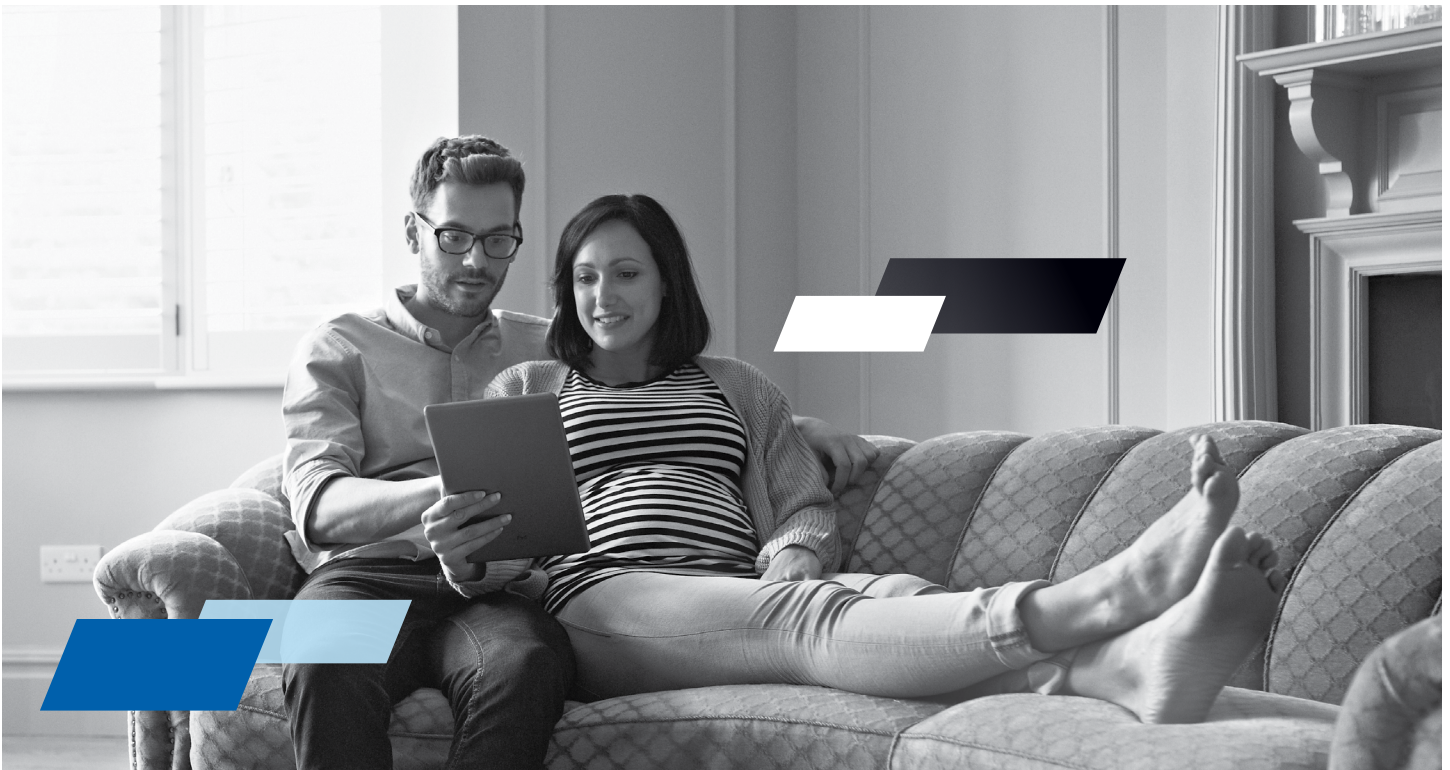
- Valid Will, Powers of Attorney and Living Will (Advanced Health Care Directive), in Quebec, a Protection Mandate
- Adequate insurance coverage in place
- Review ownership structure on assets (Rights of Survivorship)
- Updated Designation of Beneficiary on registered assets and insurance policies
- Potential use of Trusts
- Tax planning on death
- Charitable Giving considerations
- Buy-Sell Agreement

Will planning

When an individual passes away without having a valid Will, it is called dying *intestate*. Each province and territory has their own legislation which deals with intestacy. This legislation generally has a specified order to distribute your assets and may not match your intended wishes. Intestacy can also lead to added legal costs and cause delays in the distribution of your estate.

