Emma, an FPSC Level 1 Certificant in Financial Planning, asked her clients, Joe and Jill, about their estate plan during their discovery meeting. Somewhat embarrassed, they responded that “things have been too busy at home with our two children, Anna, 23, and Justin, 14, to get our affairs in order; plus who really likes to talk about their own mortality?"

The couple was also inhibited by the costs associated with hiring a legal professional to draft their wills, powers of attorney and personal directives. However, they had already taken the necessary steps, recommended by their friends, to ensure an efficient transfer of their various accounts to one another is carried out upon either of their deaths. They made one another beneficiaries of their respective Registered Retired Savings Plans (RRSPs) and Tax-Free Savings Accounts (TFSAs), and made their non-registered, investment account joint with right of survivorship. When asked about the type and level of their insurance coverage, the couple indicated that coverage for each of them amounted to two times their respective annual salaries through an employer-sponsored group insurance plan. They were uncertain about beneficiary designations.

When Emma asked if they had given any thought to who would become Justin’s guardian in the event of their deaths, the couple agreed that it should be Jill’s 67-year-old mother, who currently lives with the couple and their children.

The couple also agreed that their estates should pass to each other upon either of their deaths; the children should inherit their estates in equal shares if the couple dies at the same time, or when the surviving spouse passes away. The couple’s net worth is $1 million and comprises the following: $650,000 of their principal residence with a $150,000 mortgage remaining; $100,000 in each of their RRSPs and $50,000 in each of their TFSAs; the remaining $200,000 is parked in a joint, non-registered investment account containing a mixture of equities and fixed-income securities.

When asked if they thought about who should manage their estates for the benefit of the children in the unlikely event of their concurrent deaths, the couple thought Anna may be the best choice given her maturity and their trust in her. Jill said that she learned from her co-worker about the cost of probate, and how the couple might avoid the cost by adding their children’s names to their non-registered, investment account as joint owners. The couple wants to know whether this is prudent, and what else they should consider to provide best for their children, Justin in particular, who is younger and needs more support.

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1 Personal directive is a term used in some jurisdictions to describe the document containing an individual’s authorization to another individual to make personal, and health-related decisions, on their behalf in the event of their being unable to do so due to incapacitation. Such a document may be known by other names in other jurisdictions.
Knowledge Expectations – Wills, Powers of Attorney and Beneficiaries

The FPSC Level 1 Certificant in Financial Planning and CFP Professional should be able to:

• Explain that, if they die without a will, Joe and Jill will be deemed to have died intestate. Upon either of their deaths, the surviving spouse may be required to apply to the court to administer the other’s estate. This could result in additional financial costs and lengthy waits for a court appointment. Upon both of their deaths, or upon the surviving spouse’s death, Anna would have this responsibility. The transfer of the property to her and Justin may be delayed if no wills are in place. Other roadblocks to Anna and Justin’s receiving their shares may occur, since each jurisdiction has mandated legislation about estate distribution when a deceased individual leaves no will. In addition, Justin’s share of the property may not be transferrable directly to him until he reaches the age of majority. Furthermore, the couple’s wishes for guardianship would be decided solely by the court.

• Explain that the couple may draft their own wills to save time and money. However, self-drafted documents may be more susceptible to errors and omissions, and result in unintended consequences, including the failure to achieve their intended wishes. Such unintended consequences may cost the couple more in the future than the amount saved by drafting their own wills. The use of an appropriate legal professional can help ensure that the couple’s wishes are achieved, and less likely to be contested.

• Explain that, while Joe and Jill have named beneficiaries for their respective RRSPs and TFSAs, and hold a non-registered account jointly, a will provides them with even more security with respect to their children. A will provides more than mere guidance for the distribution of capital and personal property in the event of their individual, or concurrent deaths. It provides a facility to name a guardian for Justin, and appoint the person whom they wish to handle their estates. It also provides instructions for the creation of a testamentary trust, which may be appropriate for the children, particularly Justin given his age. In the couple’s case, they may wish to act as each other’s personal representative, with Anna named as an alternate personal representative based on the couple’s confidence in her to fulfill this role.

• Explain that when deciding on a guardian, the couple should consider choosing an individual whom: they trust; will support Justin, emotionally and financially if needed; and will be available and willing to act. As expressed by the couple, Jill’s mother may be a good candidate. Anna may also be a good contingent guardian, given the couple’s trust and confidence in her, especially since Jill’s mother is getting older and may find the role increasingly difficult with time.

• Explain that the couple should ensure that their respective group life insurance plans have each other listed as beneficiary. Before adding their children as successor beneficiaries of their policies, the couple should seek advice of a legal or estate specialist to ensure that the transfer of insurance proceeds is completed according to their wishes.

• Explain that the couple should change their TFSA beneficiary designations to ensure that each of them is named as the other’s successor holder. Naming each other as successor holder will enable the surviving spouse to transfer the entire balance of the deceased spouse’s TFSA to their own on a tax-free basis. This differs from a beneficiary designation. A beneficiary designation will enable the surviving spouse to transfer the balance of the TFSA tax-free to their own TFSA only up to, and including, the date of the deceased spouse’s death. Any growth in the account thereafter will be taxed to the surviving spouse.
• Explain that making their non-registered, investment account joint with their children can be done. However, there are risks associated with joint ownership, including potential tax implications now and in the future, and the ability for the children to access the funds at any time. The funds could also be jeopardized in the future should the children, if married, experience matrimonial discord. Furthermore, the funds may pass directly to the children for self-management upon the couple’s death, which may not be appropriate. These risks may offset the benefits of reduced probate fees. In addition, the intention of the transfer must be clearly documented. Emma may refer the couple to her CFP professional colleague, and/or a legal professional, to elaborate further on the potential risks and requirements.

• Explain that Joe and Jill should each have an enduring power of attorney for property drafted. This will ensure that financial and legal decisions may be made on their behalf, should they become incapacitated and unable to make such decisions for themselves. They may consider each other, with an alternative power of attorney being Anna, based on their trust and confidence in her to make financial decisions.

• Explain that Joe and Jill should each have a personal directive drafted. This document will enable them to appoint an individual, or individuals, to make health-care, living and other personal decisions on their behalf, should either of them become incapacitated or unable to make such decisions for themselves. Similar to appointing an attorney in an enduring power of attorney, Joe and Jill may consider having one another act as their respective agent in this capacity, or Anna as an alternate agent.

• Explain that the couple should seek the advice of a legal professional to ensure that their wishes are properly documented. Emma may provide the couple with a number of referral opportunities for legal advice, and to help put the appropriate legal documents in place.