ESTATE PLANNING GUIDE

A GUIDE FOR BUSINESS OWNERS

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

Life's brighter under the sun

Sun Life Financial

This guide is one in a series of planning guides that Sun Life Financial has developed on subjects of interest to business owners. Guides in the series cover topics such as:

- buy-sell agreements,
- key person protection (continuation planning)
- succession planning,
- estate planning, and
- planned giving.

Other guides, intended primarily for your professional advisors, examine the tax and legal aspects of related financial concepts using life insurance. These guides cover topics such as shared ownership and leveraging.

Ask your financial advisor for guides that may be helpful for other professional advisors who work with you.

TABLE OF CONTENTS

ESTATE PLANNING BASICS

The importance of estate planning

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

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

The guide will help you:

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

Why do I need an estate plan?

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

- In all provinces, if you die without a will, the law will distribute your assets accordingly to default rules that may not align with your intentions.
- If you die without an estate plan, the language in a will may not be enough to allow your family to take advantage of the tax opportunities available to them or your business.
- Further, if you die without an estate plan your surviving family members will be left to deal with your business as is and may not have the resources or experience to manage the financial decisions.

Is estate planning different for business owners?

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

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

What if certain decisions are holding me back?

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

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

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

You're in charge of the estate planning process

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

What is estate planning?

- Estate planning is the process of organizing a tax-efficient transfer of your assets to specific people or charities.
- While not strictly part of estate planning, incapacity planning is part of a complete plan. It may be harder than estate planning, since the needs and prospects of an incapacitated person are often very difficult to predict.

In addition to determining who should receive your assets and when they should receive the proceeds of your estate (during your lifetime, at death, long after death or never), estate planning also considers:

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

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

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

Is a will enough?

Whether or not you are currently a family business owner, you'll need more than a will to adequately distribute your estate and provide for your family. In many families, the bulk of assets are passed on by some other estate planning tool quite distinct from the will. Joint tenancy for real estate, joint accounts[1] for cash and investments, and designated beneficiaries for life insurance and registered plans[2] may effectively move most of the assets. The will may, in fact, only control a small portion of a business owner's assets.

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

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

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

What motivates estate planning?

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

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

Are you concerned about:

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

Do you want to:

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

How can family members encourage estate planning?

If your parent is a business owner, encouraging them to start the estate planning process can be a delicate task. Family members are often reluctant to initiate the estate planning process in case they're thought to be greedy. At the same time, your parents may be reluctant to start the discussion in case it leads to disagreements among family members. Various organizations such as the Canadian Association of Family Enterprise (CAFE),[3] and in Quebec, The International Business Families Centre (CIFA),[4] or a trusted business advisor can help family business owners start an estate plan.

[3] See the CAFE website at www.cafecanada.ca

[4] See the CIFA website at http://campus-montreal.ca/en/project/centre-international-des-familles-en-affaires-cifa/

Is an estate plan the same as a succession plan?

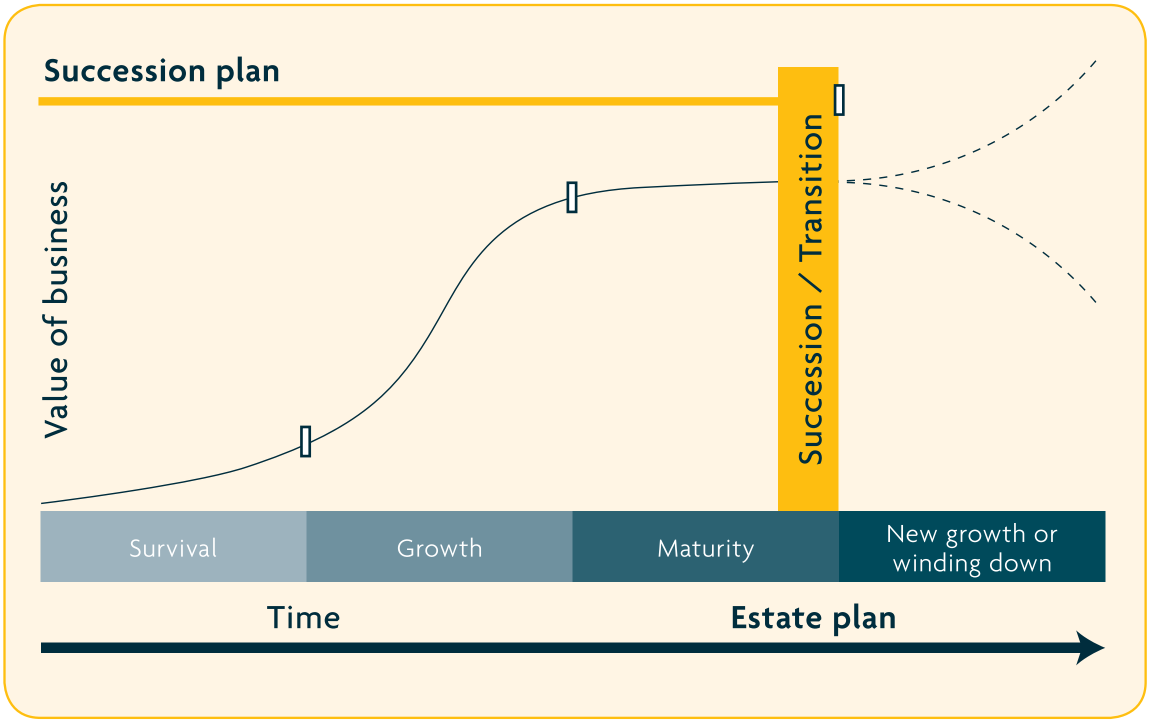
An estate plan includes all of your business and personal assets. A succession plan involves only your business assets. An estate plan is triggered by your death, while a succession plan may take effect during your lifetime or at the time of your death.

