

Estate Planning

You spend a large proportion of your life working; working to get money to look after yourself, to provide for your family and to save for the future. Given the focus that is placed on creating wealth while you are alive, it seems logical to want some control over what happens to these assets once you are gone.

Estate planning is about giving you that control. Control to make sure that:

- the people you care about are looked after once you are gone; and
- your assets are passed to the people you want to receive them.

In simple terms, estate planning is about wealth succession - a process designed to help protect the wealth you have built over your lifetime so that it is distributed smoothly according to your wishes.

This fact sheet has been designed to get you thinking about your own situation. If you don't have an estate plan – we hope it encourages you to get one. If you do already have a plan in place – does it still reflect your current situation and wishes?

What type of people benefit from estate planning?

Estate planning is important for everyone. If you own anything or have people who rely on you, it is a good idea to have an estate plan. The more complicated your personal and financial affairs, the more important estate planning is.

There are certain times in your life when planning for the future becomes more crucial. The list below outlines some of the situations when you should review your estate plans:

- Getting married, living with a partner,
- Getting separated or divorced;
- Having children, including step children;
- Moving house, interstate or overseas;
- Buying real estate or other valuable assets;
- Relationship breakdown with other family members;
- Family separation involving other family members;
- Buying, selling or operating a business;
- Setting up a family trust or company; and
- If you have family members with special needs or children who are vulnerable.

Estate planning tools

This fact sheet discusses some of the more common tools that can help with your estate plans:

- Wills
- Asset ownership
- Powers of Attorney
- Superannuation Nominations

Wills	
What is a Will?	<p>A Will is a legal document outlining your wishes for your assets and possessions upon your death.</p> <p>A Will can also be designed to encompass a range of requests including:</p> <ul style="list-style-type: none"> • Providing for children from a previous relationship. • Providing for children with special needs. • Providing for people outside your immediate family. • Guardianship of your children. • Assets that do not form part of your estate (such as jewellery). • Meeting your charitable objectives.
What happens if I don't have a Will?	<p>Dying without a valid Will is called "dying intestate". When this happens, the court will appoint an administrator and your assets will be distributed according to a strict government formula. This formula may not be in line with your intentions, and the outcome may not be in the best interests of your family and loved ones.</p>
Important parties to a Will	<p>Executor The person appointed in your Will to administer your estate in the event of your death.</p> <p>Beneficiaries The person named in your Will to receive a particular asset or assets through your estate upon your death.</p> <p>Guardian The person who you have nominated to be legally responsible for caring and otherwise managing the affairs of minor children in the event of your death.</p>
Finalising an estate - The administration process	<p>Finalising an estate can be a difficult task. It is not as simple as following the instructions of your Will. Your executor should have a sound knowledge of the legal, accounting and estate administration process.</p> <p>Your executor can be a relative or close family friend, your solicitor, or you can appoint a trustee company.</p> <p>The estate administration process includes:</p> <ul style="list-style-type: none"> • Making your funeral arrangements. • Locating your beneficiaries and informing them of what they are entitled to receive from your estate. • Accounting for all of your assets and liabilities. • Looking after the assets of your estate. • Applying for Probate with the courts, so assets of your estate can be distributed to your beneficiaries. • Handing over bequest items to the nominated beneficiary. • Transferring assets and/or cash to your beneficiaries according to the beneficiaries instructions. • Finalising tax returns of your estate. • Establishing any trusts as dictated in your Will.
How can the assets of your estate be passed on to your loved ones?	<p>You must consider whether or not you want your assets sold down and distributed as cash, or passed on as they are.</p> <p>Specific bequests</p> <ul style="list-style-type: none"> • You may want to leave certain assets to particular people. • Reasons for specific bequests can include tax benefits, family history, sentimental reasons and to ensure equality between beneficiaries.

