Do Not Ignore Your Mortality

PRACTICAL ADVICE FROM A FUNERAL & FINANCIAL INSIDER

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Estate Planning 101

Leave a legacy, not a legal and tax headache

"The need to leave a legacy is our spiritual need to have a sense of meaning, purpose, personal congruence, and contribution."

— Stephen Covey

We all know we are going to die eventually. Those genuinely willing to plan around their death have a unique commitment to those they love and the causes they believe in. Going through the planning process often provides a rather liberating and peaceful feeling. After the planning has been initially established, the all too familiar forces of avoidance and control seem to fade.

It is natural to think of your mortality more often as you age. If you are fortunate to live to a ripe old age, these thoughts occur more frequently. Some, however, are forced to face the end of their lives sooner due to unwelcome health issues.

Facing the end of your life due to a terminal illness must be incredibly difficult. I cannot imagine it. Coming to terms with this devastating reality can be eased through a unique medically related support program known as palliative care. The World Health Organization describes palliative care as "an approach that improves the quality of life of patients (adults
and children) and their families who are facing problems associated with a life-threatening illness. It prevents and relieves suffering through the early identification, correct assessment and treatment of pain and other problems, whether physical, psychosocial, or spiritual. Addressing suffering involves taking care of issues beyond physical symptoms. Palliative care uses a team approach to support patients and their caregivers. This includes addressing practical needs and providing bereavement counseling. It offers a support system to help patients live as actively as possible until death." It further states, "Palliative care is most effective when considered early in the course of the illness. Early palliative care not only improves quality of life for patients but also reduces unnecessary hospitalizations and use of health-care services."  

Dr. Kathryn Mannix, a well respected consultant in palliative medicine, Newcastle upon Tyne Hospitals, U.K., explains it well; "The process of dying is something we recognize and understand the sequence of. We can walk alongside of them to make sure their symptoms are well managed, as they gradually lose awareness of the world around them as their breathing slowly fades and stops."  Learning about palliative care often reduces or even eliminates many frightening concerns of what is often a peaceful process.

Professionals from this field are eager to improve the public's perception of this very worthwhile and unique support system. The need for palliative care is dramatically increasing. The government of Canada, as an example, has taken a bold position to expand and enhance the entire system nationwide. The Framework on Palliative Care resulted from evidence revealing Canada has fallen behind in this area. The Canada.ca website indicates, "According to the Economist Intelligence Unit's 2015 Quality of Death Index, Canada has slipped from 9th to 11th out of 80 countries based on the availability, affordability, and quality of palliative care. While the provision of palliative care has improved since its inception in the 1970s, a number of reports have identified ongoing gaps in access and quality of palliative care across the country". 

The number of people dying in hospital settings is declining. The prestigious Harvard Medical School reported, "Although more than 700,000
people die in hospitals each year in the U.S., the trend is toward fewer in-hospital deaths...Some of the reduction in deaths during hospital stays and emergency room visits could be due to improved treatment. But much of the decrease is probably due to other factors, including improved availability and acceptability of alternative sites of care, including hospice settings”.

Palliative care and hospice care are very similar. Palliative care is broad in scope and is often provided in hospital settings. On the other hand, hospice care is typically provided outside of hospital environments when someone with a terminal illness has less than six months to live. This support includes symptom relief due to the disease, counseling, help with medical equipment, and family and grief support. Curing treatment is no longer provided with hospice care.

Medical assistance in dying (MAID) is a relatively new and growing practice in my home country of Canada, as well as the United States, Belgium, Colombia, and the Netherlands. Although the act of intentionally bringing an end to one’s life is very controversial, it is slowly becoming more accepted within our society. Ongoing debates over procedural safeguards and enhanced data collection for monitoring purposes are the tip of the iceberg regarding the highly emotional nature of this topic.