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

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

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

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



Factor in the effects of grief

An estate plan helps protect your family from the burden of making difficult decisions when they're grieving.

As family members move through the various stages of grief and approach acceptance, they're more likely to make decisions for rational, rather than emotional reasons. In general, people are advised to wait six to twelve months after the death of a spouse or other family member before making any major decisions. By planning for your estate in advance of your death, you can help protect your family from the stress of making major decisions during that time.

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

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

Wills and power of attorney		Yes	No
1.	Do you have a will?	❒	❒
2.	Do you have a power of attorney (mandate in Quebec)?[5]	❒	❒
3.	If your province permits more than one type of power of attorney (for property and personal care), do you have both types?	❒	❒
4.	If you have assets in any other provinces or countries, have you considered whether it would be advantageous to have a will and/or a power of attorney in each of those jurisdictions?	❒	❒
Cross border issues			
5.	If you have family members or other beneficiaries who reside in other countries, does your estate plan take possible tax and other effects into account?	❒	❒
6.	If you have family members or other beneficiaries who hold citizenship (including dual citizenship) of another country, does your estate plan take that into account?	❒	❒
Financial planning			
7.	Have you determined the income needs of your spouse and any other family members who are financially dependent on you?	❒	❒
8.	Have you considered steps to implement splitting income after your death?	❒	❒
Business issues			
9.	Do you know how much your business is worth?	❒	❒
10.	Do you have a buy-sell agreement (it may be part of a shareholders' agreement or partnership agreement) with the co-owners of your business?	❒	❒
11.	Is the buy-sell agreement funded by life insurance, disability insurance and critical illness insurance?	❒	❒
12.	Do you, your co-owners and potential beneficiaries who may inherit an interest in your business, have marriage contracts protecting the business assets?	❒	❒
13.	Does your estate plan address creditor protection issues?	❒	❒
14.	Do you have an emergency plan if you are incapacitated or die before transferring your ownership interest?	❒	❒
15.	Have you appointed a successor or established a process for selecting a successor for your business?	❒	❒
16.	Do you have a written plan for the transfer of your business interests?	❒	❒
17.	If you are leaving the business to one family member, have you made arrangements to leave assets of similar or equal value to other family members?	❒	❒

[5] See Appendix B and C for more details about various types of powers of attorney.

Advanced tax planning

		Yes	No
18.	Have you identified if your business or shares are eligible, or could be made eligible for the lifetime capital gains exemption?[6]	❐	❐
19.	Are you ready to transfer the future growth of your business to someone else (an estate freeze)?	❐	❐
20.	Have you considered the use of a capital gains rollover to your spouse, or to a spousal trust, to defer the taxes that will be payable at your death?	❐	❐
21.	Have you calculated the tax liabilities that your estate will be responsible for at your death?	❐	❐
22.	Will your estate be guaranteed to have enough cash to cover those tax liabilities?	❐	❐
23.	If you have assets in the U.S., have you considered strategies to reduce and pay U.S. estate taxes?	❐	❐
24.	Have you considered strategies to reduce probate fees, where probate fees are applicable?	❐	❐
25.	Have you planned for charitable giving at your death?	❐	❐

General

26.	Have all the agreements that form part of your estate plan been prepared or reviewed in the last year?	❐	❐
27.	Have you or anyone affected by your estate plan experienced any major life changes since the agreements were prepared (e.g., divorce, marriage) that may affect your estate plan?	❐	❐
28.	Does your family know the details of your estate plan?	❐	❐
29.	Does your family know where key documents, such as your will and insurance policies, are located?	❐	❐
30.	Does your family know your funeral and organ donation wishes?	❐	❐

If you answer 'No' to one or more of these questions, you may need to do more preparation to ensure you have an effective estate plan.

[6] $824,176 for 2016 , indexed annually for inflation.

DEVELOPING YOUR ESTATE PLAN

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

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

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

Step 1 – Consult your advisors

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

Sun Life Financial created this guide to help you as you work with your advisor and business professionals to create an effective estate plan. Each of your advisors will provide assistance for you in a specific area. In certain situations you may need more than one advisor from a specific discipline. For example, you may need both a corporate and tax lawyer. You may also want to consider hiring a team leader whose sole responsibility is to coordinate the other team members and manage the entire process.

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

Advisors to your business

- **Family council –** Family businesses may have family councils that discuss the role of the business within a family context. Your family council can help you establish business and succession goals that reflect the wishes of you and your family members.
- **Advisory board –** An advisory board is an outside group that may include other business owners, entrepreneurs, professionals and friends, who provide the family business with knowledge, assistance and a fresh perspective. Your advisory board can assist in the development of your ownership transition process and estate planning.

