Estate Planning for Physicians

You've been devoted to establishing your medical practice, providing for your family and saving for a comfortable retirement. As busy professionals, doctors may overlook the potential impact on their family and practice if they were to become critically ill, incapacitated or pass away unexpectedly. That's why it's important for physicians to prioritize estate planning within their wealth management planning.

An estate plan can provide the peace of mind that comes from knowing your family and financial affairs will be properly managed according to your instructions. Unfortunately, there is no *one-size-fits-all* estate plan. An effective estate plan is tailored to your specific circumstances and, as a physician, addresses considerations that are inherent to your profession.

Probate planning and the ownership structure of assets

Depending on your province of residence, probate taxes or fees may be significant, particularly in Nova Scotia, Ontario and British Columbia. It is important to note, even in these 'high' probate provinces, the amount payable is less than 2% of the value of the estate that is subject to probate.

Proper planning is important. Elaborate schemes to avoid probate taxes can create much larger income tax issues or other problems down the road. For example, although holding your family home jointly with your spouse or common-law partner ("spouse") may save on probate fees[1] if you were to die first, your home could be subject to seizure by creditors if there was a successful claim against you in excess of your medical liability insurance limits. Accordingly, many married business owners, including medical professionals, choose to register most, if not all, personal assets in the name of their spouse for liability purposes, at the risk of higher probate fees.

It is possible to designate beneficiaries on certain assets, such as a Registered Retirement Savings Plan ("RRSP") and life insurance, so that the proceeds pass directly to the named beneficiaries rather than through your estate. Provided that a beneficiary survives you, the proceeds will not pass through your estate, avoiding probate fees. It is important to ensure that your beneficiary designations and the ownership structure of your assets are consistent with your overall estate plan. Certain types of registered assets and life insurance may be creditor protected due to the nature of the asset itself. Other assets may be protected from creditor claims through the use of trusts. Depending on your province of residence, it may be possible to pass some assets, such as certain business interests, to your beneficiaries through a secondary Will that bypasses the probate requirement. However, this is a very complicated area of law, and professional legal advice should be sought.

Importance of choice of attorney and executor

Whether you are operating your medical practice as a sole proprietor, or through a partnership or corporation, the administration of your affairs is likely complex. If you suddenly become incapacitated or pass away, your spouse and/or children may be required to attend to your personal and professional affairs. However, depending on the nature of your practice, you could put certain agreements in place to deal with these potential situations.

Many partnership and shareholders agreements contain clauses that indicate what happens if one of the partners or shareholders becomes incapable or passes away. For example, your partnership agreement may impose obligations on the surviving partners to buy out your partnership interest, with the proceeds passing to your estate and distributed in accordance with your estate plan. Often times this is funded by life insurance to ensure that liquidity is not an issue. Your overall estate plan needs to be consistent with any such agreements, and a good estate plan will often include a partnership or shareholder agreement for your business interests.

Further, your attorney for property and executor need to be aware of such arrangements, so they can administer your affairs in a manner consistent with your rights and obligations under such agreements. Given the complex nature in administering a business owner's estate, it may be prudent to consider a professional trustee, such as BMO Trust Company, to assist in administering your affairs in the event of incapacity or death.

Wills and Powers of Attorney

Your Will and Powers of Attorney are integral parts of an estate plan. It is important that all relevant estate planning documents, including your Will and Powers of Attorney, are kept current and align with your asset structure and other agreements to ensure that your estate plan operates smoothly.

Your Will officially appoints your executor (called a liquidator in Quebec) to manage the administration of your estate. The terms of your Will govern the distribution of all of your solely owned assets, other than those which pass outside the estate by way of beneficiary designation, as previously discussed. Depending on your particular circumstances, it may be advisable to use specific strategies, such as including a spousal trust, life insurance trust, trusts for certain beneficiaries, or using multiple Wills to reduce probate fees. There are many ways to set up distribution options through a Will, and professional legal guidance is essential to ensure that your estate plan is established properly.

Powers of Attorney for Property and Personal Care as they are called in Ontario, appoint another person to make decisions regarding your property and personal care while you are alive. For example, you may have a Power of Attorney for Property (called a Mandate in Quebec) that appoints someone to make financial decisions for you if you become incapacitated. There are limits on what decisions an attorney may make on behalf of the donor (the person who made the Power of Attorney). For example, your attorney may not be able to step into your shoes as director of a corporation, or as trustee of a trust. As a medical professional, you can appreciate the importance of having a properly drafted Power of Attorney for Personal Care (also known as an Advance Health Care Directive in Ontario, a Personal Directive in Alberta, and a Representation Agreement in British Columbia). Although there may be provincial legislation that provides default decision-making authority to certain relatives, if no Power of Attorney for Personal Care is in place, it is preferable to draft a customized document in accordance with your specific wishes.

Reviewing your estate plan

It is important to review your estate plan periodically, even if there have been no significant changes to your personal circumstances. In recent years there have been significant changes to tax legislation and an executor's duties that may warrant a revision of your estate plan. For example, recent tax changes may significantly impact your ability to split income with other family members through your medical professional corporation. It is recommended that your estate plan be reviewed at a minimum of every three to five years, or when a significant change in your circumstances occurs.

Seek professional advice

Due to the complex nature of estate planning, it is essential that you obtain legal and tax advice from professionals who specialize in this area. Your BMO financial professional can guide you through the estate planning process and help connect you with external legal and tax advisors to establish a customized estate plan that meets the needs of you and your family.

For more information, please speak with your BMO financial professional.

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[1] Joint tenancy with right of survivorship is not recognized in Quebec. In Quebec, ownership of property by more than one person can only be achieved by way of co-tenancy, also known as tenancy in common.

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