WHAT IS A WILL AND WHAT TYPES OF WILLS ARE VALID?

A Will is a legally executed document that provides instructions on how your estate will be managed and distributed. A properly documented Will ensures that your exact wishes and instructions will be followed. Your Will provides your final instructions to help direct your executor/liquidator (legal representative appointed to manage your estate), identifies who your beneficiaries are and how much or what they might receive. Each province and territory has the right to set their own legal formalities as to what is considered a valid Will, therefore, it is recommended to review the relevant legislation within your home province.



Types of Wills:

FORMAL WILL

A formal Will is a typed legal document and must be signed in the presence of two witnesses, which cannot be one of your beneficiaries. Most formal Wills are created by your lawyer. Having a lawyer or notary (in Quebec) prepare your Will helps to ensure your objectives and wishes are met.

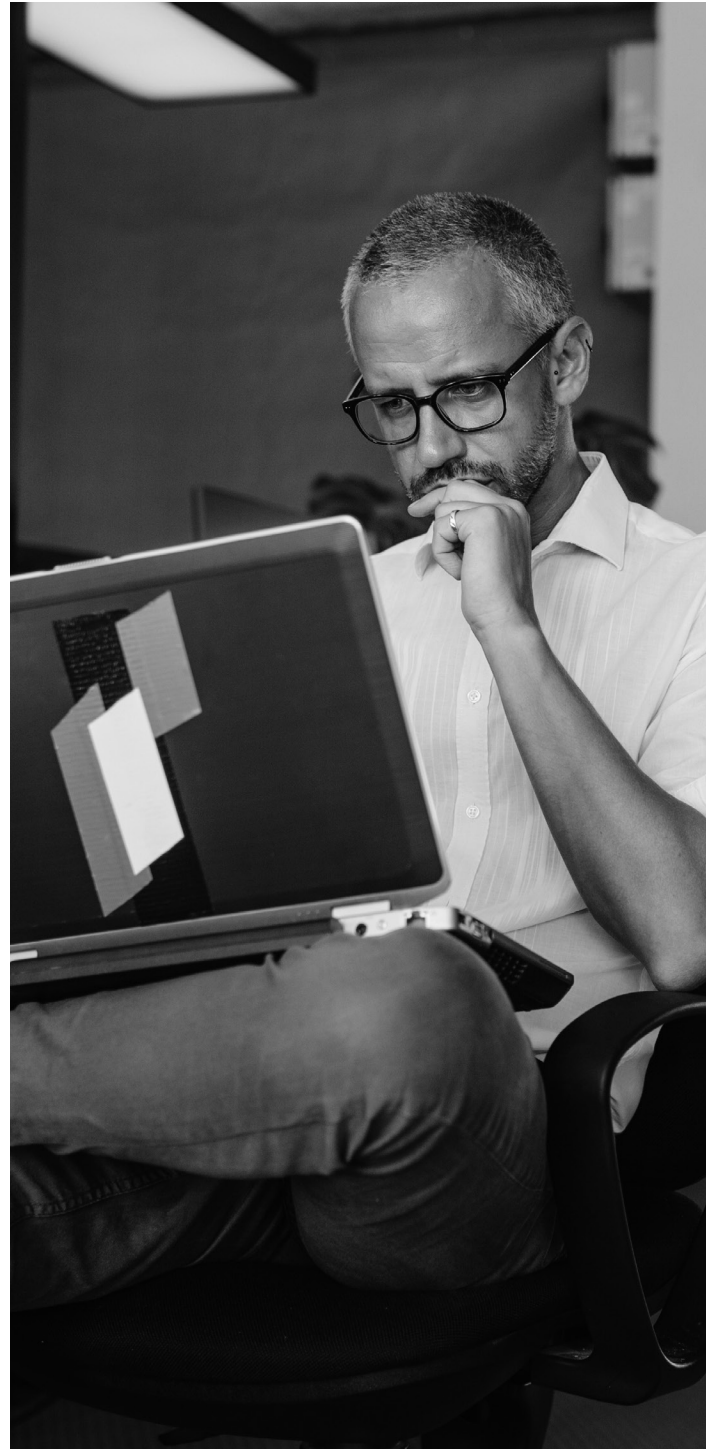
Another option for the do-it-yourselfer is a "Will-kit". These are prepared templates with fill in the blanks to help you complete your Will. You must ensure that these "Will-kits" comply with your province's current legislation. Keep in mind that a poorly drafted Will might save you money upfront, but, may actually cost your estate more money and time in the long run.