Specialists

- **Lawyers –** Lawyers provide advice on legal issues that may arise out of the estate plan and draft the necessary documents and agreements. They may also consult with lawyers in other jurisdictions where you own assets.
- **Financial advisors –** Financial advisors cover a wide variety of expertise. They can provide you with strategies to maximize the value of your estate, help you develop an investment strategy for your non-business assets, provide you with insurance advice and may manage your investment portfolio. Consider a financial planner who has their Certified Financial Planner (CFP®) designation, which means they have met the standards of the Financial Planning Standards Council. In Quebec financial planners are licensed and receive a designation from the Quebec Institute of Financial Planning (IQPF).
- **Accountants –** Accountants will develop strategies to reduce the taxes payable during your lifetime and at the time of your death. They also provide you with advice on the tax implications of the various components of your estate plan.
- **Chartered Business Valuator (CBV) –** Specialist expertise may be useful in quantifying the value of your assets, especially the value of an ongoing business. Valuation of goodwill and income flow is especially difficult. A designated CBV specialist may be able to provide an expert opinion that may be required later by taxation authorities.

Non-traditional advisors

- **Life/leadership coach –** High performers in any field, including business, often rely on coaching from impartial outsiders. A life coach can help you clarify your personal goals and priorities so that they can be reflected in your estate plan.
- **Physician/psychiatrist –** Medical opinions, especially as to mental status and competence, are sometimes sought as part of an estate plan, especially in the case of elderly or seriously ill individuals. Timely medical opinions can have a powerful effect in bolstering or protecting estate plans, especially if the plan is unpopular with certain individuals.
- **Family business advisor/facilitator –** Promoting understanding and communication within the family can make families more effective in business. Professionals with experience in family business and family dynamics can often provide insight, counsel, and advice that's not available from other sources. This includes advice on succession planning.

Dispute resolution

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

Independent advice

Your family members may want to retain their own advisors. If any of your family members are asked to sign agreements (such as marriage contracts) in which they waive any of their legal rights, it's important they get independent legal advice. They should not rely on the advice of your lawyer; otherwise the documents may be open to challenge later.

Step 2 – Determine your estate planning goals

Once you've chosen your advisors, you can start determining your estate planning goals. At this stage, you're focusing on identifying specific goals and what you need versus what you want. Some of your goals may revolve around tangible things, such as business assets, or on intangible things like family harmony.

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

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

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

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

TIP

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

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

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

Step 3 – Weigh your options and develop your plan

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

Step 4 – Share your plan

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

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

TIP

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

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

TIP

Planning for the unexpected
Death is not the only contingency. While incapacity planning is not strictly part of estate planning, it's often done at the same time, and as part of a business emergency plan. Prolonged absence may also trigger the business succession plan.

Implementing your estate plan may require a significant amount of time, especially if it involves corporate reorganizations and tax planning. You may want to provide someone you trust with a power of attorney, along with written instructions setting out all of the steps involved in your estate plan and authorizing them to complete its implementation if necessary. The power of attorney could also contain restrictions preventing the attorney from changing the parts of the plan already implemented. You should discuss this with your legal advisor.

Step 5 – Implement the plan

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

Step 6 – Monitor the plan

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

Reasonable benchmarks for progress in building or updating parts of your plan will help manage expectations. If a document is solely in your control, such as a will, it may be reasonable to expect it will be drafted and ready for signing a few days or weeks after you finalize your instructions. If a legal agreement requires negotiation, such as a shareholder agreement, it may take six months or more.

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

ESTATE PLANNING AND YOUR BUSINESS

Business exit strategies

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

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

1. appointing a successor
2. selling the business

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

Selling your business

You may decide you'd rather sell your business than appoint a family successor. The decision to sell may depend on whether you see your business as a commodity or a career. People often establish a business with the intention of running it for several years, then selling it for a large profit and retiring. This plan may change over time.

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

The importance of a buy-sell agreement

If you're the co-owner of a business, it's essential that you have a buy-sell agreement, which sets out conditions under which one owner has the right to buy the ownership share of the other owner. Triggering events will usually include death, disability, retirement and a non-resolvable dispute between the owners.

Some buy-sell agreements provide a method of valuing the shares being sold if one of the triggering events occurs. The method chosen will depend on the goals and objectives of the shareholders, the specifics of their situation and the industry. Since neither shareholder knows whether they'll be the buyer or seller, both will want to select a formula that's fair in either event.

TOOLS FOR CREATING AN ESTATE PLAN

There are a number of estate planning tools available to address a range of issues. These include offering protection in the case of unforeseen events, such as disability or marriage breakdown, and providing the necessary capital investment growth to meet financial goals in retirement.

Some of the tools, such as a will, are essential to every estate plan. Others can be used on their own – or in combination with other tools – to address estate planning issues unique to your particular situation.

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

Wills

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

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

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

Descriptions of other types of wills are found in "**Appendix A**" at the back of this guide.[7]

If you die without a valid will, otherwise known as dying "intestate," provincial legislation will direct who receives your property. In most or all provinces, a regime exists to determine how your estate will be distributed to your creditors, spouse and children. This disposition may not be what you want.

The court will appoint an administrator to manage and distribute your estate. The people with the first right to be appointed as administrator are typically your spouse and children. In Quebec, the intestacy rules provide for your spouse to receive one third of your estate while your children receive the remaining two-thirds.

