

Estate planning for complex family dynamics

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Today, the modern family comes in many different shapes and sizes; this diversity is having an impact on family relationships and the way families interact when addressing estate planning.

Toward the end of each year, various media outlets publish tribute lists that help us remember the artists, musicians, actors and other famous people that the world has lost over the previous twelve months. Unfortunately, many of these public figures continue to make news long after their passing because they did not have a valid Will or estate plan to distribute their sizable net worth and many valuable assets to their loved ones. Their spouses, partners, and children, and often, distant or estranged family members, make news as they openly contest the distribution of wealth. As a result, details of the distribution of the estate are publicly disclosed and discussed, and the estate is subject to larger tax and legal bills than would have been necessary had proper estate planning been in place.

The complexities of American families

Many of the more newsworthy stories about the battles over the estate assets of famous people involve complex family dynamics – multiple marriages and children from those marriages, siblings, step-siblings and their spouses, or family estrangements. Family structures like these are becoming common in America. Detailed information from the U.S. Census Bureau indicates that there are a large number of American families that have complex structures and relationships. The marital status of the population of approximately 257 million people age 15 and over is broken down as follows:¹

Legal marital status in the United States in 2016	Percentage
Married	52.1
Never Married	32.2
Divorced	9.9
Widowed	5.8

Many American families may find that they identify with the families portrayed on the popular TV show [Modern Family](#).² In the United States, 4.7% of all children under the age of 18 are stepchildren – more than 4,165,000 children live in a home with a parent that is not their biological parent.³

While the rate at which marriage occurs has been dropping since the year 2000, the rate of divorces and annulments has also been dropping. Every year there are more than twice as many marriages as there are divorces and annulments.⁴ Many divorced individuals start new relationships. In the United States 9.5% of all individuals age 15 and over are currently in their second marriage, and 2.4% of individuals over age 15 are enjoying their third or subsequent marriage.⁵

There are also close to 1,000,000 same-sex couples in the U.S., of whom almost 40% of are married.⁶

This leads to the difficult topic of family dynamics, which become even more complex for stepfamilies where the situation may involve divorce and second marriages. After a death, conflict and issues often play out and hidden bitternesses come to the surface. Before this happens, there is an opportunity to work on these issues to not only promote a more friendly and efficient distribution of worldly possessions after death, but also to develop more harmonious family relationships.

Inheritances and estate planning

BMO Wealth Institute commissioned a survey to ask Americans for their views on inheritance, communication about estate planning within their families, and care issues as they grow older.⁷ The answers were cross-referenced with family relationship status to see if complexity of family relationships affects the approach to estate planning. The respondents of the survey were comprised of the following relationship statuses:

- Living together, but not married
 - First marriage, living together
 - First marriage – separated or divorced, single
 - First marriage – separated or divorced, living with new partner
 - Second or subsequent marriage, living together
 - Same-sex couple
 - Single or only recently living together
- About two-thirds of the Americans surveyed had adult or minor children.

The survey respondents were asked whether they had already received, or expected to receive, an inheritance. More than half (54%) of those surveyed indicated that they had received an inheritance. Of these, about 8% considered the amount that they had received to be significant. Only 13% of those surveyed expected to receive a future inheritance, with younger respondents more likely to expect an inheritance.