	<p>Estate equalisation</p> <ul style="list-style-type: none"> Do you want to make allowances to compensate for or alleviate any discrepancies to ensure equality between beneficiaries?
<p>Considerations for your Will</p>	<p>Asset register</p> <ul style="list-style-type: none"> This document should include the location of your Will, a list of your investments, as well as specific bequests. A copy could be retained by your legal representative to ensure it does not get lost. <p>Debts</p> <ul style="list-style-type: none"> Do you want your loved one to inherit any debts attached to their inheritance? Do you want debts funded to make sure your estate is 'debt free'? <p>Tax</p> <ul style="list-style-type: none"> What tax implications will there be and how will these be handled? <p>Centrelink</p> <ul style="list-style-type: none"> Are any of your nominated beneficiaries receiving Centrelink benefits? What impact will an inheritance have on Centrelink entitlements?
<p>When should I update my Will?</p>	<p>Your Will should be reviewed regularly and updated in line with changes in your life, e.g.:</p> <ul style="list-style-type: none"> marriage, separation or divorce, or entering into a new relationship. birth or death of children, grandchildren or other close relatives, or other changes in your family circumstances. significant changes to the value of your assets. substantial changes to the manner in which you own assets, including the formation of a family trust or the establishment of a self managed superannuation fund. if you enter into a new business or change your existing business structure. changes in your residency status or of any of your intended beneficiaries. retirement from full-time employment.
<p>Can my Will be challenged?</p>	<p>Although a Will is a legally binding document, a person can challenge the validity of your Will for a number of reasons.</p> <p>Most challenges come about from a poorly drafted or incomplete Will, or where a family member receives little or no inheritance compared to other family members.</p> <p>Having a Will properly drafted by a lawyer specialising in estate planning will reduce the risk of your Will being challenged.</p>

The importance of asset ownership

Not all of the assets you own are included in your Will. Assets not covered in your Will are called non-estate assets.

It is important that you are aware of which assets pass on through your Will and other assets that will transfer to another person on your death, allowing you to decide on how your loved ones are taken care of.

Assets included in your Will

- Assets held in your personal name, such as shares, property and certain personal assets.
- Assets held tenants in common.
- Life insurance, where you are the owner and there is no nominated beneficiary.
- Loans owed to you.

Assets not included in your Will

- Assets owned in joint names – these pass directly to the surviving owner.
- Superannuation benefits - The superannuation fund trustee has the ultimate discretion over who receives your benefit unless a binding nomination is in force.

The payout from a life insurance policy where you:

- Elect someone else to own the policy - the benefit passes directly to the policy owner.
- Nominate a beneficiary – the benefit passes directly to the beneficiary.

Children - the most important consideration for your Will

Without question the most important consideration when drawing up your Will is your dependants, in particular young children.

Your Will should detail who you want to take care of your children in the event of your death, as well as how you want them to be cared for. Your Will should include instructions for the appointment of a guardian who can legally act on behalf of your children, as well as specific instructions for their upbringing. This can prevent messy feuds later down the track, especially in the case of blended families and where both parents pass away at the same time.

Another consideration where minor children are involved is tax management. Children under the age of 18 can be hit with penalty tax rates up to 66% on the income earned on investments if your Will is not structured correctly.

Testamentary trusts

A testamentary trust is a trust that is established as a consequence of a Will and results in the trustee looking after the assets on behalf of the beneficiaries. It is an effective estate planning tool because it allows the trustee to distribute income from the estate to the beneficiaries in a tax efficient manner.

Children under 18 who receive income from a testamentary trust are subject to adult tax rates, rather than minor penalty rates.

A testamentary trust can also be an effective estate planning tool to:

- Protect assets from spendthrift or bankrupt beneficiaries who may be prone to misuse assets they inherit.
- Protect against splitting of assets in the event of a beneficiary becoming divorced.
- Ensure assets are passed down to your children upon the death of the surviving spouse.
- Provide income and asset protection for a handicapped beneficiary unable to manage their own affairs.
- Minimise income and Capital Gains Tax implications on assets inherited.
- To minimise the loss of a beneficiary's Centrelink income support entitlement.

Should a testamentary trust not be included in your Will, there are other estate planning 'vehicles' where your beneficiaries can transfer asset/s to a trust for themselves or for the benefit of another person, such as an estate proceeds trust.

The benefits of an estate proceeds trust are similar to that of a testamentary trust in that a trustee looks after the assets on behalf of the beneficiaries. However, there are limitations when using these trusts.

Powers of Attorney

A Power of Attorney is a legal document allowing you to appoint someone to act on your behalf.

When in force, the signature of the person you appoint as your Power of Attorney has the same legal force as your own.