Power of attorney (for Quebec residents see "Appendix B")

When you create a power of attorney you (the donor) give another person (the attorney) the authority to make decisions on your behalf. By creating a power of attorney you don't give up the power to make decisions – you just let someone else make them, too. The attorney does not need to be a lawyer.

[7] Drafting a joint spousal will is not allowed under the Quebec Civil Code (QCC). Each spouse must have their own will drafted separately.

A power of attorney allows you to plan for situations in which you become physically or mentally incapacitated. However, it's important that the document actually say that it is valid for any period during which you are incapacitated. Without such language, a power of attorney becomes invalid upon your incapacity even though that's the time when most people would want their attorney to be able to use it. You can also word your power of attorney to be valid for a temporary period of time or indefinitely, but in any event, it is only valid during your lifetime and terminates on your death. You need a power of attorney that can be exercised in each jurisdiction where you own assets. This doesn't necessarily mean you need a separate power of attorney in each jurisdiction. Consult your legal counsel to ensure all assets are covered. If you don't have a power of attorney, and you become incapacitated, a judge can appoint a substitute decision maker to act on your behalf, but that can be an expensive, time-consuming and stressful process.

Descriptions of types of powers of attorney are found in "Appendix C" at the back of this guide.

Trusts (for Quebec residents, see "Appendix B")

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

- provide benefits to minor children or own property for minor children until they are old enough to own property themselves
- provide benefits to a second spouse following the willmaker's death without disinheriting any children from your first marriage
- provide benefits to an incapacitated surviving spouse
- offer estate privacy
- minimize taxes

There are two main types of trusts:

- **Inter vivos trusts (living trusts)** – These take effect during your lifetime and are taxed at the highest marginal tax rate on accumulated income. Living trusts are often used together with a planning technique called an estate freeze to save on later capital gains taxes. The technique freezes the value of the company (and the accompanying capital gains tax liability) for the owner, while transferring the right to any future growth to the owner's successors.
- **Testamentary trusts** – These are created in your will and take effect at your death. Starting in 2016 testamentary trust income will be taxed at the highest marginal tax rate, the same as inter vivos trusts. A limited exception applies to graduated rate estates (GREs) and to qualified disability trusts (QDTs).
  A GRE is a testamentary trust that comes into being on an individual's death. It is taxed at graduated rates for the fist 36 months after the individual's death, after which the highest marginal rate applies. There can be only one GRE per deceased individual.
  A QDT is a testamentary trust that elects, with one or more trust beneficiaries, to be taxed as a QDT. The trust must be resident in Canada, each electing beneficiary must be eligible for the disability tax credit, and an electing beneficiary must be a named beneficiary (not a member of a class of beneficiaries referred to in the trust document). There can be only one QDT per disabled person.

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

Other agreements

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

Insurance products

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

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

Other forms of insurance, such as disability insurance, critical illness insurance and long term care insurance, should also be considered. See "**Appendix F**" for an overview of the different types of insurance coverage you may want to consider as part of your estate plan.

If the life insurance policy beneficiary designation is properly structured, the policy's cash values may be protected from claims of the policy owner's creditors during the insured's lifetime, and the death benefit will be protected against claims of the policy owner's creditors after the insured's death. Remember that creditor protection is not absolute. The Canada Revenue Agency, for example, may have greater rights in some circumstances than other creditors. Also, attempts to buy a life insurance policy and use it to shelter funds against creditors' claims when the policy owner is insolvent or on the eve of bankruptcy may not succeed.

HOW TAXES CAN IMPACT YOUR ESTATE PLAN

Taxes and your estate plan

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

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

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

Income taxes

- **Income tax.** You'll be taxed on all income earned by you in the year of your death.
- **Capital gains tax.** All of your capital property is deemed to be disposed of when you die, and any capital gains or capital losses are included in the calculation of your final income. For some tax payers, this is subject to the lifetime exemption for capital gains from qualified small business shares and qualified farm and fishing property.[8] Since there is no guarantee this exemption will always be available, many people choose to crystallize some or all of their capital gains by triggering a disposition during their lifetime. The deemed disposition on death may also trigger recapture of depreciation, which is taxed as income. All taxpayers can defer these taxes by transferring assets to a spouse or qualifying spousal trust.
- **Tax on Registered Retirement Savings Plan (RRSP) and Registered Retirement Income Fund (RRIF) assets.** At your death, registered assets such as RRSPs and RRIFs can be transferred to a registered plan for your spouse, or in some cases to a financially dependent child or grandchild, on a tax-deferred basis. Otherwise, you may transfer registered assets to whomever you please. In the circumstance where these assets transfer to someone other than a spouse or dependent child, the person to whom you transfer the RRSP or RRIF money will receive the money tax-free, but the value of the registered asset will be included as income on your final tax return. Only if your estate lacks sufficient funds to pay all the tax will your beneficiary have to pay any part of the tax.
- **Tax on Tax-Free Savings Account (TFSAs).** TFSAs lose their tax free status when the account holder dies. However, tax deferral may be continued if the account holder has named their spouse or common law partner as the successor account holder, or provides for a transfer at death of assets in their TFSA to their spouse or common law partner. Otherwise, amounts in a TFSA, including earnings accumulated to the date of death, are not taxable in a beneficiary's hands. Amounts that accumulate in the TFSA from the date of the account holder's death are taxable in the beneficiary's hands.

