The modern couple’s guide to legacy planning
A special report for U.S. clients
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Ensuring the smooth transition of your estate

From your spouse to the next generation

Many estate planning books, articles and reference materials focus on preparing children for future inheritances and efficiently transitioning wealth from one generation to the next.

The majority of estate plans, however, include an important step before the children become responsible for the family financial legacy. This step involves transferring wealth from one spouse to another when the first one passes.

These two-step estate plans leave a deceased’s assets to the surviving spouse with the expectation that, upon his or her death, the estate will pass to the couple’s heirs. This process also allows for a deferral of estate taxes until the surviving spouse’s death.

To help ensure a smooth transition of wealth to the people you care about, you may want to ask yourself:

- Is my spouse prepared to be the first heir?
- Will my wishes be carried out by my surviving spouse?
- What if my spouse remarries?
- Should my estate plan focus on optimizing estate tax deferral or adequately reflecting my current wishes?
- What if portability of the estate tax exemption is repealed?
- How do I want to provide for my children?

Your answers may yield valuable insights to help inform how to most effectively prepare your estate plan. Yet these important questions are often overlooked because most couples simply revert to the common and straightforward method of leaving everything to the surviving spouse.

This estate planning special report—provided by RBC Wealth Management – U.S., in conjunction with RBC Wealth Management – Canada—is intended to help you think strategically and take appropriate action regarding how these questions may affect you personally.

It also shares some tips on how to ensure your wealth passes from your surviving spouse to your children while reflecting your wishes.
Meet John and Mary

Getting to know a hypothetical family and the approach it takes to estate planning may help us understand how various strategies and solutions might play out in real life. Meet John and Mary Smith. They have been married for 15 years and John is the parent of two adult children from a previous marriage. Mary does not have any children of her own. John has two grandchildren, Kelly and Lee, from his son Dave’s first marriage and one grandchild, Christopher, from Dave’s current marriage. John’s other son, Tom, is currently single and has no children. John and Mary love all the grandchildren, and providing for Lee, who suffers from a severe disability, is a priority for them.

John and Mary’s assets consist of a primary residence, investment accounts, two IRAs and a life insurance policy on John’s life. John and Mary have named each other as personal representatives in their wills.

John and Mary have both been successful in their careers. However, John recently inherited $5 million from his father’s estate, allowing him and his wife the freedom to retire. John and Mary’s current wills leave all their assets to one another. Upon the surviving spouse’s death, the assets will be divided equally between Dave and Tom.

Dave is a busy self-employed home remodeler and his wife stays at home to care for Lee. Dave works hard, so he and his wife feel they deserve to travel whenever they can. Making monthly payments on a handicap-accessible motor home for family trips has resulted in little savings for their future.

Tom is a successful technology salesman. He has a good head for business and closing deals. Unfortunately, his drive to win, high-pressure career and busy travel schedule also contributed to some personal problems, which recently led to his bankruptcy and divorce.

John and Mary wish to avoid risks to the family legacy. They are concerned that the assets they will leave Tom and Dave in their estate may be mismanaged. One of those concerns is if Dave passes away and leaves his estate to his wife, she may exclude her stepchildren from her will, thus depriving Kelly and Lee of Dave’s estate and the estate of their grandparents.

What can John and Mary do? Let’s look at some of their options.
Leaving assets to a spouse

There are several ways to leave assets to a spouse with the intention that the estate will eventually flow through to the next generation.

**Wills that leave all to survivor spouse**

Also sometimes called “I-love-you” or “sweetheart” wills, this approach is often the default estate planning tool couples use to provide for one another when the first one passes. For many families, creating a will that leaves the deceased’s assets to the surviving spouse can be fairly straightforward. These wills usually include provisions for the entire estate to be transferred to the surviving spouse upon the first death. In the event of a joint disaster or upon the death of the second spouse, the will directs the entire estate to be divided equally between the surviving children.

The benefit of this type of will is it helps ensure estate distribution remains consistent regardless of spousal order of death. However, depending on a will requires taking a leap of faith—since this kind of estate planning document cannot guarantee that a deceased’s wishes will be followed.

But there’s a very real problem: The surviving spouse can change his or her own will to leave the estate to a new spouse or to beneficiaries other than the couple’s surviving children. And sadly, this happens more often than you might imagine. Indeed, we have all probably heard stories to this effect at one time or another.