Cultural and social barriers surrounding death and dying are slowly improving. The tendency to avoid these issues out of fear is being gradually replaced by ripples of mild acceptance. Industries other than the medical field are gaining ground in convincing the public to plan around their mortality. Beyond medical care, the most prevalent areas of planning involve legal and financial guidance.

I realize everyone does not have the financial means to hire a lawyer and financial planner to assist them. However, there are an increasing number of online resources to help those who want to complete their own planning. As I have stressed earlier though, the do-it-yourself (DIY) approach does have distinct limitations. Creating your own will online as an example, is only practical if your situation does not involve such things as support payments, strained family relationships, a blended
family, business or foreign property ownership, or any complex "if this then that" scenarios.

For those wanting to ensure their estate documents are thoroughly organized, engaging an experienced estate lawyer is absolutely your best option. The old adage of 'you get what you pay for,' holds very true in this sense. Legal professionals are your ultimate defense and can provide you with all kinds of relevant information, strategies, and solutions regarding such things as;

• The structing of your documents so they will be compliant with the rules of your jurisdiction.
• Practical steps to reduce the risk of your wishes being challenged or contested.
• Ways to ensure your final wishes are respected and followed.
• Advice to help you effectively decide upon the best executors for your circumstances.
• Verification that no one was influencing you before/during the preparation of your will (in case ever questioned).
• Ways to help you structure fair treatment of your beneficiaries (which does not always mean equally).
• The expectations/role of those acting as your executors.
• The common planning risks involved with such things as blended families.
• How to establish motivating financial incentives for your beneficiaries.
• Verification that you were of sound mind during the entire process (in case ever questioned).
• Information to help your executors with settling your estate.
• Strategies to help control negative emotional reactions and arguments between your beneficiaries.
• How to establish financial controls to protect any spendthrift beneficiaries (from themselves).

• Effective ways of leaving particular people out of your will (if you choose to do so).

• Help with considering everything you should when establishing your will.

• The creation of a legacy that is truly reflective of how you want to be remembered.

• Guidance to make minor changes to your will as your situation evolves.

• Their collaborative work with your financial planner and your accountant.

• The safekeeping of your original will until needed.

Yes, that is a long list, but it is important to be mindful that legal advice is vital. Attempting to accomplish estate/legacy planning without any legal guidance whatsoever is like trying to perform your own surgery. It will not be effective, and it could be just as painful. Having proper legal guidance will ensure your will is going to accomplish what you want. Ignoring this fact will result in unnecessary expenses, frustration, and stress.

Establishing a trust is something that you may also want to consider. Financial assets and other property are transferred into this legal entity for the purpose of benefiting the beneficiaries of your choosing. The primary advantage of using a trust is that it creates greater security, savings, and privacy. Trusts have been popular for hundreds of years. They can be structured in several creative ways. Trusts are certainly worth looking into, especially if your situation involves a higher net worth.

There are many details regarding the topic of wills and trusts, however, I do not want to give any impression that I am providing legal advice. I am not a lawyer. I have taken several courses in my career, including some legal information, but nowhere near the extensive training lawyers
receive. I am convinced, however, that guidance from knowledgeable professionals is crucial.

In Chapter One it was pointed out that financial planners are another important part of your advisory team. They are not only crucial to the growth and protection of your money, but they often act as a quarterback with your lawyer and accountant. This type of comprehensive planning provides you and your family with the greatest peace of mind.

Financial planners who are seasoned in the area of estate/legacy planning are instrumental. These planners are familiar with the current rules of your jurisdiction. They are uniquely positioned to help you with such things as:

- Strategies to help you defer or eliminate tax.
- How to arrange for timely and private transfers of money after your death.
- Ways of transferring money to your loved ones while bypassing your estate.
- Methods of creating financial security for you and those you love (short and long term).
- Ways to effectively reduce estate costs.
- Steps to create greater privacy regarding your personal affairs (i.e., Who gets what, etc.).
- Ways to help your executors with the settlement of your estate.
- How to minimize the risk for those acting as your executors.
- Cost-effective strategies to significantly benefit charitable organizations which may be important to you.
- Remind you to keep your estate/legacy planning current with legislative changes and your situation as it evolves.
- Ways to leverage life insurance based on your objectives.
• Strategies to help control negative emotional reactions and arguments between your beneficiaries.
• The creation of a legacy that is truly reflective of how you want to be remembered.
• Strategies to better organize your affairs.
• Determine if there are any unforeseen risks.
• Collaboratively working with your lawyer and accountant.