  In Quebec, only TFSAs that qualify as annuities allow for a beneficiary designation and for the designation of a successor account holder. Therefore, the transfer of assets in a TFSA that does not qualify as an annuity to a surviving spouse or to a spouse's TFSA requires special attention in the client's will.

[8] $824,176 in 2016. The exemption amount rises each year with the level of inflation.

Probate and other fees

- **Probate taxes.** Provinces charge fees or taxes for court orders, commonly termed letters probate, confirming that the will is valid and the executor has the authority to act. All provinces, other than Alberta and Quebec, charge probate fees that are a percentage of the total value of the assets that flow through the will.[9] Ontario has among the highest charges of all the provinces: $5 for each $1,000, or part thereof, of the first $50,000 of the value of the estate, and $15 for each $1,000, or part thereof, of the value of the estate exceeding $50,000.[10] Nova Scotia currently has the highest charges. The top rate is 1.645% of the value of assets passing through the estate.
- **Executor's fees.** Although not a tax, executors may be entitled to charge a fee, typically up to five per cent of the value of the assets transferred under the will. In Quebec, the liquidator is entitled to the reimbursement of his expenses. If he is not an heir, he is also entitled to remuneration. If he is an heir, he may be remunerated only if the will so provides or the heirs agree. If the renumeration is not fixed in the will, the heirs fix it or in case of disagreement the court does so.

Cross-border issues – U.S. estate tax

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

- people born in the U.S.
- U.S. citizens, even if they live outside the United States
- people with dual citizenship even if they are unaware that they hold U.S. citizenship
- permanent residents of the United States, people domiciled in the U.S. and people who hold green cards

You may be considered a U.S. resident for tax purposes even though you're also a Canadian resident and pay Canadian taxes.

If you are a U.S. person, the value of everything you own at death will be included in your estate. If you are not a U.S. person, only the U.S. property you own at death will be included in your estate. U.S. property includes real estate, debts and shares of U.S. corporations. If you own shares of a U.S. corporation, either inside or outside your RRSP, you may be liable for U.S. estate taxes on that property, even if you're not a U.S. person. There is a major exception for registered and non-registered mutual funds: U.S. shares in mutual funds you own are not included in your estate. For those who are not U.S. persons, U.S. property does not include life insurance policy death benefits from policies issued by U.S. insurance companies, U.S. debt securities where the interest income would be exempt from U.S. withholding tax, U.S. bank accounts, and, as just noted, Canadian mutual funds owning U.S. securities.

[9] Alberta charges fixed fees that range from $25 for assets valued at $10,000 or less to a maximum of $400 for assets over $250,000. In Quebec, notarial wills do not have to be probated. Fees vary but are generally about $1,000, including professional fees.

[10] Ontario, Ministry of the Attorney General, "Frequently asked questions about estates," at http://www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp.

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

- **Estate tax.** This is a federal transfer tax applied against worldwide assets. Under current law, the maximum rate is 40 per cent, with up to $5.45 million US in property exempt (2016 exemption, indexed to inflation).
- **Gift tax.** This is also a federal transfer tax, payable on any taxable transfer of property during your lifetime. Like the federal estate tax, the maximum rate is 40 per cent, with up to $5.45 million US in property exempt (2016 exemption, indexed to inflation). To the extent that you use any part of the $5.45 million US exemption during life to shelter gifts from gift tax, that room is not available at death to shelter your estate from estate taxes.
- **Generation-skipping tax (GST).** This is a flat rate federal tax applied at the highest marginal rate to transfers that skip a generation (e.g. from a grandparent to a grandchild). Like the federal estate and gift taxes, the maximum rate is 40 per cent, with up to $5.45 million US in property exempt (2016 exemption, indexed to inflation). This tax is applied in addition to any gift or estate tax assessed.
- **Stamp taxes.** These are taxes imposed by the federal government on the issue and transfer of stocks, bonds and deeds.
- **State inheritance, estate and death taxes.** Several U.S. states tax the value of property received by a beneficiary.[11] These taxes are in addition to any federal taxes imposed.
- **Capital gains tax.** Capital gains on the sale of stocks, bonds, mutual funds or other investment assets held for more than one year are subject to tax at various rates. Here are the rates:
  - 0% if your income is taxed in the 10% or 15% marginal tax brackets
  - 15% if your income is taxed in any of the 25, 28, 33 or 35% marginal tax brackets
  - 20% if your income is taxed in the 39.6% marginal tax bracket

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

Strategies for reducing taxes at death

There are a number of strategies you can use to reduce the various taxes your estate will pay on your death. If the assets involved with any of these strategies are subject to a foreign country's laws (like U.S. property) care must be taken to ensure that the strategy does not trigger unintended taxation under the foreign country's tax laws.

Strategy	Benefit
Gifts during lifetime	■ Allows you to transfer assets without paying probate fees. However, gifts of capital property (to anyone other than your spouse) are generally treated as a sale and will trigger capital gains or losses to you. Gifts of certain U.S. situs property may trigger U.S. gift tax. ■ Gifts to spouses or minor children will trigger the income attribution rules, and income earned on gifts will be attributed to you (other than capital gains received by a minor child).

[11] New Jersey, Maryland, Pennsylvania, Kentucky, Iowa and Nebraska.