Even if there is no new spouse or new will, the surviving spouse can give away inherited assets during his or her lifetime to other individuals. Moreover, the surviving spouse might not know how to manage finances, resulting in a significant decline in estate’s assets. The surviving spouse might also have solvency or creditor issues, resulting in a potential claim by these creditors on estate’s assets.

Children or others might contest the surviving spouse’s will in court, believing they were entitled to certain assets left by the first spouse according to the original plan. Contesting a will in court can be an expensive, lengthy process and may not render the results a deceased intended to achieve when drafting an estate plan.

Plus, this approach may have negative estate tax consequences and should be carefully considered before implementing.

For all of these reasons, there are alternatives you may wish to consider.

**What about John and Mary?**

If John dies first, there may be nothing, other than a sense of moral obligation, to stop Mary from modifying her will to change the beneficiaries of her estate. Similarly, there may be nothing to prevent her from gifting some of the assets away during her lifetime. John could provide for Mary after he is gone using this approach. But this approach offers no protection for his assets and cannot ensure they pass to his children.
Joint assets
Advantages
• Simplify administration of the estate
• Minimize probate

Drawbacks
• Do not prevent surviving spouse from distributing the estate before death
• Joint assets could be claimed by creditors
• Estate tax may be higher in the future if portability is repealed

Joint assets
Many couples hold most of their assets in joint tenancy with right of survivorship. Joint tenancy between spouses is a sensible and convenient way of holding property that reflects a couple’s shared efforts. It can also simplify the administration of the estate and minimize probate. This may help ensure the couple’s pooled assets pass to the surviving spouse with minimum effort and cost.

However, owning assets in joint tenancy with right of survivorship may expose you to exactly the same problems associated with sweetheart wills:

• The surviving joint tenant can give the property away at any time rather than pass it on to the children upon death.
• The surviving joint tenant can remarry and give this property to his or her new spouse (and/or the children of his or her new spouse) upon death.
• The property could be subject to a claim by the creditors of the surviving joint tenant.

In addition, property held in joint tenancy with right of survivorship does not flow through the estate of the deceased. That means estate planning tools such as trusts cannot be used for these assets unless disclaimed by the survivor.

To overcome some of the shortcomings of owning assets jointly, you and your spouse may wish to consider owning certain assets separately. This sole ownership allows the assets to form part of your individual estates, thus giving you the option of using trusts or other planning strategies.
Another way to provide a more assured inheritance for your children is to create a revocable trust that becomes irrevocable at your death—funding a “marital” or “exemption” trust (also called a “bypass trust,” “credit shelter trust” or “family trust”). This trust is established for the benefit of the surviving spouse through provisions in the estate plan of the deceased spouse. When the first spouse passes away, his or her assets are held in trust for the benefit of the surviving spouse. When the survivor dies, the trust assets will go downstream in the family, either as outright distributions or as continuing trusts.

Under this structure, the surviving spouse usually receives all the income the trust produces and may also receive principal distributions from the trust.

An estate plan that includes trust provisions will generally allow trustees to encroach on the trust assets for the benefit of the spouse for health, education, maintenance and support, or whatever the grantor has authorized in the document. These powers allow the trustee to use some discretion to make principal disbursements directly to the spouse.

**What about John and Mary?**

A revocable living trust might be the ideal structure for John to consider, because it would help ensure his estate planning goals are met if he is the first to die. John would title assets in the name of his trust during his lifetime and would serve as his own trustee until death or incapacity. Upon John’s death, the trust would simply continue and provide income to Mary during her lifetime. When Mary passes away, the assets remaining in the trust would be paid out only to Dave and Tom (or their survivors). This way, if Mary remarried after John’s death, the trust would protect John’s assets and ensure they would not pass to Mary’s new spouse or any other possible heirs.

If John wishes to protect the assets for his children and grandchildren, he might consider the use of trusts to hold each of the children’s share or leave certain assets in a generation-skipping trust for the benefit of the grandchildren. These types of trusts are further discussed in the appendix.

It would also be important to include special needs provisions for any assets earmarked for Lee’s benefit. This would allow for Lee to continue receiving any medical or disability benefits without disruption. Without this type of planning, if Lee were to receive an inheritance outright, it could cause significant disruption in his health and personal care.