This detailed approach is far superior to any other method because it considers the bigger picture of your unique situation. FP Canada completed an extensive three-year survey across Canada and found those “who engage in comprehensive financial planning with a CFP (Certified Financial Planner) professional confirm significantly higher levels of financial and emotional well-being”. This is very compelling.

It is important to realize that some financial planners do not get involved in any estate/legacy planning. They may have a speciality focus they provide such as investment planning, retirement planning or risk management planning. These planners can provide excellent value, but it’s best to ensure that you are not missing any areas. A comprehensive financial planning service is best.

Deciding upon a financial planner to work with is not always easy. One of the most effective strategies is simply to ask relatives and friends who they use (and why). Keep in mind though, a good fit for them may not also mean a good fit for you. Everyone’s situation is different. I recommend interviewing three to four financial planners. This takes time and effort but is well worth it. If you’re able to obtain references from existing clients, this too is valuable.

If you are not receiving professional financial planning guidance, I highly recommend you consider otherwise. There are so many benefits to working with a good financial planner. Here are just a couple; greater confidence in your future and less stress. Can you really put a dollar figure on
those qualities? Investing in your future (as well as your family’s future), whether you’re here to enjoy it or not, is still money well spent. Your financial health is very important.

So, what is a healthy estate? It’s one which has been discussed with those you love, including your executors. They respect and know what you want done. They also know how your assets (large and small) are to be distributed. Tax planning has been considered, there are no disputes, and there will be no forced asset sales to pay for unexpected taxes. Your affairs are in order. Congratulations. This is the peace of mind I have been referring to.

In many situations, family members and/or close friends are chosen as executors. Typically, this delicate decision is based on who they trust the most. If those people have acted as an executor in the past though, they should certainly be asked if they genuinely want to do it again. In my experience, most people do not want to be an executor often enough to get good at it. I’m a Certified Executor Advisor, and I would be fine with never being an executor again.

Many people provide their executor with some details of what they want for their funeral. However, very few people leave their executor with any guidance regarding the next 18 - 24 months (or longer) required to settle the estate. Most executors are forced to ‘learn as they go’. This can be very time-consuming, require more legal expenses than necessary and be frustrating to the beneficiaries anxious to receive their gift from the estate.

Executors are often in a challenging position. They are always expected to keep the deceased’s wishes and best interests of the estate beneficiaries a top priority, successfully handle various detailed tasks in a timely manner and maintain very good notes throughout the process. Being close to the deceased, they also need to work through their own grief simultaneously. Being an executor can be like having a very stressful part-time job for about two years.

Choosing the best people to act as your executors is not always easy. A common approach is simply to name all the adult children. This may
seem like the fairest and most straightforward solution, but this strategy can easily create significant problems.

If your children already have busy lives, will they really have the required time and patience to wrap up all your affairs properly? Do they have the skills? Have they always got along, and will they be able to do so throughout the process? Remember, the time following a death (especially a parent’s death) is often extremely sensitive and sometimes volatile. Emotions will likely be running high. When the sentimental aspects of dividing up your things are added to the mix, it could be a disaster waiting to happen. Brothers and sisters being forced to work together can be challenging at the best of times. It could be the worst experience ever. Expecting family harmony to continue after you are no longer alive may be unrealistic.

If there are strained relationships in your family now, they may never improve, unfortunately. Some people get to the point where they just don’t care and are not open to making things right. These legacy conversations, however, can have a positive impact. Looking deep into one’s soul in the context of life’s meaning, is a humbling experience.