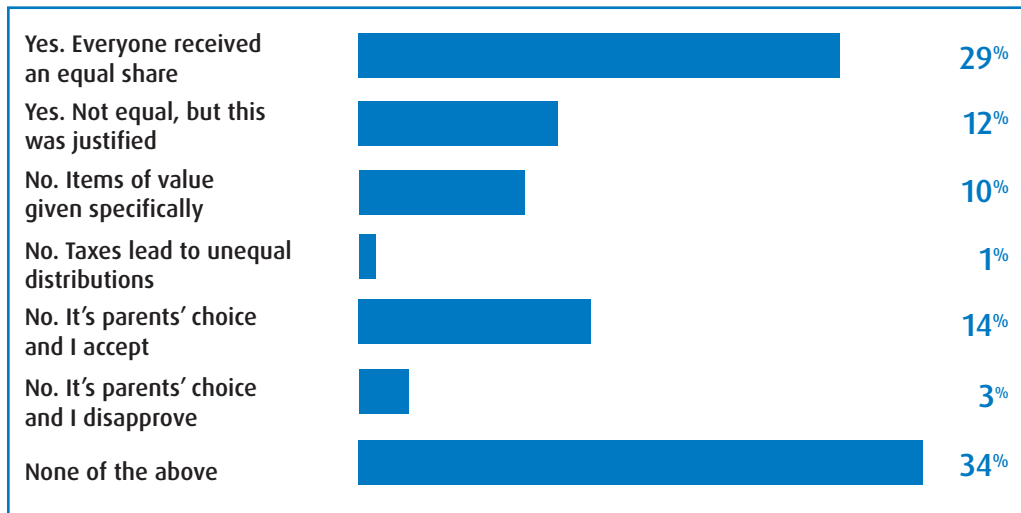
Distribution of parents' estates

The general perception found in the survey was that leaving a fair amount for each beneficiary was important to many of the respondents' parents. Not that fair always meant equal, according to those that felt their parents' estate distributions were fair. Almost 60% had received equal shares, and just over 40% had received unequal, but justifiable amounts. More interestingly, about 40% of those surveyed felt that the distribution of their parents' estates was not done fairly. The groups most likely to feel that the distributions were unfair were those that were in any type of relationship other than marriage. Even though they felt they were not being fairly treated, many still accepted their parents' decisions.

2 of 5

of those surveyed felt that the distribution of their parents' estates was **not done fairly**.

Did your parents distribute their estates in a fair way?⁸



Source: BMO Wealth Institute survey by Validatell Technologies Inc., December 2016.

On the big question of how much is fair to leave to a child, legendary investor **Warren Buffett** famously noted that to him the perfect amount to leave is...

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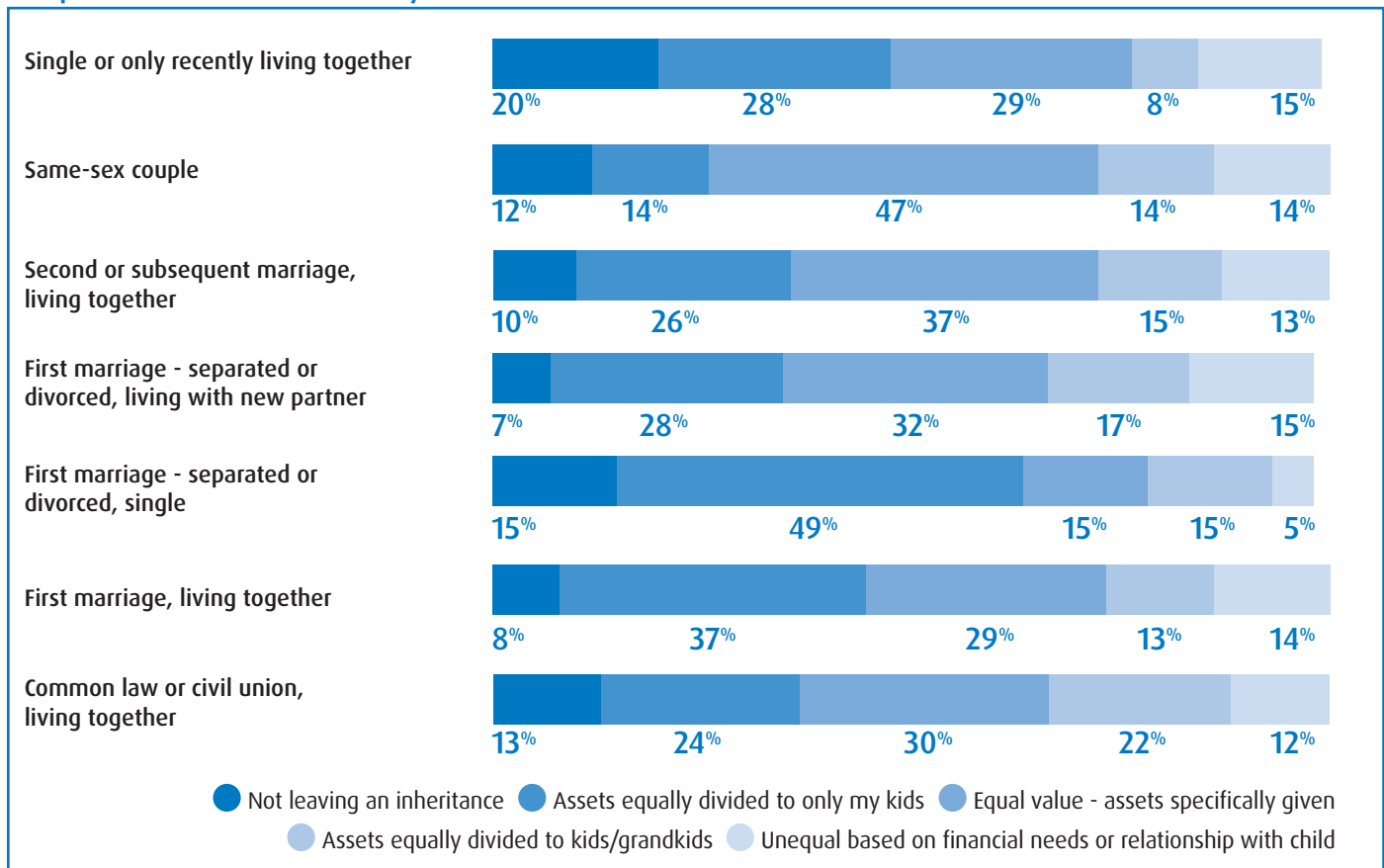
enough money so that they would feel they could do anything, but not so much that they could do nothing.⁹