Strategy	Benefit
Joint title to assets	■ Allows two or more people to own an asset together. ■ If assets are held in joint tenancy with right of survivorship, when one owner dies, ownership passes to remaining owner(s) outside of the will (this concept does not exist in Quebec). This may help to avoid probate taxes, but not capital gains taxes.
Beneficiary designations	■ Naming beneficiaries for your registered plans and pension plans allows the beneficiary to receive the proceeds outside of your will so probate fees aren't payable. This associated tax burden needs to be planned for since it may fall on your estate and not the beneficiary. ■ In Quebec, such a beneficiary designation is available only on life insurance products and annuities, including fixed term annuities and pension plans. ■ Life insurance beneficiaries generally receive the proceeds tax-free.
Contingent owner of life insurance	■ Insurance policies that you own on the lives of your spouse or children, can be transferred to them outside of the estate on a tax-free rollover basis. Consult with your tax advisor since the rollover is tax-free only if certain conditions apply.
Tax-deferred rollovers	■ Process by which tax from disposition or deemed disposition of capital property is deferred. ■ Example: transferring capital property to an alter ego or joint partner trust. ■ Example: distributing trust assets to capital beneficiaries in satisfaction of their entitlement.
Estate freeze	■ Freezes the values of your company's shares during your lifetime so that you can provide for the tax liability that will arise on your death. ■ Future growth in the value of your shares will accrue to your successors in the business, who may be your children or other family members. ■ Often accomplished by transferring shares of an operating company to a holding company or to a family trust. ■ You receive back fixed value preferred shares equal to the fair market value of the operating company at the time of transfer. ■ Your beneficiaries, or a trust for their benefit, subscribe for common shares with a nominal value to which future growth in the value of the company will be attributed. ■ Structured so you retain voting control.

Strategy	Benefit
Insured annuity owned by a corporation	■ Reduces the value of private company shares for capital gains tax purposes by pairing a life annuity with a life insurance policy, neither of which may have high values for tax purposes. **Note:** the rules governing the taxation of life insurance and annuities are changing on January 1, 2017. This strategy, while still viable, may not deliver the same tax results after that date.

APPENDIX A - WILLS

Type of will	Description
Will in solemn form	■ Traditional format. ■ Signed by willmaker in presence of two witnesses who also sign and who are not beneficiaries or related to beneficiaries.
Will made in the presence of witnesses	■ In Quebec. ■ The testator acknowledges their signature in the presence of two witnesses.
Notarial will	■ In Quebec. ■ Made before a notary, *en minute* in the presence of a witness or, in certain cases, two witnesses. The will is signed by the testator, the witness(es) and the notary.
Holograph will	■ Some provinces permit wills written and signed entirely in the willmaker's own handwriting without the formality of witnesses. ■ Can create problems since signed notes, letters and postcards may be given legal effect whether intended or not. Some people have tried to use new electronic media like DVD and video to express their last will. This is a risky process since only a judge can decide whether the electronic media can be enforced as a person's last will. As a result, the classic will written on paper with the assistance of a lawyer is always a safer choice.

APPENDIX B - FOR QUEBEC RESIDENTS

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

Tool	Description
Mandate given in anticipation of incapacity	■ Notarial or witnessed document that allows individuals chosen as mandatary to make decisions on your behalf if you become incapacitated. A mandatary fulfills a role similar to an attorney's in the common law provinces. ■ Can combine instructions as to property and personal care. ■ Multiple mandataries can be appointed and duties split between them, which is useful for business owners who want to separate their business and personal affairs. ■ To enter in force, this document must be homologated by the court. The term, "homologated" refers to the process whereby a Court verifies the existence and validity of the mandate before allowing the mandatary to use it on behalf on an incapacitated individual. ■ A power of attorney for property (called mandate in Quebec) can continue in case of incapacity but it needs to be homologated.
Trust	■ Trust is established by contract, by will or, in certain cases, by law. Where authorized by law, it may also be established by judgment. ■ Legal ownership of trust property differs in Quebec from common law provinces – the settlor of a trust transfers property to a separate patrimony, which is segregated from the settlor, trustee and beneficiaries, none of whom have any real right to it. In the common law provinces a person's "patrimony" would be their estate - everything they own. A separate patrimony would then be assets that they have separated from the rest of their estate, by using a trust, for example.

Tool	Description
Tutor	■ A tutorship is similar to a guardianship for a child in the common law provinces. A tutor is appointed to manage a child's property and to make decisions affecting the child's care, health, and civil rights. ■ With respect to the property of the minor, the tutor acts as an administrator charged with simple administration. ■ In administering the property of their minor child, fathers and mothers are not bound to make an inventory of the property, furnish security for their administration, render an annual account of their management, or obtain any advice or authorization from the tutorship council or the court unless the property is worth more than $25,000 or the court so orders upon the application of an interested person. ■ Two types of tutorship exist – legal (automatically conferred on parents) and dative (if parents die or are dismissed as tutors). A dative tutor can be appointed by the last surviving parent in a will or a mandate given in anticipation of mandator's incapacity or by filing a declaration to that effect with the public curator.
Curator and tutor to an adult person	■ Quebec law provides for three ways of protecting persons who are incapable of managing their property or person: curatorship, tutorship or advisers to persons of full age. 1. A court will appoint a curator: to a person of full age if it is established that the incapacity of that person to care for themselves and to administer their property is total and permanent and that the person needs to be represented in the exercise of their civil rights. 2. The court appoints a tutor to a person of full age if it is established that the incapacity of that person to care for themselves or to administer their property is partial or temporary and that they need to be represented in the exercise of their civil rights, either to the person or to property. 3. The court appoints an adviser to a person of full age who, although generally and habitually capable of caring for themselves and of administering their property, needs, for acts or for a certain time, to be assisted or advised in the administration of their property. ■ An incapacitated heir can have a curator or a tutor designated by the court.