Below is a condensed list of the various duties of executors. They include, but are not limited to:

- Securing all your property.
- Communicating with all your beneficiaries.
- Locating your original will.
- Arranging your funeral/cremation/burial.
- Locating all your financial documentation.
- Completing the inventory of your assets.
- Communicating the contents of your will with your beneficiaries.
- Notifications.
- Applying for probate.
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• Advertising for creditors.
• Managing and accounting for the estate.
• Completing your tax returns.
• Paying out final disbursements.

Just because you have a person in mind who is very smart and extremely organized does not always mean this is the best choice either. Adding all the work of executor to their already busy schedule may not be welcomed at all. What if the person(s) you name as your executors are unable or unwilling to be your executor at the time of your death? Remember, they cannot be forced to act in this role for you. If you choose an executor who happens to live in another jurisdiction, this too can create additional complications due to rules of the other jurisdiction needing to be followed. This deserves careful consideration.

More people should consider involving a corporate executor, at least to some degree. Many firms offer this valuable service, and yes, it does come with a cost. I will discuss that soon, but let’s look at the benefits first. The Canadian Retirement Education Group Inc explains the benefits very well on their website.52

“BENEFITS OF USING A TRUST COMPANY AS EXECUTOR

Experience and expertise in will and estate planning: A large portion of any trust company’s operation involves acting as an executor. A trust company’s staff can advise you on a regular basis in terms of coordinating the contents of your will with the other financial affairs, needs and personal changes in your life, as they are closely interrelated. In addition, planning involves determining what taxes would be payable by the estate or beneficiaries and considering procedures for minimizing or providing for these taxes.

Accessibility: A trust officer is assigned a specific estate and is personally responsible for providing customized and responsive service.
Full attention to the needs of your estate: Given the established infrastructure and continuity offered by a trust company, the operation of your estate administration is smooth. If a layperson is an executor, their attention to the executor duties could be influenced by other personal interests, age, ill health, procrastination or excessive stress due to the demands of fulfilling expectations in an area where they have no experience or expertise.

Financial responsibility and security: Most trust companies in Canada are well-established and are backed by substantial capital and reserve accounts. Trust companies strictly segregate estate assets from the general funds. They are also covered by insurance in case there is a mistake or oversight due to negligence or inadvertence.

Funding capacity: A trust company can work with the members of your family to provide for their immediate financial requirements and needs immediately after your death.

Specialized knowledge: Due to the increasingly complex nature of tax and other legislation issues relating to an estate, as well as to the wide variety of options available, a trust company employs a staff of experts to review and advise on related issues. Specialists include expertise in tax, legal, insurance, investment and other areas.

Acting as a trustee: This means that the trust company protects your ongoing interests after you die. One example would be managing your investments or capital and making payments to designated beneficiaries as required over time. If there are minor children, children from a previous marriage, or situations where the estate assets have to be controlled for an extended period of time, a trustee is required. A trustee could be giving out necessary funds from your estate over a period of 20 years or more.

Avoiding the possibility of family conflict: In any family situation there could be personality or ego conflicts, friction due to issues dealing with control, power, money, and distribution of family possessions or assets, resentment due to past financial favors to certain children or forgiveness of loans to others, unequal distribution of the estate to family members, or a multitude of other potential conflict areas. A trust company acts as
a neutral, objective and professional entity in pre-empting or resolving potential disagreements affecting the administration or distribution of the estate.

Peace of mind: There is great relief in knowing that your estate will be administered competently, professionally, promptly and in accordance with your stated wishes. An experienced trust company can provide this peace of mind and feeling of security.

Finally, remember to interview a minimum of three trust companies before you decide which one is right for you.”

It was mentioned above that trust companies are covered by insurance in case of a mistake, oversight, or negligence. While that is true, similar insurance can now be purchased to protect individual executors. It is a prudent step to consider especially since executors are at greater risk than ever. Estate insurance should be proactively considered in the planning process long before a death occurs.