When asked what constituted a fair distribution, respondents to the survey had many different thoughts. Most thought that assets should either be divided equally between the children, or that the children should each receive an equal value from the estate. Together, these two answers accounted for over 60% of the responses. Only 15% of respondents felt that it would be fair to distribute assets on an unequal basis, with reasons such as financial need or the closeness of the relationship with the child being cited.

60%

felt assets should either be **divided equally** between children, or that children should each receive an equal value from the estate.

Perspective on fair inheritance by marital status



Source: BMO Wealth Institute survey by Validatelt Technologies Inc., December 2016.

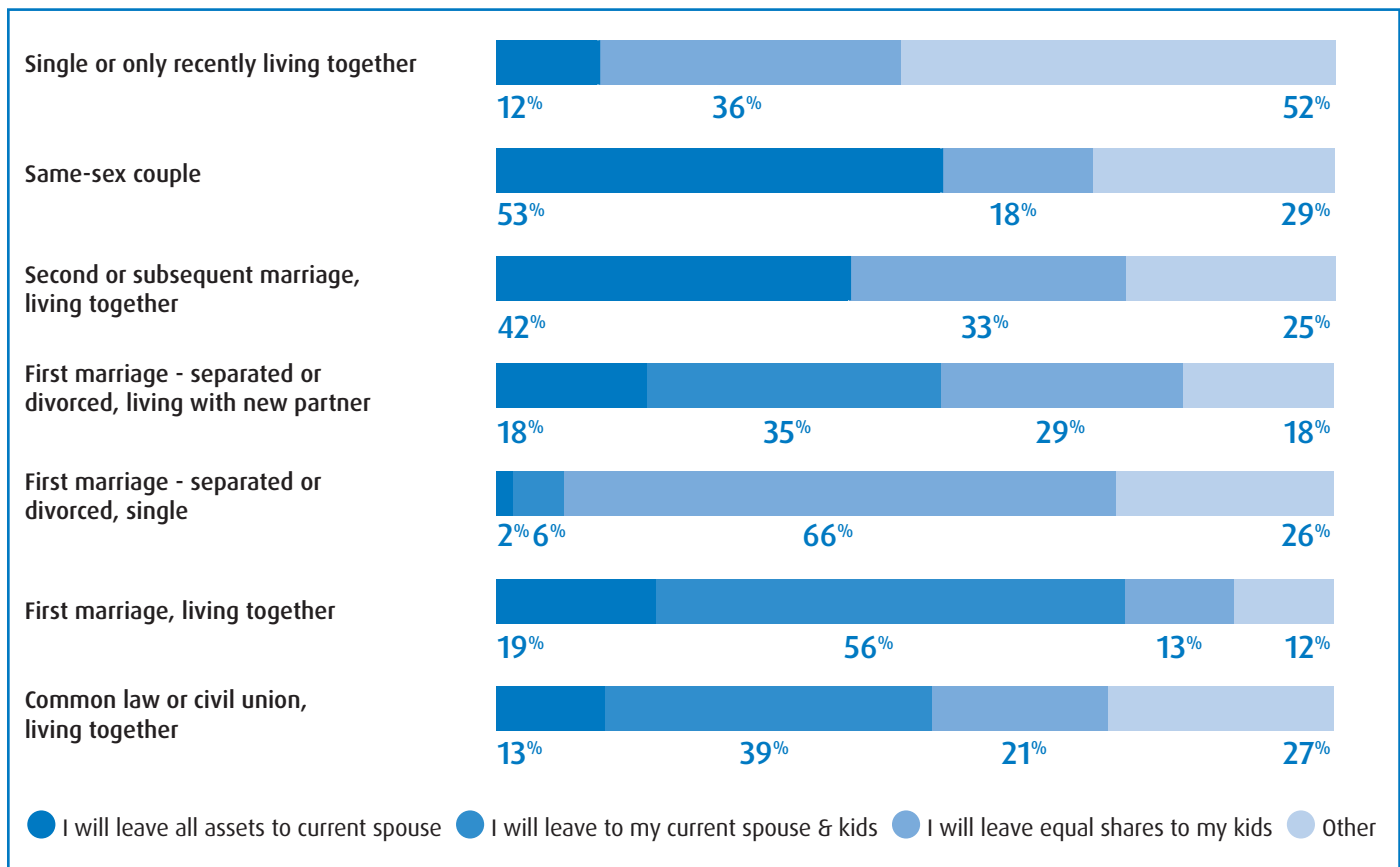
Another trend found was that respondents age 55 and over were much less likely than younger respondents to plan to leave specific assets to individual children. Instead, they were more likely to consider an equal division of all assets to be more fair.

