



TOOLBOX

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AGING AGENDA

Advise clients with elderly parents to ask some tough questions now.

WHAT are your clients going to do about mom and dad getting older?

As your clients deal with their parents' aging, the first issue you should be helping them address is mom and dad's financial stability.

Many Canadians aren't aware that adult children are legally responsible for supporting their parents in the event the parents are unable to. There is legislation in place in every province except Alberta giving courts the power to award parental support in cases where the parent raised the child, and the child is now capable of supporting the parent.

Regardless of the legal liability, many children feel morally obligated to ensure their parents are adequately cared for in old age. Unfortunately, many older parents have too much pride to speak to their children about finances, or are just plain not comfortable delving into the topic with offspring. It's therefore important to try to convince parents to broach the subject in the presence of an independent third party, such as a financial advisor.

Disability Planning

Once clients' parents get talking on the matter, the next step is to encourage your clients to start discussing disability with their moms and dads. Bring up the fact that even though their parents may live for a long time, will they be capable of managing their affairs for their entire lives?

Many individuals assume that if something happens

to them, that a spouse or child automatically has the right to manage their affairs. Not so. In fact, in some jurisdictions, the spouse is the one person who cannot sell or mortgage the marital home, as he or she cannot act both on behalf of himself and his spouse when dealing with that particular asset. Therefore, clients need to raise the topic of powers of attorney with their parents while they are still of sound mind, and ensure all the proper documentation is in place. Suggest your clients ask their parents the following:

- Do you have a power of attorney for finances?
- Is it broad enough to deal with all your assets?

Some people assume that signing a power of attorney with a financial institution is all they need—in fact, those documents usually only address the asset(s) held by that institution, and are completely ineffective elsewhere. However, if multiple documents are required, it's important to ensure they do not revoke each other, and that each remains in force.

- Do you have a power of attorney for healthcare decisions?

This document is referred to by many different names across the country (representation agreement, living will, advanced healthcare directive, etc.), but the basic premise is that every individual should appoint someone to make healthcare decisions if he is incapable of doing so. This person does not have to be the same person appointed for financial decisions. The parents should speak to their doctors prior to signing such a document, to ensure their healthcare providers understand their wishes.

- Have you appointed alternate **continued on page 10**

TOOLBOX

continued from page 9 powers of attorney for both finances and health-care?

If a parent appoints his or her spouse, and the spouse is involved in an accident at the same time as the parent or predeceases him or her, then the parent will effectively have no attorney. It's very common to appoint children as an alternate, to ensure someone will be available.

Respect Your Elders

Unfortunately, one problem that has become more prevalent in recent years is elder abuse. Clients must keep in mind that if they're appointed as power of attorney for their parents, their responsibility is to act in the parents' best interests, not theirs. Therefore, actions such as adding themselves as a joint owner of their parents' property, or designating themselves as direct beneficiaries of their parents' assets are generally conflicts of interest, and could expose them to litigation.

- Ask whether or not parents have sufficient critical illness insurance or long-term-care insurance.

Again, if the parents have not done proper planning, it may be the children who pay the price, because they may be forced into becoming caregivers for the parents. Not only is this time-consuming, in many instances it can be expensive, since some children have had to scale back or quit their jobs in order to care for their parents. If the client is at a stage in life where he still must care for his own children, he could be putting his own retirement plans in jeopardy.

Estate Planning

Many advisors encourage their clients to make sure they have an adequate estate plan. However, in many cases, clients would also benefit if their parents

also had a good estate plan. Why? Here are some of the most common reasons:

- If the parent does not have a proper will or estate plan in place, it will generally be the children who are left to clean up the mess.
- If no executor has been appointed, then the children may have to post a bond before the court will grant them the right to administer the estate, resulting in delay and expense.

Ask: Have the parents structured their estates in a manner that's most tax-effective and beneficial to the child? For example, if a child is in a high-income tax bracket, then leaving her an inheritance through a testamentary trust may be more effective than leaving it directly. Some parents think they're doing their children a favour by adding them as joint owners of their properties or designating them as direct beneficiaries of certain assets. However, this often leads to an inequitable distribution of the estate, and those funds will not then form part of a testamentary trust, so the child misses out on much more valuable income tax savings.

- Has the child's inheritance been structured so as to best protect those assets from a division of family assets in the event the child experiences a marital breakdown?

Again, leaving the assets to a child by way of joint ownership or direct beneficiary designation may not be advisable. In many provinces, inheritances are specifically exempt from a division of family assets, but again, this usually means the child should receive the asset through the estate, not by virtue of a right of survivorship. Also, the will could include a net family property clause, which in some provinces will help to protect any income earned on that inheritance from a division of family property.

In some provinces, using an inheritance to buy or pay down a mortgage on a marital home (which could include a cottage) will immediately expose those assets to the family property rules. So conduct planning in advance to protect the child as much as possible.

- Are plans in place to ensure children inherit specific assets?

For example, if the asset is a business or vacation property that will result in capital gains tax owing at the time of death of the parent, is there sufficient insurance in place to fund the tax liability? In many cases, parents assume they should simply leave their estates equally to each of their children. However, if the intent is that only one child will receive the business or vacation property, then the parents' estate plan should be structured accordingly. If the intent is that the children will jointly own a property, then perhaps a co-ownership agreement should be negotiated in advance of the parents' deaths; because attempting to negotiate these types of agreements after the parents are gone is often a futile effort.

- Have the parents pre-arranged their funerals?

Many family disputes arise over funerals, as they are very personal events, and come at a time of intense trauma for the children. If one child wants to cremate his loved one and have a small service, while the other wants a large formal affair with an expensive reception afterwards, a lack of agreement could start the administration of the estate off on the wrong foot.

These are just some of the planning considerations your clients may want to keep in mind as their parents age. The sooner discussions start, the less chance a client will be caught in a difficult situation once it is too late to rectify the problem. ^{AE} **VAN CAUWENBERGHE**