I previously stated that an executor acts as a fiduciary. This is a high standard which requires the executor to be fully informed, timely, organized, and careful. If an executor does not act in such a manner and the estate loses money, the executor can be personally liable and sued for the loss. This is a very real risk that more people need to be aware of.

I mention the idea of engaging a corporate executor (trust company or lawyer) to suggest you may want the best of both worlds. If you decide to hire a corporate executor to work with your personally selected executor (such as a close friend), this will remove some of the heavy burdens from your friend. She/he will be able to provide your beneficiaries with the personal touch, as there is familiarity with your family. The corporate executor could look after the heavy lifting – the things which your friend would rather not do. This approach can often make good sense. Engaging a corporate executor alone may also be best, depending upon your situation.

Anyone acting as an executor has the right to be paid. While close relatives or friends may offer to do the work for no compensation, they may regret making that decision when they realize what the role really involves.
It would also not be fair to expect people to be an executor without any compensation. It is often a thankless job that some beneficiaries do not value as much as they should.

The cost of executor services can be as high as about 5% of the estate. This will depend on your jurisdiction, but it can also depend upon what you arrange in advance with your executors. If your estate is well organized and will be straightforward to settle the details, the executor fee would tend to be lower. More involved estates will tend to have a higher executor fee.

Anyone asked to be an executor should know what they are getting into before accepting the role. If the will-maker (testator) has been married more than once, has strained family relationships, owns foreign property, or has been involved in a business, the executor’s role will be more difficult. Knowing these types of things before the testator’s death is crucial. If the testator is not taking steps to organize their estate properly, beware! This is a big red flag for anyone asked to be their executor. For the executor to have the best outcome in settling the estate, it is vital the testator plan appropriately with transparency and total engagement. If the testator is not doing this, anyone asked to be their executor should question whether they want to be involved.

Earlier, I mentioned the problem of secrecy. It is certainly understandable that issues such as infidelity or illegitimate children would cause many testators to avoid disclosure, but transparency is crucial for effective estate/legacy planning. Anything less than full engagement in this process will increase the risk of problems. Those who think they are owed something can be very forceful after a death. Consider this statement from Mondaq.com, a well-established legal information website. "The State of New York’s Court system reported an approximate 350 percent increase in contested estate cases between 2016 and 2019—from 1,005 cases to 3,500 cases just three years later". Do not let your estate become another bitter statistic.

Too many people do not inform those they have selected as executors that they will be an executor in the future. This makes no sense. You may like and respect someone for their strong work ethic and honesty, but
this role is certainly not for everyone. Those who are named as executor should be well prepared in advance and not blindsided at the same time as being informed of the death of someone dear. The shock of, 'Surprise – you’re my executor' is definitely not a responsible way of leaving a memorable legacy.

The perception of being named as executor is frequently viewed as an honor. Generally, those trusted family members who tend to be responsible, compassionate, and organized are the ones who are selected. However, the reality of being named as executor can often be very stressful unless you have plenty of free time and you think you are the best person to handle the family infighting, second-guessing, and backstabbing. Fulfilling this unique role may be the only one were you’re asked to take on a major project, but you cannot ask any questions or get help from the person who asked you to take on the project.

Executors are not expected to have the knowledge of a lawyer, financial planner, or accountant. They are, however, expected always to have the testator’s and beneficiaries’ best interests at heart. Even a straightforward estate, though, can have issues regardless of the executor’s experience or knowledge level. Beneficiaries have the right to know what is happening, but the executor is not required to consult with the beneficiaries or keep them updated every step of the way. This surprises many people.

Beneficiaries can feel that communication with the executor is an invitation for them to provide input. However, they do not have the right to offer any input, as the executors are the ones in charge. It is a prevalent yet unusual situation. Executors owe a duty of care to the beneficiaries. For example, they must keep proper records of all financial transactions and show those records to the beneficiaries if they request to see them. Executors are held to increasingly strict standards.