Will you leave an inheritance?

The survey asked respondents if they planned to leave an inheritance and to whom they would give their estate assets. The results showed a wide variety of choices, depending on the marital status of the respondent. The most frequently cited plan was to leave assets to their spouse as well as to their children (32% on average). As to be expected, this choice was less popular for those currently separated or divorced (6%), but it was much higher (35%) for people in a new relationship after going through separation or divorce. The following chart shows whether respondents intend to leave assets only to a current spouse, to both the current spouse and children, just to the children, or to others, based on the respondents' marital status.

32%
plan to leave assets to both a spouse and children.

Leaving an inheritance according to marital status



Source: BMO Wealth Institute survey by Validatell Technologies Inc., December 2016.

Essential conversations and open communication

When asked if their parents had shared their estate distribution plans or details of their Wills and executor selections, only 28% of respondents indicated that they have had these discussions.

Interestingly, the people surveyed were about half as likely as their parents to share information about their own estate intentions (13%). More alarmingly, more than half of those surveyed (52%) did not have a Will in place. Even those aged 35 to 54 had a low rate of estate planning, with 56% reporting that they did not yet have a Will in place.

Communication about your estate plan helps to reduce potential conflict among your heirs in the future, and to ensure that your estate is distributed as you would like. When asked if their parents have had a conversation or family meeting about their parents' estate intentions the results were split, with almost 60% having had detailed conversations with their parents and about 40% not having had these essential and open conversations. When asked about their own estate planning and the extent to which they have had conversations with their own potential heirs, just over half had had these conversations.

40%
 have **not had essential and open conversations** about their estate intentions with their children.

Dividing things, not families

Having essential and open conversations with future heirs can help to reduce conflicts, and acclimatize heirs to the idea that they will not necessarily inherit what – or how much – they expect, especially if the intention is not to be [equal](#) or [fair](#). Essential conversations with loved ones also bring up the issue of sentimental assets and help to determine who most cherishes those special assets. Dealing with this issue up front may help to avoid the problem of valuable personal effects and sentimental assets going missing from the estate. This is especially important in complex family situations, which can be made more difficult if certain treasured assets are not distributed as planned to your heirs.

