

The Family Conversation You Should Not Avoid: How to Discuss Your Legacy

The BMO Wealth Institute provides insights and strategies around wealth planning and financial decisions to better prepare you for a confident financial future.

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How do you want to be remembered? What is the lasting memory that your heirs and beneficiaries will have when you pass away? Will they remember their period of loss as one when they were comforted and supported by each other or will it be one of the most difficult interpersonal experiences of their lives?

Everyone needs to take the time to consider what they are leaving behind. What is left behind is often far more than can be measured in monetary terms. In addition to material worldly assets, a person leaves behind a legacy, that represents their values, plans, beliefs and many cherished memories.

Traditionally, estate planning has focussed on estate administration and tax considerations and having the proper legal documents in place. It is now understood that the emotional impact on those left behind calls for the concept of **enhanced estate planning** to be introduced. Enhanced estate planning requires having the often difficult conversations necessary to share the background and reasoning behind the estate decisions that have been made that your heirs will have to implement.

Benjamin Franklin said “By failing to prepare, you are preparing to fail.” This statement continues to hold true as many families have direct experience with the reluctance of a parent to effectively plan, prepare and communicate their estate plans. So often this unwillingness to plan is increased by a lack of information about the parent’s wishes, especially when it leads to ongoing hostility over items that represent memories beyond their monetary value.

A survey noted that almost half (44%) of the people surveyed recognized that one of the most important reasons for having a will is to prevent family disputes¹.

Feelings of hurt and strained family relationships can be avoided, through the appropriate and necessary estate conversations with family members and other intended heirs and beneficiaries. Your personal legacy depends more on the effective communication of your values, plans and beliefs than on the items that can be neatly summarized in the paragraphs of your will and trust.

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Traditional Estate Planning

Estate planning has traditionally been seen as an exercise that is first undertaken with the assistance of accounting and legal professionals. For high net worth individuals, the primary estate planning documents that have to be prepared are a will and a trust. Powers of attorney for property (durable power of attorney) and for personal care (advance health care directive) should be prepared at the same time as the will and trust. Incorporated into these documents would be strategies that may minimize taxes, ensure that your worldly assets are distributed as you desire, and provide a means to make important decisions when you are not able. Only when the legal documents were completed would consideration then be given to letting family members know about what was planned.

The importance of having a will prepared is well understood by Americans who are in their retirement years. According to a survey, three-quarters of Americans over the age of 65 have a will. Unfortunately, overall the proportion of those with a will drops with age. Less than half of those surveyed who were age 54 or less had made a will².

A will is important for everyone, not just for those who are at an age when they are thinking about their own estate plan. The reason is that a severe and debilitating illness or death can happen at any age. The most important reason is to be able to ensure that any assets, both financial and sentimental, are passed in accordance with your wishes.

Enhanced Estate Planning

Enhanced estate planning is much more than just the creation of legal documents that include considerations for accounting and tax issues – it helps to avoid family conflicts.

Distinct advantages of the enhanced estate planning process

1. Avoid family conflicts over the division of the financial assets
2. Avoid family conflicts over the division of the personal effects
3. Leave a legacy that represents values, plans, beliefs, and cherished memories

Enhanced estate planning is an important way to share a real human story – the concept of a legacy. Legacy is the way in which a person is remembered by loved ones. It is how people would describe someone after they passed away. Legacy is leaving behind the essence of who you are.

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One of the best ways to create a legacy is through conversations with family loved ones, heirs, and beneficiaries. When a person passes away, they leave behind much more than assets and gifts for their loved ones. Often the most important things that are left behind are cherished memories. An important way to create lasting positive memories is to share stories about personal possessions and cherished assets with loved ones as you create your estate plan so that they have an understanding of your intentions, feelings and wishes. Sharing stories about these non-financial assets with loved ones and learning about the objects' importance to them will help to avoid family conflicts over the division of personal effects.