If you or someone you know is likely to be in the role of executor or power of attorney at some point, they should consider completing an online course which provides them with the fundamental knowledge they need. I recommend the Personal Fiduciary Certificate course through Personal Fiduciary Standards International. I recently completed this course and found it to be very good. The cost was very reasonable at
$39.95 USD. The level of difficulty was very low (beginner), a formal certificate was provided upon completion (involving a brief test), and it only took a couple of hours to finish.55

This type of innovative course is a great way for anyone, anywhere, to quickly become more aware of the standards they will be held to as a fiduciary. Even those who are currently in the role of executor or power of attorney would be wise to consider this type of online training.

"The only certainties in life are death and taxes"

– MARK TWAIN

A good amount of estate/legacy planning is tax motivated. Being proactive and planning with appropriate advice can result in substantial savings. After your death, however, the opportunity for implementing tax planning strategies is reduced drastically. The ‘tax headache’ in the subtitle of this chapter refers to the common regrets and frustrations which are often realized among surviving family members as the estate is settled.

A prevalent tactic is simply adding a family member as a joint owner to your bank accounts. This may seem like a logical and cost-effective idea (it generally does not cost anything), but risks are involved. The new joint owner will have access to your money, and if she/he has financial problems or a divorce, it could result in a claim on your joint account. Estate settlement involving joint accounts could be problematic if you do not adequately specify what is to happen with the account upon your death. When the one account owner dies, the surviving owner typically has complete control of the assets in the account. Joint accounts after death are a common area of estate litigation.

Payable-on-death accounts are the type that allow for named beneficiaries to be specified. Two common examples are Registered Retirement Savings Plans in Canada and 401k Retirement Plans in the United States. At the time of the account owner’s death, the proceeds payable go directly/privately to the named beneficiaries specified on the account. This is a popular and straightforward strategy because the account does
not form part of the estate. The more assets which form part of the estate, the higher the probate (Court) fee. Keeping the beneficiary designations on these accounts current with your wishes will allow your beneficiaries to receive money quicker than accounts included in your will. Life insurance policies also provide these same advantages.

The Investopedia website provides a good explanation of probate. "It is the process of proving the will is, in fact, the last will, and there are no challenges to it and of adjudicating any claims against the estate under Court supervision. Probate usually occurs in the appropriate Court in the state and county where the deceased permanently resided at the time of his or her death…These proceedings take time and money, and your heirs are the ones who will have to pay. Since probate proceedings can take up to a year or two, the assets are typically "frozen" until the Courts decide on the distribution of the property. Probate can easily cost from 3% to 7% or more of the total estate value".

Proactive tax planning can help avoid assets from needing to be sold. If cash is not readily available to pay obligations like taxes owing, estate assets such as a cottage property or business may need to be sold quickly. A forced sale may mean the assets are sold for less than their fair value. In many cases, these things have been in the family for years. Being forced to sell a family cottage where generations of children learned to swim is something most families would prefer not to do.

After you die, the government becomes very interested in your estate. (Some would argue, too much so). In many jurisdictions throughout Canada and the United States, a greater amount of tax is forced upon estates. Planning for these things while still alive provides flexible options which are incredibly valuable. Many of those options expire when you do.

Numerous estate-related tax topics have been well covered in other books by very smart people. I am not one of them. My comments regarding tax planning are intentionally brief because this is meant to be an inspiring introduction to estate/legacy planning. I hope I am inspiring you.
DO NOT IGNORE YOUR MORTALITY

Bottom line;

1. Seek out a good lawyer who focuses on estate/legacy planning.
2. Seek out a seasoned financial planner who enjoys estate/legacy planning.
3. Choose your executors most carefully.
4. Online estate/legacy/financial planning with limited advice requires an abundance of caution.
5. Consider volunteering at a local hospice.