**Trusts**

Advantages

- Prevent surviving spouse from giving away estate before death
- Assure financial security of surviving spouse, as well as transfer of wealth to next generation
- Remarriage of surviving spouse does not affect the trust
- The terms of a trust are confidential, resulting in better privacy for the family

Drawbacks

- Increased professional costs
- Assets may be subject to probate, unless the trust is funded prior to death
Leaving assets to someone other than a spouse

If you have children from a previous marriage, you might wish to leave assets to them immediately upon your death. You will need to ensure that the terms of your estate plan agree with the provisions of any prenuptial or postnuptial agreement. In the absence of any such agreements, you will need to ensure that your plan does not seek to frustrate the marital claims of your spouse. Estate planning for blended families requires careful consideration and may incorporate some of the strategies discussed in this special report.¹

If you wish to leave assets to someone other than a spouse, you should be aware it may trigger an immediate estate tax liability if the amount transferred exceeds the exclusion for estate tax in the year of your death. However, the following strategies may help you achieve this goal while minimizing any tax consequences.

**Choose and allocate assets wisely**

Not all assets are treated equally for tax purposes at the time of death. For example, assets held in regular (nonretirement) accounts receive a cost basis adjustment at death and can subsequently be sold with little or no capital gain impact. However, tax-deferred retirement accounts like 401(k)s and IRAs do not get a basis adjustment, and every dollar distributed from those accounts is subject to immediate income taxation. And while the proceeds of a life insurance policy are not subject to income tax, the value of the policy will be included in your estate for estate tax purposes if you own the policy when you die.

Choosing the right asset for the right beneficiary can be tricky. You may choose assets of equal value for each beneficiary, but different tax treatments of those assets may cause inequality between the values eventually received by your beneficiaries.  

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**What about John and Mary?**

John is thinking about leaving some assets directly to his sons, designating Dave the beneficiary of his $1 million life insurance policy and Tom the beneficiary of his $1 million IRA. The rest of his estate would pass to Mary in trust as discussed previously.

While intending to treat his sons equally, an unequal outcome would result, since Tom would have an income tax liability on the IRA, but Dave would receive the entire $1 million life insurance payment tax free.

Or John could distribute his assets in a much more tax-efficient way. For example, he could designate Mary as the beneficiary of his IRA and name both Dave and Tom as beneficiaries of his life insurance policy. As a surviving spouse, Mary could roll the entire balance of the IRA into her IRA and defer any distributions (and any taxes) until age 70½, and Dave and Tom would pay no tax on the insurance proceeds. John could leave a larger amount directly to his sons by moving $1 million of what he inherited from his father’s estate into an account titled in the name of his revocable living trust and have those assets transfer to Dave and Tom in trust at his death.
Gifts to children during your lifetime

After ensuring you will have sufficient assets to comfortably meet your retirement needs, you may want to give some of your assets to your children during your lifetime and then leave the rest of your estate to your surviving spouse. But before you do, consider whether there will be any tax implications from making the gift during your lifetime and any impact the gift may have on your income and cash flow.

For alternatives to making lifetime gifts to your children, please refer to the appendix.

Charitable giving

You may wish to incorporate charitable giving in your estate plan and provide lump sum gifts to charities upon your death.

You may also consider using beneficiary designations to make donations in the most tax-efficient manner. For example, donating IRAs allows you to eliminate the income tax liability associated with tax-deferred accounts and also reduce your estate for estate tax purposes.

Charitable gift fund

There are several ways you can make a charitable gift during your lifetime or in your estate plan:

- You can give a gift directly to a charity.
- You can give a gift to a private or public foundation.
- You can set up a donor advised fund (DAF) during your lifetime.
  - Essentially a private endowment fund within a public foundation, a DAF offers the benefits of a private foundation without the related administrative complexities.
  - It can also be easy to establish and manage, be cost effective, and provide flexibility to meet your goals during your lifetime and potentially after your death.²
- You could create a charitable remainder trust (CRT) that would provide an income to you and your spouse for life, transferring trust assets to charity at the second death.
  - Because the CRT will eventually distribute assets to charity, you may receive an immediate income tax deduction.
  - The CRT structure allows you to sell appreciated assets without incurring an immediate capital gains tax.
Life insurance

You can use life insurance in a number of ways to provide estate plan flexibility.