Many families are having conversations about the parents' estate planning and goals. In fact almost 90% of adult children and parents agree that estate planning is an important topic to discuss³. But only 19% of the adult children say that the discussions have been very detailed. The parents report that only one-third (33%) have had detailed discussions about their estate planning. Telling a child that a will, trust and powers of attorney have been prepared, and maybe even letting them know some of the plans for managing and distributing assets would be considered a discussion, but not a detailed discussion.

**33% of parents report that
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adult children.**

A detailed discussion would explain the reasons for the decisions that were included in the preparation of the will and powers of attorney, and be key to the process of building a legacy for those left behind. It is these enhanced estate planning conversations that would ensure a legacy that represents the values, beliefs and cherished memories remains long into the future.

Estate Planning Conversations

Consider the story of Frank. He was the retired father of three adult children who lost his wife many years back. Several years ago after a wonderful Thanksgiving dinner with his whole family, Frank gathered his three adult children together to let them know that he had his will and trust updated and he had made sure that each of them will be treated “fairly”. All were relieved to find this out and no further conversation took place for a number of years.

Last year, Frank passed away suddenly and his children were quite surprised by the instructions he left behind in his will and trust. At the time of his passing only one real estate property remained of the three that he had owned at the time of making his will and trust. In this case, only one of his adult children might receive the remaining property as she was specifically named as the beneficiary of that property. Depending on state law, the other two children might receive no real estate, or assets in lieu of real estate, as they were individually named as beneficiaries on the two properties that were sold over the intervening years to provide money for Frank to live on. The small amount of remaining cash and other assets were more easily divisible. But because the will and trust were not updated for many years, what might have once been considered fair from a financial point of view, was no longer fair.

This situation might have been avoided had there been enhanced estate planning conversations prior to the will and trust being drafted. Even after that date, conversations could have been initiated as the will and trust could have been updated, or replaced as long as Frank was able. While Frank did have an estate planning conversation, it was not detailed.

Another subject not addressed in the will and trust is the disposition of personal effects, and in many cases their exclusion can cause lasting grief. In the case of Frank’s estate, the one prized possession that Frank did not include in his will or his trust was the family cookbook that was left behind by his wife. Many pages included her hand written notes that helped to explain how she turned ordinary recipes into family favorites that all of

the children fondly remember from their childhoods. One daughter took possession of the family cookbook many years ago and has not let her sister or brother see the cookbook since.

Often non-financial assets are not even considered in a will and trust, leaving children to fight among themselves for the most coveted personal possessions that hold memories. Estate planning conversations could have been initiated by the children as it related to both financial assets and personal items. The conversations could have been a valuable opportunity for Frank and his children to share in his wife's memory, avoid future conflicts, and get better understanding of importance of these possessions to each family member.

4 Steps for Having an Estate Planning Conversation

It is important to try to have estate planning conversations prior to going to a legal professional to draft a will, trust and powers of attorney, and prior to working with accounting and tax professionals on the implementation of tax savings strategies. In Frank's example above, he skipped having the detailed conversations about his estate plans, goals and wishes with the outcome being less than positive for his children.

There are four steps to having meaningful estate planning conversations, what BMO Financial Group's Life Transition Expert, Dr. Amy D'Aprix, calls Essential Conversations™.

1. Clearly identify the issue
2. Avoid assumptions and expectations
3. Hear the point of view of everyone involved
4. Problem solve

Had Frank or his children started a more in depth estate planning discussion, they may have identified the family cookbook as a prized asset that had sentimental value to each of the children. Rather than the children feeling guilty about possibly being considered insensitive to their father or the memory of their mother, the conversation would have been an opportunity to avoid the assumption that the cookbook was not valuable to the children. Frank would have been able to hear each of his children express their points of view about items that had emotional value. Other family heirlooms

could have also been considered so that each child was able to receive family possessions that had important personal meaning to each of them. The family could even have solved the problem of having only one prized cookbook by having high quality reproductions produced so that each child could better share in the important memories the family cookbook evokes.