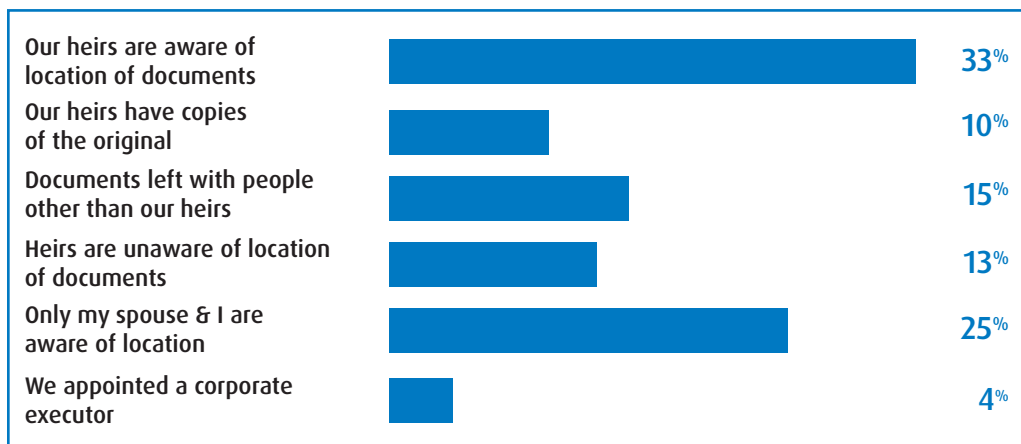
Dr. Amy D'Aprix, BMO Financial Group's Life Transition Expert, suggests some ways to approach the division of personal property to minimize conflict and maximize harmony among your heirs:

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You may choose to have your heirs come together and go room to room listing out the items that are most important to them. You can choose to draw lots and take turns picking the items each person wants. Or you can use coloured stickers for each person to label what they are most interested in. Where there is more than one sticker, you can revert to drawing lots. Whichever method you use, make sure you document it, and that a copy is with your Will and everyone involved. If there are items such as artwork or jewelry included, you may need to get appraisals ahead of time so that people feel the value of what they get is fair. You might also want to consider making copies of photos and videos so that everyone has these. In this case, copies are often as good as the originals.

An important element in the communication process is letting your future executor know where to find your Will when it is required. Of the respondents that have Wills in place, many have done a good job of providing information about its location or access to original copies of the Will. The following table shows how the location of essential estate documents, including Wills, has been shared.

Sharing details of the location of Wills and Powers of Attorney with heirs



Source: BMO Wealth Institute survey by Validatelt Technologies Inc., December 2016.

Estate planning in the United States

In the United States, when a person without a Will dies, state intestacy laws determine who will receive assets from the estate. Generally, a spouse and children have priority (which may be shared, depending on the state), followed by parents, and then siblings. Without a Will, more distant relations can inherit assets if there is no spouse or children, parents and siblings.

Many challenges and potential family conflict can be avoided if an estate plan and Will is in place, rather than relying on state rules that leave no opportunity for discretion. Having a well-thought-out and documented estate plan that includes a Will allows for greater control over which heirs receive an inheritance, how much they receive and when these amounts are received. A Will could also help to control and minimize taxes for the estate and reduce the risk of arguments or legal challenges. Yet, many people ignore this foundation of estate planning.

There are many reasons for not addressing estate planning, even though this may result in high costs for the complex families that are left behind. Issues of mortality, the challenge of figuring out how to treat different family members equitably, procrastination and not wanting to deal with conflicts that may arise are all reasons why Wills are not put in place.

Desire for wealth and valuable physical assets, and perhaps for an opportunity to benefit at the expense of other family members, can lead to conflict between potential heirs.

Enhanced estate planning

Estate planning should be about much more than just creating the necessary legal documents to facilitate the efficient processing and distribution of an estate. Enhanced estate planning looks not only at how and when traditional assets with a financial value are shared with your heirs, but also at a person's legacy and the cherished memories that are left behind.

It is not always the most expensive items that cause conflict among heirs. Sometimes simple, but personal, items have the most meaning for children and loved ones. The desire to inherit these items, such as a special piece of jewelry, a favourite photo, or a memento, can lead heirs into conflict unless these issues are dealt with prior to death.

A BMO Wealth Report titled [The Family Conversation You Should Not Avoid: How to Discuss Your Legacy](#)¹⁰ examines this issue and the need for communication to help reduce conflict. [Dr. Amy D'Aprix](#) shares the following:



Many people think you can avoid conflict by not having conversations. The truth is you can only delay conflict, not avoid it. Conflict usually escalates the longer you put off talking about things. For the least amount of conflict and the greatest level of harmony, talk early and talk often!"

[Warren Buffett](#) was asked about estate planning at the Berkshire Hathaway annual general meeting in 2013.¹¹ Part of his answer builds on the need for communication when it comes to putting your estate plan in place. He said:



Your children are going to read the Will someday... it's crazy for them to read it after you're dead for the first time. You're not in a position to answer questions.

It is better to let your heirs know and understand your estate intentions and goals now than to have them interpreted later in ways you did not intend.