Life insurance could provide cash flow to your family in the event that you pass away while your dependents need financial support. Life insurance proceeds could also provide funds to meet any estate tax liability triggered at the time of your death if you leave your assets to someone other than a spouse or upon the death of the surviving spouse, again, if any estate tax is due.

You may also use life insurance to equalize gifts to children or when estate assets are not sufficient to meet your desired goals. Before purchasing life insurance, speak to your RBC Wealth Management financial advisor who has access to an RBC Wealth Management insurance specialist about how to most effectively incorporate life insurance into your overall estate plan.

What about John and Mary?

As part of their estate planning strategy, John and Mary should review their existing life insurance coverage to determine if it continues to meet their needs. Since John is considering naming his sons as beneficiaries of his life insurance, he should evaluate how this change would impact his overall estate. For example, it may be preferable to make his insurance payable to a trust for the benefit of his children. In fact, it would probably make even more sense to have the insurance owned by a special irrevocable trust to keep the proceeds from being subject to estate tax.
When talking with your spouse and family about how to plan for your estate and ensure a successful transition to the next generation, some of the most important tasks may not be financial in nature. They may focus more on the responsibilities, relationships and processes with which your family should be familiar. Consider some of the following tips to make the transfer and management of your estate as easy as possible for your survivors.

**Power of attorney and health care directive**

A power of attorney allows you to appoint an agent to act on your behalf if you are unable to act for yourself with regard to financial matters. It is recommended that you name an agent and at least two successor agents to serve in the event the first successor agent you have named is also unable or unwilling to serve.

A health care directive allows you to appoint an agent to act on your behalf for medical decisions if you are unable to make those decisions for yourself due to incapacity. This is a vital planning document. Be sure to include a HIPAA release to allow doctors, hospitals and other care providers to release your medical information to your agent, so they can make an informed decision on your behalf. Without a signed HIPAA release, caregivers will be unable to release your personal medical information by law.

**Family inventory**

A good first step in any estate plan is to prepare a comprehensive list of information regarding your financial life:
- Location of important financial records (banking, income, insurance, investments, mortgage, tax, etc.)
- Names of and contact information for accountants, attorneys, financial advisors, etc.
- Assets and property owned (safe deposit boxes, etc.)
- Business records (if any)
- Pension information

This family inventory provides a critical guide for all the financial information needed to ensure your wishes are followed and your responsibilities are resolved appropriately in case a life-changing event occurs.

Share the content of this inventory with your spouse and discuss the details. Include your children in the conversation if you are comfortable doing so. In many cases, resolving a decedent’s financial affairs can be complicated. So this can be a valuable tool to assist your family when the time comes to transition responsibilities at the time of your death.

It is also important to consider your digital legacy. This includes your electronic documents, photos, videos, music, e-books, loyalty and reward programs, email accounts, domain names, and social media profiles. As a relatively new and often overlooked
aspect of estate planning, managing digital assets can be an administrative burden for the surviving spouse or your executor if an up-to-date list is not maintained.

To make the process of creating a family inventory easier, RBC Wealth Management offers a complimentary Family Inventory workbook, available in print and digital formats. To request your complimentary Family Inventory, please contact your RBC Wealth Management financial advisor or visit www.rbcwm-usa.com to find an advisor near you.

Introductions to advisors
If you and your spouse share the same professional advisors for your banking, investments, taxes and legal matters, then continuing these relationships after your death should be seamless. However, if you and your spouse depend on different professional advisors for any of these services, consider introducing them to your spouse, and possibly other family members, as part of your estate plan.

These introductions will allow your surviving spouse to continue working with advisors who know your history and are familiar with your planning. Establishing these relationships now may help facilitate a smooth estate administration experience. It can also help ensure that any planning you began during your lifetime is continued or completed after your death.

Wealth management plan
A current wealth management plan is important to ensure that life goals will be met. Involving both spouses in the process can mean that they are more likely to understand each other’s needs, goals and concerns. It can provide peace of mind to a surviving spouse who is neither familiar nor comfortable with handling financial matters.