Tool	Description
Matrimonial regime	■ Any kind of stipulation may be made in a marriage contract, subject to the imperative provisions of law and public order. ■ Partition of the matrimonial regime on death is part of the estate planning process. ■ Three types of matrimonial regime still exist: 1. Community of property is the default regime if married before July 1, 1970. 2. Partnership of acquests is the default regime if married on or after July 1, 1970. 3. Separation of property is a contractual regime.
Civil union	■ Since 2002, civil union is a commitment by two persons 18 years of age or over who express their free and enlightened consent to live together and to uphold the rights and obligations that derive from that status. ■ Composed of two persons of the opposite or same sex who publicly celebrate a marriage-like union. ■ For Quebec legal purposes (property and civil rights) equivalent to married.
Family patrimony	■ Marriage or Civil Union entails the establishment of family patrimony. ■ The value of family assets is subject to mandatory partition at death, except in the case of formal renunciation by the surviving spouse.[12] ■ Family assets are limited to the value of the following property owned by one or the other of the spouses: 1. family residences. 2. furniture (the movable property with which they are furnished or decorated and which serves for the use of the household). 3. motor vehicles used by the family. 4. benefits accrued during marriage under a retirement plan (this includes RRSPs, among other things).[13] ■ Property devolved to one of the spouses by succession or gift before or during the marriage is excluded from the family patrimony.

[12] There is partition of the family patrimony also when there is separation from bed and board or dissolution or nullity of the marriage.

[13] For the purposes of the rules on family patrimony, a retirement plan is any of the following: a plan governed by the Supplemental Pension Plans Act (chapter R-15.1) or by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) or that would be governed by one of those Acts if one of them applied where the spouse works; a retirement plan governed by a similar Act of a legislative jurisdiction other than the Parliament of Quebec; a plan established by an Act of the Parliament of Quebec or of another legislative jurisdiction; a retirement-savings plan; or any other retirement-savings instrument, including an annuity contract, into which sums from any of such plans have been transferred.

APPENDIX C - POWER OF ATTORNEY

Type of power of attorney	Benefit
Power of attorney for property	■ Allows your attorney to manage your property. It may come into effect immediately, or, if you specify, upon your incapacity. For it to be effective upon your incapacity, or for it to continue during your incapacity, it also must state that it remains in effect on incapacity. Otherwise it is no longer effective on your incapacity. ■ A general power of attorney is generally considered to be one which imposes no restrictions on the activities of the attorney, whereas a limited power of attorney limits the property dealt with or the powers of the attorney to act. It is possible to have a general power of attorney which ceases on incapacity or at a specified time.
Power of attorney for personal care (advance health care directive, living will – different provinces use different names)	■ Allows the attorney to make medical and health care decisions on your behalf if you become incapacitated and unable to state your wishes. ■ Can include specific instructions about the treatment you do or do not wish to receive.
Representation agreement (British Columbia residents)	■ Allows B.C. residents to appoint representatives to make decisions about their legal affairs, financial affairs, personal care and health care needs if they lose mental capacity, similar to a power of attorney.

APPENDIX D - TRUSTS

Type of trust	Description
Discretionary trusts	■ Trustees of this type of trust have power to allocate capital and income from the trust and determine the amount and timing of distributions. ■ Are very flexible tools for transferring business ownership to the next generation and are often used as part of an estate freeze.
Fixed interest trusts	■ Terms clearly set out who should receive what property, when and in what manner.
Alter ego trusts (or self-benefit trusts)	■ Are used as a will substitute and can be a superior method for asset management during incapacity. ■ Are established for your sole lifetime benefit if you're over age 65. ■ Income and capital gains are taxable in your hands while you're alive. ■ When you die, the trust document functions as a will governing the distribution of assets. ■ Used to avoid probate and to protect privacy.
Joint partner trusts	■ Similar to self-benefit trusts but are established for the joint lifetime benefit of spouses (or common-law or same-sex partners).
Spousal trusts	■ Set up during life or upon your death for the exclusive benefit of your spouse. ■ Your spouse must receive all of the income. ■ No person, other than your spouse, can have access to the capital while your spouse is alive. ■ Assets can be transferred to the trust at their original tax cost and capital gains/losses are deferred until the trust disposes of the property or your spouse dies. ■ Useful for providing for children from an earlier marriage (spouse receives income and has access to capital during your spouse's lifetime; your children inherit the remainder on your spouse's death), for providing care for an incapacitated spouse after you die, and for reducing taxes by income-splitting if a spousal trust is set up as a testamentary trust.