Frank and his children could also have looked at the decisions he made to implement a “fair” financial distribution in his will and trust during these estate planning conversations. Fairness could have been achieved through the use of different wording in his will and trust, or had Frank updated his will and trust for the significant changes that resulted each time he sold a real estate property. Each of these changes could have helped to improve upon the now damaged legacy that Frank left behind had he only had more detailed conversations with his children that explained his wishes and goals for his estate plan.

Consider the added importance of having estate planning conversations for blended or non-traditional families. More complex family relationships heightens the importance of hearing the varying viewpoints of all family members in order to avoid future conflicts.

Unfortunately a large number of families have also not yet had any estate planning conversations. The reasons are varied, but the most prominent reason is that many children feel that their parents’ money issues are private and not to be shared with them. Other reasons include feeling uncomfortable talking about financial preparedness, not wanting to upset each other by discussing estate issues, and a belief among parents that they would rather have their children not know or count on the size of their potential inheritances.

Estate planning conversations are very important and these should be about far more than money. Family relationships can be at stake. Where difficulties can start with the division of valuable financial assets (such as Frank’s real estate properties), issues are compounded when items having only sentimental or emotional value that cannot be divided, are involved. Why risk the chance of litigation between heirs?

One of the most prominent reasons that families don’t have estate planning conversations is because the children feel their parents’ money issues are private.

Moving from Estate Planning Conversations to Estate Planning Action

Completing the four steps to Essential Conversations is important to gain an understanding of what is important to the heirs and beneficiaries. While there may not necessarily be agreement among all of the heirs and beneficiaries regarding any estate planning decisions that are made, the conversations will serve two purposes. These estate planning conversations will provide the information necessary to help to build a more robust estate plan, that has fewer potential surprises, and it will help to create a legacy that loved ones will remember fondly.

Ideally once the conversations are complete then it would be time to create an estate plan. Estate planning has two important components. The first is providing for the quality of life of the people left behind – and this is done through the will and trust. The other is providing for the quality of your life – both financially and personally, should you become incapacitated. This is done through the creation of powers of attorney.

Important reasons for creating a will and trust

- Ensures distributions to family and loved ones based on the wishes of the deceased (rather than based on applicable state law)
- Helps to speed up the process of estate distribution
- Puts controls on access in place where needed (especially for minor children or individuals who may not be able to control their spending if they received a larger distribution)
- Put strategies in place to help reduce income taxes

Why you need a Will and Trust

If a will and trust were never made or cannot be found, state intestacy laws will determine how assets of the deceased would be allocated. Even though state intestacy laws may differ, legislation typically provides for the spouse first, and if there are children from a prior marriage then they will receive a defined percentage of the assets. As the rules regarding intestacy distributions are very specific, in many cases these would differ from the distributions that would be made through a properly drafted will and trust.

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Why you need Powers of Attorney

Powers of attorney can be divided into two major categories: those created to deal with property and those created to deal with the health and personal care of the creator of the document.

Power of Attorney for Property:

- Authorizes a trusted person to make decisions about personal finances in the event that the person creating the power of attorney is unable to do so.
- Can be used to manage banking, retirement savings, insurance, investments, mortgage and other debt payments, taxes and small business operations.

Power of Attorney for Health Care:

- Authorizes a trusted person to make decisions about health care issues in the event that the person creating the power of attorney is unable to do so.
- Can be used to manage the types of medical treatments received or decisions to not receive medical treatments.

As the naming of a power of attorney puts so much responsibility in the hands of the person named, it is critical to ensure that the trusted person chosen has the ability, knowledge and willingness to make difficult decisions at times when needed. Further, having planning conversations with the people named and other loved ones is necessary to avoid misunderstandings and potential conflicts when tough decisions are required to be made under either of the powers of attorney.

