

ESTATE PLANNING

Estate Planning

This document contains factual and general information only to assist you in understanding financial planning concepts. It is designed to be used in conjunction with a Statement of Advice.

Estate planning is a key part of the financial planning process.

In the event of your death, it helps to ensure your wishes are carried out. This includes: making sure your hard-earned assets reach their intended beneficiaries; having a trusted administrator in place; and where minors are involved, nominating someone to take care of them if the worst was to happen.

It should be noted that not all assets are estate assets and only estate assets are distributed according to a will.

Estate planning may seem complicated but breaking it down into key elements will make it less daunting:

- Wills
- Guardianship of children
- Powers of Attorney
- Superannuation nominations
- Testamentary trust in some circumstances

Having a valid Will is important as it relates to the distribution of your Estate assets. But that's not the end of it - you also need to consider who can take care of your affairs and estate if you are alive but unable to do so yourself. Appointing an agent or Power of Attorney who

can act on your behalf is an important consideration.

Estate planning is a specialised area. It will only be effective if it is carried out in a timely manner and by appropriately qualified professionals. A solicitor is probably best placed to help you prepare your Will. There are also tax considerations to keep in mind when structuring your Will. We recommend that you have a tax professional guide you through these important decisions.

Wills

The benefits of having a Will are:

- You can choose who you wish to inherit your assets, rather than this decision being made by the laws of intestacy
- You can choose to pass certain belongings to certain individuals
- You can ensure that items of sentimental value are retained in the family
- If you are an unmarried couple, you can ensure your partner is provided for
- You will have peace of mind that your Estate will be divided as you wish
- You can ensure that the people you choose will administer your Estate

Very importantly, it will also make it easier for your loved ones to deal with your affairs when you are gone.

There are some specifics to keep in mind. Make sure your Will:

- Nominates Executors (and Successor Executors) for your estate who are likely to survive you and who

clearly understand your wishes.

- Nominates beneficiaries in relation to your whole estate and nominates second choice beneficiaries, should your first choice die before you do.
- Bequeaths a monetary value or a percentage of your Estate rather than a specific asset, as there is the risk that an asset may not exist when the Estate is distributed.
- Nominates assets to be held in Trust for beneficiaries under 18 years of age. For example, you can provide funds for your children or grandchildren’s education.
- Is able to accommodate the preparation of an ‘Estate Planning Black Box’ which can be kept with your Will to make it easier for Executors to administer your Estate. The Black Box contains important information about your assets like purchase details, additions, capital gains, the location of title deeds and any other relevant information.

What assets are covered by your Will?

Estate assets are usually those assets which are held personally in your name (i.e., wholly owned by you). When you die, only these assets are included in your estate. The distribution of these assets is directed by your Will.

Non-estate assets are assets you control but do not own (or wholly own). If another party has an inherent interest or authority in the asset, it is a non-estate asset. The succession of these assets must be individually addressed by your estate plan (and can usually be allocated to your estate if you wish) to ensure smooth and prudent distribution.

Estate Assets (Covered by Will)	Non Estate Assets (Not covered by Will)
Real property	Assets held with other parties as joint tenants (see below*)
Cash investments	Assets held in trust
Shares / Shares held in a company.	Unallocated assets owned by a family trust
Personal chattels such as a car or jewellery	Superannuation benefits
Loans made to the trustee of a trust	Life Insurance proceeds
Income or capital allocated to you from a trust	Account based annuities or pensions that have a reversionary beneficiary or a beneficiary under a valid binding nomination.
Interests in assets held as tenants in common [^]	

[^] Tenants in common each have legal ownership of a designated portion of an asset. Upon death, each person’s share of the asset is dealt with in accordance with their Will.

* Joint tenants own an asset mutually. This means that upon the death of one of the joint tenants, the other would automatically become the owner of the entire portion of the asset as if they had owned the entire asset from inception.

Guardianship of Children

The appointment of a Guardian is usually included in the Will as a safeguard in the event that both parents die before the child/children are 18 years old. The appointment of a Guardian also serves to avoid the possibility of disputes between members of the family. The Court has an overriding discretion to appoint or remove a Guardian.

It is the Guardian’s responsibility to make the important “life decisions” on behalf of the children. The Guardian must ensure that the children are adequately housed, clothed and educated. Careful consideration is therefore needed when appointing a person (or people) to take on this enormous responsibility.

Powers of Attorney

A Power of Attorney is a legal document that gives another person the authority to act on your behalf. The Power of Attorney must:

- Be over the age of 18
- Be of sound mind at the time of granting the attorney and capable of fully understanding the nature and purpose of the document they are signing
- Not do anything illegal while operating under a Power of Attorney
- Is unable to prepare a Will on your behalf or transfer the Power of Attorney to someone else unless specified.

There are three types of attorney:

General Power of Attorney

Where one person gives another the authority to act on a specific transaction for a limited time such as buying a house whilst you are overseas. This authority ceases immediately if you become incapacitated or die. They are unable to act on your health care.

Enduring Power of Attorney

This is similar to a General Power of Attorney except that it can start immediately and continue even if you become incapacitated. This is useful for situations where a person becomes incapacitated due to mental deterioration or coma. It is therefore extremely important that you only grant this power to someone you can trust.

