

Estate Planning for Life in the Middle

By Thomas E. Junkin

It is one thing to plan your estate with your children in mind, but amid this sandwiched generation a growing number of clients are asking, “Who will care for my mother and/or father if something happens to me?” You can almost hear the brakes of a busy life screeching to a halt when that question comes to mind.

A 2012 Statistics Canada report indicates the number of Canadians over age 45 who were providing care to elders had increased to 4.5 million, a 20% increase between 2007 and 2012.¹ While people have always cared for the elderly, and in most historic cultures it was not unusual to find three generations living under one roof, several converging factors are shaping the growing realities of 21st century “sandwiching:”

- The aging baby boom generation will result in seniors representing a larger portion of the population.
- Lower fertility rates mean fewer adult children to share the care for aging parents.
- Later marriage and child-bearing cause more overlap between eldercare and child-rearing.
- Adult “boomerang” children are returning to the family home for various reasons.
- There is a societal shift from institutional care to home care for elder patients.

From our vantage point, we know if you are providing care or financial support to aging parents, you also likely face unique estate planning considerations. Planning for your children’s future is distinctly different than planning for the benefit of parents. To start with:

- Focusing on passing wealth to your children is largely a unilateral process. You (and your spouse) decide how, and how much each child will inherit. The child usually has little input in the process. Alternatively, plans to protect your parents will almost always require some joint planning between your parents’ estate and yours.
- Plans to protect vulnerable or financially dependent parents may require cooperation among adult siblings, or sometimes one child may accept more responsibility.
- A husband or wife usually counts on their surviving spouse to support dependent children. Expecting a surviving spouse to care for a deceased spouse’s parents may not be as automatic.

With this in mind, there are two important halves to the sandwich situation that need attention to help ensure life “works” as you envision.

YOUR PARENTS’ ESTATE PLAN

Discuss your parents’ financial situation and plans with them. This can be a difficult, but necessary, topic to approach. One conversation starter is to mention you are working on your estate plan and want to ensure it takes your parents’ needs into account. Introducing your parents to your financial advisors can be a way to begin an objective discussion. As part of the conversation, address questions such as:

- Do your parents have a Will, properly prepared and executed by a lawyer, which directs how their estate will be distributed?
- Do they have a Power of Attorney that appoints someone to make financial decisions on their behalf, and an Advanced Health Care Directive (which may go by a different name depending on the province where they live) that appoints someone to make medical decisions on their behalf?
- Have your parents designated beneficiaries for their life insurance and registered investment plans? Are those designations up to date, and consistent with their overall plan for estate distributions?
- Can they provide a copy of their estate planning documents, or tell you where they are held so you can find them?
- Do your parents maintain any digital assets (online bank accounts, social media profiles, photo or music collections, etc.)? If so, have they prepared an inventory including passwords? Do they have specific instructions about what is to be done with such assets?
- Who are your parents’ legal, financial, insurance and tax advisors? Can you meet them?
- Is there an opportunity to simplify their financial lives? For example, if they deal with several financial institutions or advisors, has the time come to consider narrowing down to one or two main accounts? It will be much easier to do this while they are alive and able to give instructions.

1. Maire Sinha, “Portrait of Caregivers, 2012,” *Spotlight on Canadians: Results from the General Social Survey*, Statistics Canada, September 2013, Catalogue No.89-652-X-No. 001.

- Are your parents vulnerable to identity theft, fraud, scams or undue influence by people that they trust? If so, what steps can you take to protect them?
- Do they own any assets in joint names with you, or any of your siblings? If so, what is their intention regarding those assets after they die? (We normally do not recommend owning assets in joint names with children due to numerous legal issues that can arise. But, if joint tenancy is part of your parents' estate plan, ensure their intentions regarding who owns the assets upon their death is clearly documented in writing.)
- If, at some point, your parents are unable to live independently, where would they want to live? Are their wishes known to all of their children? Do they need help identifying their preferred assisted-living facility while they are still healthy, thus avoiding you or your siblings eventually deciding on their behalf?
- Do your parents have any specific funeral or memorial plans? Are those wishes known to all of their children, helping to avoid future disagreements? Sometimes, pre-arranging funeral plans while your parents are alive makes sense.

YOUR ESTATE PLAN

As you know, at a bare minimum, you require a professionally prepared Will, Power of Attorney, and Advanced Health Care Directive. However, how do those plans look, taking your children and current or future responsibilities for elderly parents into account? Here are some factors to look at:

- If you become mentally or physically incapacitated, who will assume the caregiving or financial support you currently provide? If, for instance, you pay bills on behalf of your parents, be certain the person appointed under your Power of Attorney will have the authority to continue making those payments. Normally, an Attorney can only use your money for purposes that directly benefit you and not others, so this may require specific wording in the Power of Attorney.
- If you are appointed as Attorney under your parents' Power of Attorney, you need a backup plan in case you are unable to fulfil your responsibility. Ideally, your parents will have appointed an alternate Attorney in the event you are unavailable. If they have not and they no longer have the capacity to appoint an Attorney, things can get more complicated. You may be limited in your



ability to arrange a successor Attorney, but you should seek advice about what you can do to help ensure continuity of financial responsibility for your parents.

- Do your parents have sufficient accumulated wealth to ensure all of their financial needs will be met for their remaining lives? If there is some risk that their wealth will be depleted during their lifetime, you may need to provide for them in your Will. For example, you might have a contingency plan that says if you predecease your parent(s), a portion of your estate is to be allocated to a testamentary trust to assist them for the remainder of their lifetime(s). Out of necessity, this would postpone and possibly influence the amount of your children's inheritance.
- Are your estate planning documents in order and do your spouse or children know where to find them?

PAUSING FOR ANSWERS

When caring for children and parents, it is easy for estate planning questions to get lost in the stress, cost and demands of daily life. They are the questions that often emerge in the wee hours of the morning and get added to the "to do" list. Making the answers a priority can help reduce or avoid the most significant stressors, making more room for the richly rewarding life experience being sandwiched can be.