Type of trust	Description
Family trusts	■ Usually has family members as beneficiaries, but may also include non-family members. ■ Often used for income splitting among family members, for reduction in probate fees and to avoid challenges to your will. Are very useful in the succession process for family-owned business (see Discretionary trusts).
Offshore trusts	■ Used primarily to protect assets from creditors and to protect the confidentiality of information about the trust. Not tax advantageous. ■ Rules on governing offshore trusts are very complex and many tax opportunities have been closed in recent years. ■ Obtain professional advice before establishing an offshore trust.
Alberta trusts	■ Designed to take advantage of Alberta's lower tax rates for those who live in other provinces where the top tax rates are higher. ■ Intended for reducing taxes if you're a resident of a province other than Quebec, are in the highest tax bracket and won't need to withdraw the funds for current needs.[14] ■ Majority of trustees must be resident in Alberta. The CRA has challenged this strategy, though its most recent challenge was unsuccessful in court [Discovery Trust v. MNR, 2015 NLTD(G) 86].
Insurance trusts	■ A trust that receives the proceeds of a life insurance policy. ■ Separate from the probated estate. ■ Useful for minor or special needs beneficiaries or to establish a trust for income splitting. ■ In Quebec, an insurance trust may be difficult to implement. You should consult your legal advisor to effect a beneficiary designation or, if needed, to implement a creditor protection strategy using life insurance.

[14] The Quebec Taxation Act contains a definition of "designated trust" and "designated beneficiary" applicable when a testamentary or a living trust is resident outside of Quebec and has one or more beneficiaries resident in Quebec. Any income distributed to a Quebec beneficiary is taxed at the beneficiary's tax rate even if the income was already taxed at the trust level. A Quebec "designated beneficiary" must disclose in their annual provincial tax return his beneficial interest in a designated trust.

APPENDIX E - LEGAL AGREEMENTS

Type of agreement	Description
Buy-sell agreement	■ Some businesses have stand-alone buy-sell agreements which addresses the death, disability or retirement of one of the owners, and includes a formula for business valuation.
Shareholders agreement	■ Sets out the rights and obligations of the shareholders of a corporation, and may include buy-sell provisions.
Partnership agreement	■ Sets out the rights and obligations of partners in a partnership, and may include buy-sell provisions.
Marriage contract or domestic agreement	■ Agreement between you and your spouse dealing with the rights to support and to ownership or the division of property on marriage breakdown or death. ■ Spouse who is not involved with the business may agree not to make any claim against the business. ■ Called a prenuptial agreement if entered before marriage. ■ May also have a similar agreement with a common-law partner.
Separation agreement	■ Similar to a marriage contract. ■ An agreement you enter into with your spouse on separation, which includes provisions addressing support and division of property.
Shared ownership insurance agreement (also known as split-dollar agreement)	■ An agreement governing the relationship between two or more parties who share the ownership of an insurance policy. The parties agree on how they will share or allocate the premium payment obligation, policy cash values (if any) and policy benefits.
Shared benefit insurance agreement	■ Agreement to share the benefits of a life insurance policy, but not the ownership of the policy. ■ Can be used by a key employee/shareholder who is the sole owner of the policy and designates the company as the irrevocable beneficiary of the death benefit portion of the policy. ■ On retirement, the employee changes the beneficiary in accordance with the agreement. The employee can then make withdrawals from the policy or pledge it as collateral for loans to create retirement income.

APPENDIX F - INSURANCE PRODUCTS

Type of insurance	Description
Temporary: Term	■ Provides protection for a fixed period, ranging from one year to a specific age. ■ Some products are renewable at higher premiums. ■ May be convertible to permanent products.
Permanent: Term to 100 and non-participating whole life	■ Simple form of permanent insurance. ■ Guaranteed level death benefit. ■ Usually without the additional features available with other plans. ■ Less flexible. ■ Low cash values. ■ Some guaranteed limited pay options, e.g. 10, 20 pay.
Participating whole life	■ Permanent insurance with some flexibility on design of both the death benefit and the cash surrender value. ■ Participates in a product's investment and claims experience through policy dividends, that can be applied in several different ways. ■ More guarantees, but less flexibility than universal life plans.
Universal life	■ Permanent insurance with maximum flexibility over death benefit and cash surrender value design. ■ Investment of policy deposit in excess of cost of insurance under the policy owner's control. ■ More flexibility but less guarantees than whole life plans.
Critical illness insurance	■ You receive a lump-sum cash payment if you are diagnosed with an illness covered by your policy and survive the waiting period. ■ Your business should have critical illness insurance on its owners, managers and key employees to protect the business from financial loss.

Type of insurance	Description

Disability insurance	■ You receive a monthly payment to replace a portion of your income if you're unable to work as a result of illness or injury.
	■ Your business should consider disability insurance on its owners, managers and key employees. Consider:
	  ■ monthly income plans for sole owner protection or for key person coverage, business overhead expense insurance (provides a benefit to help cover overhead expenses if you or a key person is disabled) or business loan protection.
	  ■ lump-sum plans for shareholder and partner buyouts.

Long term care insurance	■ You receive a payment if you become unable to care for yourself due to aging, an accident, illness or deteriorated mental abilities. ■ It helps protect you from depleting your estate to cover costs related to your long term care needs.

This guide is a tool to help with the important task of planning your estate. Your advisor can help you identify your objectives and any areas of concern so you can prioritize before you bring in other professional advisors.

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

In Quebec, contact The International Business Families Centre (CIFA) at **http://expertise.hec.ca/businessfamilies/**.

THINGS TO REMEMBER

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

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