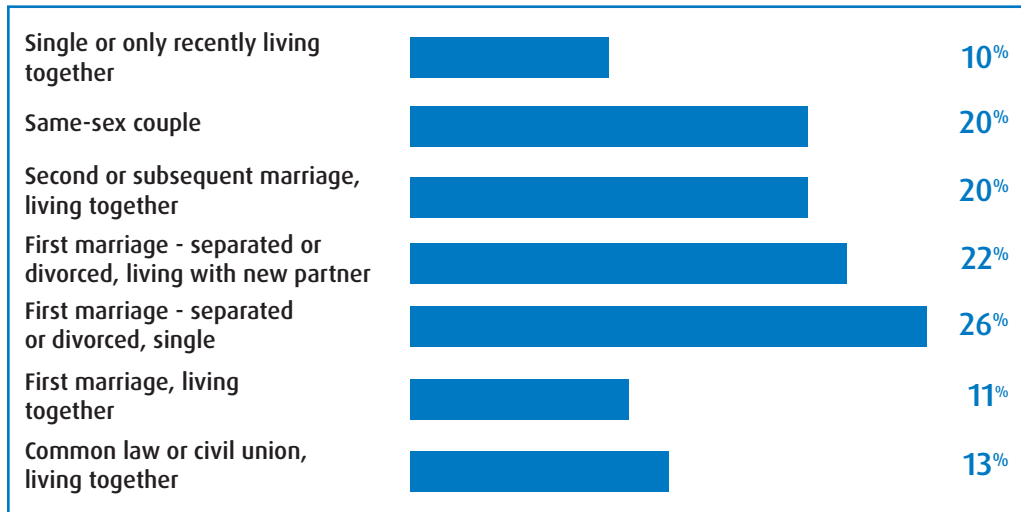
Estate planning is more challenging in complex family situations.

Illness and mental capacity issues

The fear of future illness or loss of mental capacity can be an impetus to stop procrastinating and put the necessary estate planning pieces in place. A loss of mental capacity can affect the ability to understand and make the decisions necessary to draft a Will or Powers of Attorney. In this unfortunate circumstance, the likelihood of dying intestate increases. The potential for conflict within a family over estate assets grows as a parent without the mental capacity to make a Will ages.

Loss of mental capacity for estate planning is not the only issue facing the children of aging parents. Providing assistance for their parents with daily living is a reality for many. Survey respondents that are separated, divorced, in a second marriage or in a same-sex relationship were more likely to be the family members that provided regular assistance for their aging parents as compared to children in first marriages.

Arrangements made by (grand) parents with (grand) children for daily living assistance in the future