A wealth management plan is not a one-time exercise. As circumstances change, it is important to review and adjust it as necessary. For instance, when one spouse passes away, the surviving spouse should update his or her plan based on the new situation.

Business owners have additional planning needs and should consider preparing a business succession plan to address the business needs and the surviving spouse’s needs if he or she is involved in the business.
Choosing the right executor

An executor (or personal representative) is the individual or institution appointed to administer the estate. This includes preparing an inventory of assets and liabilities, paying off the liabilities, and distributing the remaining assets as required under the terms of the estate plan. The executor must settle the estate in a timely and evenhanded manner according to the intentions of the decedent, and must also comply with state and federal laws governing the estate.

In addition to the importance of the duties and responsibilities that go with the job, when choosing an executor you should carefully consider the willingness, knowledge and ability of the potential executor to get to work with a clear head promptly upon your death. An executor is accountable and legally liable for his or her acts of administration. Unfortunately, many executors are unaware of the scope of the role to which they have been appointed.

A common practice is for each spouse to name the other as his or her respective executor, as in the case of John and Mary. However, a spouse may not always be the best choice. When one spouse passes, the surviving spouse is often profoundly affected by grief. And he or she may be overwhelmed by the volume and complexity of the tasks to be completed, time constraints, and the knowledge required to fulfill his or her duties. Funeral arrangements alone can be a cumbersome task on top of everything a surviving spouse is expected to do.

An individual can name someone other than a spouse as executor, or someone as a co-executor to act jointly with the spouse. Co-executors simply share the responsibility and become equally bound and responsible for all the duties of the executor.

Here are some alternatives to consider when choosing an executor or co-executor.

Family members
You may choose to name a child or other family member as executor or co-executor of your estate. When naming a family member, keep in mind his or her age and place of residency in comparison to yours. Be sure to ask your potential candidates if they would be willing to act as executor and if they understand what it means.

Professional
A trusted accountant or lawyer can be named as executor or co-executor with your spouse or other family member. Typically professionals are bound by a greater duty of care and held to a higher degree of accountability for any professional services rendered, especially given that they charge a fee for the execution of their duties.

Trust company
A trust company is a corporation that has the advantage of never becoming incapacitated. They are highly regulated and are held to the highest degree of accountability under the law. Trust companies charge a fee for their services. They employ a wide variety of professionals and have the expertise to discharge the duties of estate administration, including legal and tax work, in a timely and efficient manner.
There is no obligation to act as an executor, but once the executor has demonstrated his or her decision to act by carrying out duties or tasks relating to the estate, the executor becomes legally liable for his or her actions. An executor has the right to refuse or resign from his or her appointment as executor, or may decide to delegate various duties to a third party. While he or she may delegate, the executor retains final decision-making authority and full legal liability for the work delegated to the third party.

To avoid the potential delays and costs associated with an executor declining to serve, it is advisable to have a discussion with the individual you wish to appoint as your executor (and your backup choice) before you draft your estate plan. This helps ensure that the person you choose will be willing to accept his or her duties and responsibilities when called upon to act. It is also advisable to name an alternate executor in case the executor is unable to act or has predeceased you.

Communication is the key
If your spouse will be the first heir of your estate and potentially your executor, his or her success may depend on the two of you having open and regular discussions about your intentions, goals and plans, because these conversations may help him or her become familiar and comfortable with the tasks he or she will face.

It is equally important that your surviving spouse have similar discussions with your advisors during your lifetime, to help avoid any estate settlement misunderstandings or problems that may arise after you are gone. Including your advisors in conversations with your spouse may also help assure you that your goals will be met, while your spouse will be better positioned to be the first heir of your estate.

The role of your RBC Wealth Management advisor
RBC Wealth Management works with you and your independent legal or tax advisors to help achieve your personal estate planning objectives and maximize overall wealth. Our approach includes wealth transfer and estate tax mitigation strategies and solutions. If you are a business owner, we can also help you with business succession planning from both business and personal perspectives.

Other services that are considered in conjunction with your estate plan include investment management, personal retirement planning, trustee services, philanthropy and insurance. We believe that addressing all aspects of your financial life results in a more comprehensive and cohesive outcome for you.