HOLOGRAPH WILL

A holograph Will is one that is entirely written in your own handwriting and signed by you. There is no requirement to have it witnessed. Holograph Wills may be quick, easy and free; however, they can lead to many pitfalls that could further complicate your estate. Such pitfalls commonly include, ambiguous terminology and/or not dealing with the entire residue of your estate. If the Will is found to be invalid or does not cover the distribution of all your assets, you may be deemed to have died *intestate*, resulting in your wishes not being followed.

HEALTHCARE DIRECTIVE/LIVING WILL / PROTECTION MANDATE

Another notable document that should form part of your overall estate plan is a health care directive. This document falls under many different names (personal care directive, living Will, Power of Attorney for personal care, etc.), and has various powers and requirements depending on your province. In general, this document appoints an individual to decide your medical care or follow the instructions provided, in the event you are unable to communicate your wishes.



Appointing an executor/liquidator

An executor /liquidator is the person(s) that is legally appointed to represent and act in the administration of your estate. When creating a Will, you will have the option as to whom you wish to bestow the honour of being your executor/liquidator. Depending on the size and complexity of your estate, you need to be mindful of who might be capable of handling the responsibility.

EXECUTOR DUTIES

Below is a sample list of duties that an executor may face:

- Making funeral arrangements (you can include instructions in your Will; however, note that often your Will may not be located and read prior to your funeral)
- Find and notify beneficiaries of the estate
- Contact the deceased's financial institution for a list of the contents of the deceased's safety deposit box
- Compile a full and comprehensive list of all property, assets and debts of the deceased as at the date of death
- Review existing insurance policies and notify insurance companies of the death and placing additional insurance, if necessary
- Protect or secure the safety of any estate property (insurance, security, appraisals)
- Providing for the protection and supervision of vacant land and buildings
- Arrange management of the estate property, including continuing business operations, taking control of property and selling property
- Retain a lawyer to advise on the administration of the estate and to apply for a grant of probate from the court
- Complete paperwork for any pensions, annuities, death benefits, life insurance or other benefits payable to the estate
- Advise any joint tenancy beneficiaries of the death of the deceased
- Advise any designated beneficiaries of their interests under life insurance or other property passing outside the Will
- Arrange for the payment of debts and expenses owed by the deceased and the estate (advertising for claimants, checking all claims and making payments as funds become available)
- Determine the income tax or other tax liability of the deceased and of the estate, file the necessary returns, pay any tax owing and obtain income tax or other tax clearance certificates before distributing the estate property
- Instruct a lawyer in any litigation
- Administer any continuing testamentary trusts or trusts for minors
- Prepare the personal representative's financial statements, a proposed compensation schedule and a proposed final distribution schedule
- Distribute the estate property in accordance with the deceased's last Will and testament

Buy-sell agreement for your business

For most business owners who own a business with one or more business partners, a buy-sell agreement is an integral part of their estate plan. This important document helps create liquidity for the estate and pre-determines who buys the shares on the death of an owner. This helps take additional burden from the grieving family knowing that valuations, funding and terms of the sale have all been agreed upon in advance. As with all other components of your estate plan, you want to ensure all documents align with your overall wishes and do not contradict each other.

How often should your Will be reviewed?

As with most planning, your Will should be reviewed on a regular and ongoing basis to ensure your intentions have not changed, nor has any applicable legislation. In general, it's advisable to review all aspects of your plan, including your legal documents, based on life events and changes in your financial situation. In most provinces/territories, your Will is automatically revoked upon marriage, unless the Will was created in contemplation of marriage. On the flip side, your Will is not automatically revoked upon separation or divorce. Other considerations may be moving to another province or country, changes in family dynamics, death of an executor or beneficiary and significant changes in assets.