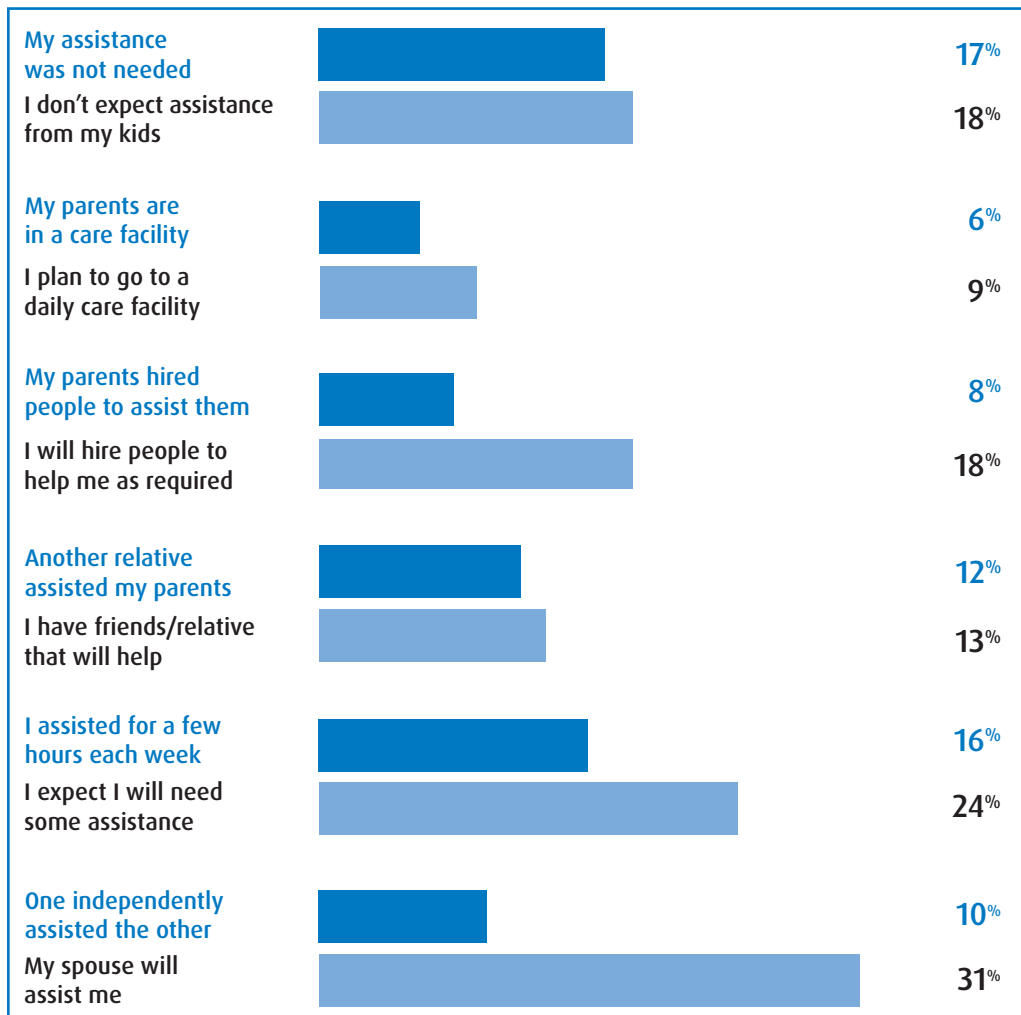


Source: BMO Wealth Institute survey by Validatell Technologies Inc., December 2016.

Being needed to help care for their own parents has influenced how survey respondents look at the future and their own expectations for needing assistance with their own daily living. Interestingly, the expectation that they will need assistance themselves in the future is higher than their incidence of providing assistance today.

A loss of mental capacity **can affect the ability to understand and make the decisions necessary to draft a Will or Powers of Attorney.**

Comparison of assistance provided to the expectation of assistance⁸



Source: BMO Wealth Institute survey by Validatelt Technologies Inc., December 2016.

Another expectation of almost half of those in first and second marriages was that their spouse would be there to assist them when needed. This is in stark contrast to the experience of their own parents, with only about 10% reporting that one parent was able to independently assist the other.

Planning and action steps to take now

With the potential for conflict among your heirs and the risk that making or updating your Will might not be possible in the future due to illness, it is important to prioritize your estate planning and put an up-to-date Will in place. Engaging a legal professional that works together with your investment and tax professionals is highly recommended; a well-designed Will and estate plan will be fairer to your heirs and stand up better to those who might otherwise challenge your estate plans. Your professionals will also work with you to help determine who would best fill important roles, such as your executor, a trustee, guardian for your minor children, and holders of Powers of Attorney. Just downloading a do-it-yourself Will template from the internet is not recommended.

There are many issues and strategies that your qualified professionals can help you to put in place to more effectively meet your estate planning goals. Together, you can look at the use of trusts (including living trusts), estate freezes, corporate restructuring, holding companies, beneficiary designations, joint ownership, and gifting in addition to your Will to help meet specific goals.

Choosing an executor

With today's complex family situations, choosing the right executor is more important than ever. Consider the case of an adult child being named as the executor for a deceased parent who had remarried and had additional children in the second marriage. In some cases, there may be tensions between the adult child of the first marriage and the surviving step-parent and half-siblings, which may influence how he or she manages executor responsibilities. The appointment of a fair and impartial executor, such as a corporate executor, or an agent to assist the family executor, can help to bring a more balanced and fair approach to the responsibilities of estate management and distribution.

Review your Will

An important part of estate planning is the regular review of your Will and related documents to ensure they are updated to reflect changes in your family situation as life events happen. Marital status changes, the birth of children and grandchildren, the purchase of life insurance, retirement, the receipt of an inheritance, and health changes are all reasons to go back and re-evaluate your Will and estate plan.

If you have property in foreign jurisdictions, secondary Wills drafted to deal with the unique legal concerns in those jurisdictions may be necessary. Your legal professionals must take care to ensure that such secondary Wills do not contradict or offset the terms of your pre-existing Will(s). Let your executor know where to find your Wills and other estate planning documents.