The laws governing a Power of Attorney vary from state to state.

There are different Powers of Attorney, each with a different purpose:

- General Power of Attorney;
- Enduring Power of Attorney; and
- Enduring Guardian / Medical Power of Attorney/ Advanced Health Directive.

Powers of Attorney	
General Power of Attorney	<ul style="list-style-type: none"> • Allows someone to act on your behalf with regard to your personal and financial affairs. You can set limitations around the powers if you wish, defining specific time frames or asset boundaries. For example, you can nominate someone to operate a nominated bank account or sell a specific asset while you are overseas. • All general powers of attorney become void if you lose your mental capacity to make decisions.
Enduring Power of Attorney	<ul style="list-style-type: none"> • An Enduring Power of Attorney is similar to a General Power of Attorney, but it is not automatically revoked if you become mentally incapable. • An Enduring Power of Attorney can make important financial decisions in the event of your absence, illness or incapacity.
What happens if I don't have an Enduring Power of Attorney	<p>If something happens to you and you do not have an Enduring Power of Attorney, your family will have to apply to the State Authority to have an Administrator manage your affairs.</p>
Power to make medical and lifestyle decisions	<p>Having an Enduring Power of Attorney allows someone to make financial decisions on your behalf, but what about decisions that will affect your way of life?</p> <p>It is important to have someone you trust to make medical decisions in the event of your illness or incapacity.</p> <p>You can choose a person to make medical and lifestyle decisions on your behalf, depending on the state you live in, with a:</p> <ul style="list-style-type: none"> • Enduring Guardian • Medical Power of Attorney • Advanced Health Directive <p>Enduring Guardian</p> <p>An Enduring Guardian allows you to nominate someone to make health care decisions on your behalf. It is not revoked if you lose your mental capacity.</p> <p>Some of the decisions that a Guardian can make include:</p> <ul style="list-style-type: none"> • What future health treatment you have, including the medical practitioner who should treat you. • Whether to donate organs. • Where you should live. • Whether to participate in experimental health care.

	<ul style="list-style-type: none"> • Whether to have life-sustaining treatment withheld or withdrawn. <p>Medical Power of Attorney A Medical Power of Attorney allows the person nominated to make medical decisions on your behalf, in the event of you being ill or incapacitated and unable to make decisions.</p> <p>Unlike an Enduring Guardian, a Medical Power of Attorney does not allow the nominated person to make decisions affecting your lifestyle.</p> <p>Advanced Health Directive An Advanced Health Directive also allows you to nominate the types of medical treatment or care you do or do not want to receive in the event to you become unable to make the decisions for yourself.</p> <p>Similar to an Enduring Guardian you can also nominate a person to make medical and lifestyle decisions on your behalf in the event become ill or incapacitated.</p>
<p>What's the difference between an Enduring Guardian and an Enduring Power of Attorney?</p>	<p>An Enduring Guardian makes medical and lifestyle decisions for you, whereas an Enduring Power of Attorney manages your financial and legal affairs.</p>

Superannuation nominations

As previously mentioned, your superannuation savings do not form part of the assets that are distributed via your Will. This is a crucial consideration for the succession of your wealth, because if structured correctly your super savings can be received tax free when they are passed on to your beneficiaries. Conversely, if your preferences for your super savings are not structured correctly, the consequences for your savings can be damaging. Superannuation savings paid to someone other than your spouse, your child who is a minor, or someone who is financially dependent on you, can be taxed up to 31.5%.

Super and estate planning	
<p>What happens to my super when I die?</p>	<p>The trustee of your superannuation fund has the ultimate discretion about whom to pay your superannuation savings, unless you have a binding nomination.</p>
<p>What is a binding nomination?</p>	<ul style="list-style-type: none"> • A binding nomination gives you certainty about who will receive your super savings. It allows you to choose who receives your benefits at the time of your death. • It must be updated at least every 3 years, and witnessed by two adults not identified in your nomination.

How do I get an estate plan?

Estate planning is a complex area. It requires serious consideration on your behalf, as well as the expertise offered by a solicitor and accountant, in conjunction with the guidance of a financial planner.

An estate plan is an important part of managing your financial affairs. It will ensure that your wishes are carried out once you are gone, and importantly can help to protect the financial future of your family.



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