Medical Enduring Power of Attorney

This is limited to medical decisions. It does not however extend to special health decisions which include: sterilisation; abortion; donation of body tissue; some psychiatric care and experimental medicine.

If you wish to revoke the authority given under the Power of Attorney, you must have the capacity to do so and the original must be destroyed. A formal revocation of Power of Attorney must be registered in certain states.

Advance Care Directive

An advance care directive (ACD), or 'living will' can provide further instructions about your healthcare for circumstances where you can't make decisions or are incapacitated. You can also designate a representative – usually a member of your family or a friend – to make decisions if you are unable to. ACDs can provide direction on when to end or limit life support which is important to some people. Making your instructions clear to your family may help ease the decision making burden in a crisis. The legal requirements vary from state to state.

Superannuation Nominations

Your superannuation savings do not form part of the assets that are distributed via your Will. Therefore, unless you make a nomination, the Trustee of your superannuation fund uses their discretion to determine who receives your death benefits.

Non Binding Nomination	Will be considered by the Trustee who ultimately determines the final outcome but they do not have to pay the funds to the nominated beneficiary.
Binding Nomination	Is considered an instruction to the Trustee and they must pay the funds to nominated person.
Lapsing	Lapsing nominations need to be renewed every 3 years.
Non Lapsing	Do not need to be renewed. But it is important they are reviewed if they are binding.

Other considerations

- You need to consider, the tax implications of leaving your superannuation death benefit to a dependant, a non-dependant or your estate for general distribution to beneficiaries. Dependant and non-dependant recipients of your superannuation death benefits are treated differently for tax purposes.
- The Trustee of your superannuation fund is the owner of any insurance policy held inside superannuation. In the event of a claim, the insurance payment will be added to your superannuation balance. Unless a Binding Nomination is made, the Trustee will decide whom to pay all the benefits to, in accordance with the trust deed and superannuation law.
- Nominations are especially important if you have multiple beneficiaries (e.g. from previous marriages) who may have a claim on your superannuation death benefit.

Testamentary Trusts

Testamentary Trusts are trusts that are established by your Will and are created upon your death. They are generally funded by assets of the Estate or from the proceeds of insurance policies and superannuation, if these are paid into the estate.

Testamentary Trusts, like regular trusts, can either be fixed or non-fixed. Fixed trusts specify which income and or capital each beneficiary receives. Non-fixed trusts or Discretionary Trusts allow the trustee discretion as to what each beneficiary receives. In some circumstances, the law will set up a Testamentary Trust when beneficiaries are unable to hold or deal with property in their own name i.e. in the case of minor beneficiaries (young children under 18).

A trust must 'vest' (distribute the trust assets) within 80 years from the date of death of the Testator. It is possible to create a vesting date that is linked to the death of a person such as a beneficiary or some other event.

The benefits of Testamentary Trusts include:

- The ability to protect assets from potential creditors and unforeseen relationship breakdowns. For example, should your spouse or child form a relationship in the future which breaks down over time, if you have left assets to them in the form of a trust, the partner cannot directly access these assets. An inheritance held within a Testamentary Trust is less likely to be the subject of a Family Court order in the case of a marriage breakup. It may be regarded as a financial resource and have some effect on the terms of a property settlement but this is a preferable outcome to the property being at the disposal of a Family Court order.
- The ability to share the assets with family members with reduced transfer costs and ease of access.
- Income tax minimisation, particularly for minor children who are taxed at adult rates. The trustee of a non-fixed trust is able to stream the income to beneficiaries.
- The trust is able to earn investment and business income.
- Flexibility: crisis provisions can be included in the Will to trigger alternatives where a beneficiary becomes incapacitated, bankrupt or experiences family breakdown.
- The ability to allow you to 'rule from the grave' by setting guidelines, such as age, education for children and grandchildren, income streams versus lump sums for spendthrift individuals etc.
- Releasing certain beneficiaries from asset management responsibilities (For example, minors, the elderly, the incapacitated or the financially unsophisticated or gullible). The flexibility of a Testamentary Trust, especially if combined with a Memorandum of Wishes as to how the Trust should be administered, may be an appropriate arrangement.
- The trustee has total flexibility to invest in whatever assets they wish (subject to the Trust Deed) and can draw on capital or income at any time.

Estate Planning 'To Do' List

- ✓ Make sure you have current, up-to-date Will
- ✓ Appoint an Enduring Power of Attorney who can make relevant decisions if you are unable to make decisions yourself
- ✓ Have Guardianship and related instructions in place for your children. Financial arrangements could be made for guardians through insurance
- ✓ Make sure superannuation nominations are up to date and reflect your current wishes
- ✓ Give copies of your relevant Wills, Power of Attorney, etc. to all the appropriate people (e.g. solicitor, financial planner, accountant, executor, children, etc.)
- ✓ Estate Planning Black Box – prepare an electronic file that contains information regarding all of your bank accounts, superannuation accounts, investment, mortgages, title deeds, Wills, Powers of Attorney. Make sure your family and professional advisers know where this information is located.

Your adviser can assist in recommendations for your estate plan. However, it is important that you follow through and put the required legal documents in place with a solicitor.

Important Information

This information is produced for advisers and clients of ClearView Financial Advice AFSL No. 331367 and Matrix Planning Solutions AFSL No. 238256.

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