Communication about charitable intentions

Charitable intentions are important and should be discussed in advance with your executor and your heirs. Your heirs might feel that charities are being prioritized to their detriment. Having essential and open conversations with your children and other heirs about what is important to you may help to alleviate these fears.

Beneficiaries with special needs

Your estate plan and Will can be tailored to care for beneficiaries with special needs. A testamentary trust may be incorporated into your estate plan to help provide financial support for a special needs beneficiary. Determining who will assume responsibility for the trust is a decision that should be discussed and documented in your estate plan and Will.

Trusts

An additional level of privacy may be achieved through the use of living trusts and gifts (keeping the annual and lifetime gift tax limitations in mind), as a probated Will becomes a public document. There are tax considerations for this option, so the extra tax and administration costs need to be balanced with your privacy concerns with the assistance of your professional advisors.

An estate plan will take into consideration the **use of trusts (including living trusts), estate freezes, corporate restructuring, holding companies, beneficiary designations, joint tenancies, and gifting** in addition to your will to help meet specific goals.

Taxes

Taxation is an important part of estate planning. Relevant taxes include income taxes, probate fees and, depending on the size of your estate, estate taxes. Estate plans should include a focus on taxes to help you achieve the fair after-tax distributions you desire, and at the same time minimize the amount of tax that your estate will be liable to pay. Passing assets to a surviving spouse is a strategy that is often used as it can help to reduce and also defer estate taxes in the future.

Review

Tax rules also have the potential to change over time, leading to new strategies that can be employed to achieve your goals. Tax strategies may also lose some of their effectiveness over time. For example, the rules regarding estate taxes have changed many times over the years and your planning should be flexible enough to adapt to any future changes. These changes can occur at both the federal and at state levels. With all estate and Will planning it is important to avoid becoming locked in to decisions that are too difficult to adjust.

Insurance

Liquidity in an estate may also be a concern if your estate contains embedded tax liabilities from assets such as real estate or a successful business that have appreciated over many years. In this situation, the use of life insurance may be a strategy to deal with these relatively illiquid assets and help you in meeting your estate goals.

Conclusion

Putting in place an estate plan that contains an up-to-date Will, and having essential and open conversations with your executor and heirs are important to help you achieve your estate planning goals. Working with the right professionals, including your [financial professional](#), to help guide you through the process will give comfort and peace of mind to both you and your family, regardless of the complexities of your family dynamics.



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Footnotes

- ¹ Families and Living Arrangements: Marital Status. U.S. Census Bureau. Site accessed February 15, 2017 [census.gov](https://www.census.gov)
- ² Modern Family is an award-winning television show highlighting the lives of three interrelated families: a traditional family, a stepfamily, and a same-sex family. [abc.go.com](https://www.abc.go.com)
- ³ Adopted Children and Stepchildren: 2010. Kreider, R.M., and Lofquist, D.A., April 2014. U.S. Census Bureau. [census.gov](https://www.census.gov)
- ⁴ National marriage and divorce rate trends for 2000-2015. CDC: Centres for Disease Control and Prevention – National Center for Health Statistics. Marriages and Divorces. [cdc.gov](https://www.cdc.gov)
- ⁵ Remarriage in the United States. Lewis, J.M. and Kreider, R.M., March 2015. U.S. Census Bureau. [census.gov](https://www.census.gov)
- ⁶ Just the Facts: LGBT Data Overview 2015. The Williams Institute: UCLA Scholl of Law. May 2, 2015. williamsinstitute.law.ucla.edu
- ⁷ BMO Wealth Institute survey conducted by Validatelt Technologies Inc. between the dates of December 20 and 26, 2016. The online sample size was 1008 American respondents age 18 and over. The survey has a confidence interval of +/-3.01% at the 95% confidence level.
- ⁸ Respondents in the survey may have selected more than one response, so the percentages in the table do not total 100%.
- ⁹ Should you leave it all to the children? Richard I. Kirkland, Jr. Fortune Magazine, September 29, 1986. [archive.fortune.com](https://www.archive.fortune.com)
- ¹⁰ The Family Conversation You Should Not Avoid: How to Discuss Your Legacy. BMO Wealth Institute, July 2013. [bmoharris.com](https://www.bmoharris.com)
- ¹¹ Lessons in estate planning from Warren Buffett. Thane Stenner. The Globe and Mail, May 19, 2013. [theglobeandmail.com](https://www.theglobeandmail.com)