Power of attorney

A power of attorney (POA) or Mandate (in Quebec) is a legal written authorization that grants specified powers to a person to act on your behalf. Within the agreement, the “donor or grantor”, specifies certain powers that the “attorney” has when acting on behalf of the donor. This document can be of extreme importance if the donor is ill, injured, out of the province or country, or of limited mobility, unable to attend to personal affairs or mentally incapable of handling one’s affairs. There are several versions of a legal POA explained here.

A “general” power of attorney allows the attorney to act immediately with respect to the individual’s property. A “springing” POA is permitted in some provinces, which only takes effect upon the happening of some specified triggering event, typically the declaration of mental or physical incapacity by a qualified medical practitioner. One of the final and often most important considerations, is ensuring your POA is “Enduring” or continuing, which means the authority will continue and not cease upon your mental incapacity, allowing the attorney or mandatory/tutor to act when you likely need them the most.

A POA IS AUTOMATICALLY TERMINATED UNDER THE FOLLOWING:

- Death of the grantor
- Mental incapacity of the grantor, except when an enduring or continuing power is granted
- Death, mental incapacity of the attorney
- Bankruptcy of the grantor or attorney
- Renunciation by the attorney
- The donor/grantor revokes the POA
- The occurrence of a specified event in the document which terminates the POA, such as a date in time
- Court appoints a guardian to property

UNDERSTANDING TRUSTS

What is a trust?

A trust is a relationship where a person (the settlor) transfers property to another person or company (the trustee) who holds that property for the benefit of another person (the beneficiary). In general, it is possible to have more than one settlor, trustee, and/or beneficiary of a trust. Formal trusts are often part of an individual's estate plan and are laid out within one's Will. If you wish to leave funds to a minor or individual who is unable to manage finances on their own, trusts are often the best way to accomplish this.

Types of trusts

There are two categories of trusts: i) *inter vivos*, a trust created during the settlor's lifetime; and, ii) testamentary, a trust created because of an individual's death by way of their Will. Variations within these trusts exist which can help you achieve your desired goals, which may include, spousal trusts, spendthrift trusts and qualified disability trusts (Henson trusts).

SPOUSAL TRUSTS

A spousal trust avoids the outright estate distribution to a spouse or common-law partner. Instead, the assets are held in the trust with the intention that all income will go to support that individual for their lifetime. There would then be another beneficiary who would receive the residue of the trust on the death of the spouse. These are often used in second marriage situations, where the deceased wishes their spouse to be financially taken care of, however wants their children from a prior relationship to benefit from their estate.

SPENDTHRIFT TRUSTS

Spendthrift trusts are established to leave assets to a beneficiary in a way that limits their access and control over the assets. The trust restricts access and helps prevent the beneficiary from squandering the inheritance, improperly using the assets or generally spending funds in an unwise manner.

QUALIFIED DISABILITY TRUST (HENSON TRUST)

A qualified disability trust is a great way to provide a legacy for a disabled beneficiary. These trusts are taxed at the beneficiary's marginal tax rates so long as the beneficiary qualifies for the disability tax credit (DTC). These trusts can allow the beneficiary to still qualify for government support as they do not own the assets directly and the trustee can control the flow of income.

Taxation of trusts

Since a trust is a relationship and is not generally recognized as a legal entity, trusts are regarded as individuals for income tax purposes.

In an *inter vivos* trust, all the trust's income is generally subject to tax at the highest marginal rate for individuals. With the exception of a graduated rate estate (a designated testamentary trust is subject to tax at the graduated rates in the same manner as an individual for the first 36 months of an estate), testamentary trusts are also subject to tax at the highest marginal rate for individuals.

While trusts are treated as individuals for tax purposes, they do not receive the benefit of being able to claim personal tax credits.

All, or a portion, of the income earned by a trust in a taxation year can be paid or made payable to all, or some, of the beneficiaries. This income will retain its character (e.g., eligible dividends, capital gains, etc.) earned by the trust when distributed to beneficiaries and will be subject to tax in the recipient beneficiaries' hands. Any income that is not distributed to the beneficiaries in a taxation year will be subject to tax within the trust.

