# Rethinking your estate plan: Beyond the traditional will

January 2025

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When it comes to estate planning, many individuals follow a common script: leaving everything to a spouse, and if the spouse passes away first, then everything is passed on to their children. While this traditional approach may seem straightforward and logical, it doesn't always align with everyone's unique circumstances. Here are scenarios where a different approach may be warranted.

## Reasons to consider an alternative estate plan

### 1. You want to give to charity

Don't forget to include a gift for your favorite causes when making your will. Not only does this reflect your values, but your estate may be able to claim a charitable tax credit to reduce your final taxes or estate taxes.

It's important to note that your estate trustee cannot choose to make a gift; their role is to follow your will. Therefore, in order to make a charitable gift, you need to explicitly name the charity as a beneficiary in your will or name a charity in the beneficiary designations of insurance policies or registered plans, where allowed.

## 2. Your spouse has sufficient wealth

If your spouse is financially secure, leaving them the entirety of your estate may not be necessary. Instead, consider allocating some of your assets to your other family members, favorite charity, or close friends, allowing them to enjoy an earlier gift.

Making a gift to other beneficiaries also helps avoid complications that arise if a spouse remarries and subsequently leaves everything to their new partner. By naming other beneficiaries in your will, you can ensure your assets benefit those you care about and support causes that are important to you.

In certain provinces, such as British Columbia, Ontario, and Nova Scotia, there is an added benefit: you may avoid paying probate fees on the same assets twice. Once when you pass away and your assets go to your spouse and potentially again when your spouse dies, and these assets pass to another beneficiary.

Important considerations:

Consider whether your spouse should be gifted ownership of essential property that they are currently using, such as the family home and personal belongings. You can likely prevent conflict by making sure your other family members, friends, or charity do not become the owners of these assets.

Be aware of tax implications when gifting to someone other than your spouse. Assets with accrued capital gains can usually pass at their cost base to a spouse, which will delay the taxes until the spouse’s death. However, gifts of appreciated assets to others usually incur a tax liability to the deceased as a result of a deemed disposition at death.

Family laws in your jurisdiction may allow a spouse to claim a portion of your estate instead of taking what you have provided in your will. So, if you are not following a traditional distribution discuss your plans with your spouse. Have a qualified estate lawyer from your province help you with your plan.

## 3. One of your children has a disability

If one of your family members has a disability, it is crucial to consider their long-term needs. Leaving everything to your spouse or dividing assets equally among your children may not adequately provide for your family member with a disability.

Consult with an estate lawyer about how you can structure your estate plan to provide for any family member with a disability. You may want to establish a trust, to provide the necessary assistance to such family member without jeopardizing their eligibility for government benefits.

Don’t forget planning you can put in place during your lifetime as well. Talk to your tax professional and your CIBC advisor about contributing to the family member’s Registered Disability Savings Plan, where applicable. For more information see: Advanced Planning with RDSPs.

## 4. You have a blended family

In families with children from previous relationships, a traditional estate plan can create complications. If you pass away first, will your spouse distribute assets equally among all children? It may be prudent to give some gifts to your children in your will or use a trust to ensure that funds are distributed to all of your children after your spouse passes.

Planning for equitable distribution can be challenging, especially when you may not be aware of your ex-spouse's financial situation or estate plan. For example, consider Sandeep, who leaves $1 million to be equally divided between his two children. His first wife, Marta, leaves $1 million to their child together. In this scenario, their child would inherit $1.5 million, while Sandeep’s other child would receive only $500,000.

To equalize inheritances among children from different relationships, you might not provide for an equal distribution to your children from your will. Alternatively, you might consider purchasing life insurance to provide an additional inheritance for the children who are anticipated to receive less. Engage the services of a qualified estate lawyer to assist in crafting the right clauses to include in your will.

### 5. Family business considerations

In families where some children are actively involved in the family business while others are not, a traditional estate plan may prove inadequate. When business assets are personally owned, dividing these assets can be perceived as unfair to the child who is taking over the business. Additionally, if shares of a private company are involved, having individuals who are not engaged in the business become shareholders can complicate family dynamics. Therefore, a thoughtful approach is essential to help maintain harmony within the family and ensure the continued success of the business.

We recommend collaborating with qualified professionals to develop a succession plan that addresses the needs of those involved in the business while also considering the interests of those who are not. For example, you may want to consider exploring life insurance to create an additional asset class for children who are not participating in the family business, to help ensure their financial security and to foster family unity.

## Conclusion

While the traditional estate planning approach of leaving everything to a spouse and then to children may work for many, it is essential to evaluate your unique situation. By considering factors such as your spouse's financial status, the needs of your children, and the dynamics of your family, you can create a more personalized estate plan that reflects your values and priorities.

Consulting with your tax and estates professionals and your CIBC Advisor can help you navigate these complexities and develop a plan that best suits your needs. A well-thought-out estate plan may help you protect your assets, foster family harmony and ensure that your legacy is honored.

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