Please contact your RBC Wealth Management financial advisor for more information or visit www.rbcwm-usa.com for an introduction to an RBC Wealth Management financial advisor.
With the help of their advisors, John and Mary evaluated their choices and elected to include revocable trusts in their estate plan to provide for the surviving spouse while protecting family assets and passing them to their children upon the second death.

John named trusts for his children as the beneficiaries of his insurance policy to ensure they had some immediate financial flexibility upon his death. John also bought a new insurance policy and the death benefit will be paid into a special needs trust for the benefit of Lee (see appendix for special needs trust information).

John and Mary named each other as beneficiaries of their IRAs. They also decided to name a trust company as executor of their estates. This gave them the comfort of knowing that the administration of their estates will be done in a professional and timely manner.

Together, the couple went through the process of completing a comprehensive wealth management plan, offered by their RBC Wealth Management financial advisor, which gave both of them a better understanding of their financial position. This also helped clarify their financial responsibilities so that when one passes away, the administration of his or her assets will be less of a burden.

Finally—and maybe most important of all—John and Mary shared their intentions with their children and introduced each other to their trusted advisors. By openly communicating their estate goals and proactively deciding on their estate administration, John and Mary have ensured they are each prepared to manage their hard-earned assets when the first spouse dies.
Appendix

Following are additional strategies to consider when leaving assets to your children or grandchildren, as well as other family members such as nieces and nephews.

Gifting or leaving assets to children

There are three major concerns that may come up when leaving assets to your children or grandchildren. There are also several potential solutions.

Marital property rules

Depending on the state of residence, marital property claims may apply to assets left to your children and to the income generated by these assets. For example, if Tom remarries and deposits his inheritance into a joint account with a future spouse—or uses the funds to purchase a home that they share—the joint account or the home may be subject to a marital property claim and division if he divorces his wife.

Adult children receiving an inheritance or a gift should keep these assets separate from assets held jointly with their spouses and not inadvertently contribute these assets to the marriage. It is also important to consider drafting cohabitation agreements or prenuptial agreements where appropriate.

Spendthrift beneficiaries

One common concern among parents is the fear that their children may spend their inheritances carelessly, without planning for their own or their families’ futures. Teaching children financial responsibility and money management should start at an early age.

Creditor claims

Another common concern for parents is exposing any gifted assets or inheritances to their children’s creditors. As part of their estate plan, parents often search for ways to provide their children with some protection while allowing for flexibility and access to funds. Therefore, it is prudent to consult a qualified legal advisor regarding any creditor protection options available to you.
Trusts
There are several trust structures you may wish to explore to solve the three problems described on the previous page.

Irrevocable trusts created during your lifetime
You can transfer assets to an irrevocable trust during your lifetime and name your beneficiaries. You must appoint a trustee, whose responsibilities are governed by the trust agreement. These include administering the trust in the best interests of the beneficiaries and investing the trust assets prudently.

When you transfer the assets to the trust, there may be a gift for tax purposes, which may result in a gift tax liability for you. Any income earned in the trust may be taxable to the beneficiaries or to the trust. Depending on your reasons for setting up the trust and the way in which the trust is structured, it is likely that once you transfer assets to the trust, you may no longer have access to the funds for your own personal use.

Trusts that take effect at death
Your estate plan could create a separate trust for a portion of your assets, naming your intended heirs as beneficiaries and specifying how and under what circumstances trust income and principal can be used. These conditions could protect the assets from poor spending habits and from creditors, predators and divorce.

Special needs trusts
A special needs trust can help you provide for the needs of an individual who is disabled, without jeopardizing his or her eligibility for government benefits. Federal and state benefits are generally available to qualifying children and adults who have special needs. If your child qualifies for government benefits, one of your goals may be to ensure that his or her eligibility continues into the future. A special needs trust can help you attain this goal. In addition, this type of trust can provide for supplementary care and services for your loved one.
Notes
1. For more information on estate planning for blended families, please ask your RBC Wealth Management financial advisor for the fact sheet titled “Estate Planning for Blended Families.”

2. Ask your RBC Wealth Management financial advisor for more information on donor advised funds.

3. For more information, ask your RBC Wealth Management financial advisor for a copy of the RBC Wealth Management Family Inventory workbook.

4. For more information on business owner planning, ask your RBC Wealth Management financial advisor about specific planning topics that affect business owners.

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