Potential uses and benefits

A trust may be used as part of an estate plan to provide some of the following benefits:

Income splitting — Tax savings may be achieved by distributing all, or a portion, of income earned by the trust to beneficiaries who are subject to tax at a lower marginal rate than the trust, or who have unused loss carry forward balances or personal tax credits, since the income will be taxed in the beneficiaries' hands.

In the case of an *inter vivos* trust, careful planning is required to ensure that the income attribution rules do not apply in any potential income splitting strategy.

Asset protection — If structured properly, trusts may help protect assets from your/the beneficiaries' creditors, the potential breakdown of your/the beneficiaries' marriage, and from the beneficiaries themselves (in the event they are minors, disabled, or not currently at a stage in life where they have the capacity to own certain assets outright).

For individuals residing in certain provinces, the trust may protect the assets held within it from estate administration (i.e., probate) fees.



DEATH AND TAXES IN CANADA

The common phrase, “the two guarantees in life are death and taxes” is certainly a matter of fact. Though a detailed and comprehensive estate plan can’t help with the first, there are proactive planning steps that can help minimize the taxes your estate will face. In Canada, we are fortunate to not have an additional estate tax, however this does not mean your estate will have no taxes to pay. Upon death of a tax payer in Canada, an estate is subject to the following:

- **Income tax from deemed disposition**
- **Provincial and territorial probate fees**

DEEMED DISPOSITION

In Canada, you are deemed to have disposed of all your assets on the date of death and taxed accordingly, based on your combined provincial/federal tax bracket. This may include amounts within your registered products, corporate shares, investment portfolio and real estate. The *Income Tax Act* in Canada generally allows most of these assets to be passed to the spouse of the tax payer on the first death, thereby deferring taxes until the surviving spouse’s death. This is accomplished through the process of naming your spouse as the beneficiary or successor annuitant on your registered product.

But let’s assume there is no surviving spouse, how are the taxes assessed? When it comes to RRSPs/RRIFs, you have the option to name a beneficiary such as your children and for this example we will assume the children are above the age of majority. If your RRSP/RRIF has \$300,000 on death, and you chose ahead of time to name your two children equally as beneficiaries, your estate would receive taxable income of \$300,000 in the year of death and be taxed on that level of income in addition to any other income for your estate. That being said, your two children would each get a cheque for \$150,000. This level of income likely causes your estate to pay the highest tax rate, generally around the 50% range. If your estate does not have enough funds to pay this tax bill, then the CRA would hold your children jointly liable to pay this tax bill.

Real estate is often subject to deemed disposition rules, which can result in hefty estate taxes and perhaps forced liquidation. To be clear, deemed disposition, does not mean the asset is sold and that cash is available, it means that the asset is assumed sold or transferred based on current value as of the date of death. A common issue might be a family cottage, which could have a deferred tax liability. As an example, the cottage might have been purchased for \$100,000 years ago and on last death, is now valued at \$1,100,000. This change in value is a capital gain for tax purposes. Under present capital gains taxation, half of the gain is taxed based on the tax payer’s marginal tax rate. This means \$500,000 of taxable capital gain must be included and taxed to the estate, which is likely taxed near the 50% mark, resulting in a large tax bill on an asset that is not readily available as a liquid asset.

Careful pre-planning on your estate can help reduce the financial impact on the estate and the forced sale of perhaps a sentimental asset, such as the family cottage.

PROBATE FEES:

Probate is the process of verifying or establishing the validity of a Will through the courts. Administrative fees are charged by the courts based on a percentage of the estate's assets. This small percentage does vary per the applicable province/territory and does not presently apply in Quebec. Often a question is why does my Will have to be probated and how can I avoid this? Probating of the Will is not as negative as it is

perceived, as this process helps ensure that assets are being distributed according to your Last Will and Testament. Some assets may bypass the estate entirely and be passed directly to your beneficiaries, thereby bypassing the probate process and fees. This may include assets in joint tenancy with rights of survivorship, those with directly designated beneficiaries and assets which are already protected within a trust.