Having an understanding of the wishes and intentions of the provider of the powers of attorney gives greater piece of mind to the loved ones charged with the responsibility to act and reduces the potential for conflict with other family members.

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- Can be used to manage the types of medical treatments received or decisions to not receive medical treatments.

Essential components of an estate plan

There are a great number of potential strategies and solutions that can be used to help achieve the estate plan you envision. The following are four components that are considered key for the preparation of a well thought out estate plan.

1. Have family meetings about the estate plan

At the core of an effective and successful estate plan is the communication among everyone involved so that there is an understanding of what is intended by the testator. It is not possible to consider all possible scenarios and to account for these in the writing of a will and trust. But by sharing the thoughts, wishes and goals to be achieved by an estate plan, it is possible to give beneficiaries an understanding of the intentions on which the plan is based.

An analysis of the estate distribution as provided for in the will and trust is a valuable exercise to determine if the will and trust actually provide for the distribution intended.

Many families avoid having family meetings and conversations when enhanced estate planning could take place. Three of the most important reasons for creating a will and trust are: ensuring the assets pass to the right people (69%), to be sure that surviving family members are taken care of (54%) and to prevent family disputes (44%)⁴.

2. Update the will, trust and powers of attorney

In the example noted above, Frank did not update his will and trust for several years, even after his personal circumstances had changed considerably. When changes are so significant, the will and trust may not provide for the distribution intended. Not only can assets no longer be available, but intended beneficiaries may have predeceased, new potential beneficiaries been born (such as grandchildren), or changes in family circumstances (divorces) not have been considered.

Powers of attorney should also be kept up to date. An attorney who moves far away or who is no longer available, may make the power of attorney unusable. This may then require trusted family members to have to go through the time consuming process of going to court to be able to assume responsibilities that could have been easily given with up to date documents.

3. Put proper insurance in place

Insurance provides a financial safety net for the loved ones that are left behind. It can be used to replace income that can no longer be provided so that plans for the future can go ahead with little interruption. An estate liquidity analysis should be performed periodically to ensure that as time passes and circumstances evolve, that the estate plan contains the funds required to look after the beneficiaries as intended.

4. Appointment of an executor and trustee

An executor (also referred to as a personal representative) is the person appointed to administer a probate estate. A trustee is the person appointed to administer assets that are held in or are payable to a trust. The executor is responsible for locating the will and then following the terms of the will in order to distribute the assets according to the wishes of the decedent. The trustee collects property that is payable to the trust, manages the property and then distributes the property according to the terms of the trust.

Both the executor and the trustee (who could be the same person or entity) work with the family members to administer the decedent's estate, a process that includes a large number of tasks and responsibilities. Families may want to consider a corporate trustee to handle these responsibilities, especially if there is no family member to perform this role or there are concerns regarding the significant time investment required, the high level of knowledge required to effectively perform the role, or being at the center of family conflicts.

Additional strategies to consider when developing an estate plan.

- Trusts – joint trusts, marital trusts, family trusts, life insurance and other irrevocable trusts
- Corporate trustee
- Long term care insurance
- Use of joint accounts, beneficiary designations and transfer on death (TOD) designations
- Successor trustee
- Updated powers of attorney
- Marital agreements – before and after marriage
- Business succession plan
- Tax minimization planning

Conclusion

Proactive planning and professional advice go hand in hand. By working with a BMO financial professional and other key advisors who understand the importance of estate planning, you can develop a thoughtful estate plan and enjoy greater peace of mind.

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^{1,4} Survey from Rocket Lawyer: In a New Era of Estate Planning Rocket Lawyer™ Survey Shows That Only Half of Adults Have a Will, March 28, 2012

² Survey from FindLaw.com: US Data: Only One in Three Americans Have a Will, Says New FindLaw.com Survey: Only One in Six Younger Americans Have a Will, February 7, 2013

³ Survey from Fidelity: Parents and Adult Children Not in Sync as Many Families Still Struggle with Financial Conversations, November 14, 2012

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