JOINT TENANCY WITH RIGHT OF SURVIVORSHIP (JTWROS)

Owning an asset jointly with right of survivorship is a common strategy to avoid the asset forming part of the estate and potentially avoid probate, however it can also lead to different challenges during your lifetime or for your estate (not applicable to Quebec). JTWROS provides that two or more people would own an asset together, such as real estate, bank accounts or non-registered investment accounts. Each individual has an undivided interest in the asset and upon death of one, the interest automatically passes to the survivor, bypassing the estate. Perhaps this sounds like a great plan and exactly what you aim to accomplish, however, there are potential negative consequences including:

Loss of control — Having another individual on your asset, means they have full access to do as they please with your asset or property. When it comes to bank accounts or investments, they have the ability to withdraw or utilize the funds as they see fit.

Tax implications — Adding a second or third owner to a tax deferred asset may expose you to deemed disposition rules, resulting in immediate tax consequences.

Exposure to family law or creditor claims — In the event the other owner experiences a future dissolution of marriage, their spouse may have claim over your asset. Perhaps the other individual experiences creditor or legal issues, this again is an asset owned by them without restriction and could be exposed to their creditors, which may risk losing the asset or reducing its value.

May not bypass your estate — This is certainly one of the most misunderstood and disputed areas of JTWROS. It is assumed that the asset will automatically roll over and bypass the estate, however, jointly held assets are quite often disputed after death. It is important to document your intentions on this asset to avoid any uncertainty or disputes in the future.



Importance of life insurance

One of the most powerful tools in your estate planning arsenal is life insurance, a contract where you pay premiums during your lifetime or term of the contract in exchange for a benefit payable upon your death. The use of insurance can help accomplish many goals in your estate plan in a very efficient manner. You can choose to have the insurance proceeds paid directly to your spouse, children, charity or to your estate. The death benefit received is not subject to taxation under the Canadian *Income Tax Act*.

Common life insurance uses include the following:

- Provides funds to pay off liabilities upon death (mortgage/loans) and ensure estate is not forced to liquidate or struggle financially.
- Liquidity and efficient payment for income taxes to maximize your estate. Owned assets may have taxes owing upon death, which can degrade the value of your estate.
- Provide income for your surviving spouse or family to replace your income.
- Provide succession and equalization of your estate regarding your business/farm.
- Leave a legacy to a charity.
- Create an estate and legacy to leave for your children/grandchildren.

Charitable giving for your estate

Charitable giving is the act of providing a gift of value to a charity of your choice in a way that maximizes your estate planning goals and minimizes your taxes. The tax credit available in the year of death is based on donations of up to 100% of net income in that year and the preceding year. Depending on your estate, this can be a great way to offset additional or extraordinary taxes owing upon death.


If you wish to leave a legacy and support a charitable cause in a meaningful way, there are several factors to be considered according to the type of gift. Gifts can include, cash, life insurance proceeds, gifts in-kind (stocks, real estate), certified cultural property and ecologically sensitive land.

WHAT ARE THE NEXT STEPS?

The creation of an estate plan should not be a grueling task; however, it does take some time and resources to accomplish it with confidence. Given the varying level of complexity, with consistently evolving changes in laws and taxation, we recommend working with a team of specialists to create a comprehensive plan.

How do I get this process started?

- Contact your Canaccord Genuity Wealth Management Investment Advisor
- Engage with their local Wealth & Estate Planning Specialist
- Identify your goals, objectives and priorities
- Work collaboratively to create a detailed financial plan, that includes your estate goals
- Coordinate with your lawyer and accountant to ensure documentation and goals can be implemented
- Review your insurance needs
- Create your Will, power of attorney or mandate and health care directive, ensure your beneficiary designations align with your overall estate goals
- Implement your plan
- Review your plan on a regular and ongoing basis and make changes as required
- Ensure your executor/liquidator knows the location of your Will, safety deposit box keys and other pertinent information



Discussing and building your estate plan with the right person and appropriate professionals can help you meet your objectives and provide you and your loved ones with peace of mind. For more information on how we can help, contact your Canaccord Genuity Wealth Management Investment Advisor today.



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