

Distributing your assets

Estate planning in plain English

What is estate planning?

Estate planning is about wealth succession – a way to help protect the wealth you have built over your lifetime, so that it is distributed according to your wishes following your death.

You spend a large part of your life working to earn 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,
- your assets are passed to the people you want to receive them, and
- your assets are passed on in a tax effective way.



Who benefits from estate planning?

Estate planning is beneficial for everyone. The more complicated your personal and financial affairs, the more important it is to have an estate plan.

Planning for the future can become more important at certain times in your life, such as:

- getting married, living with a partner, separating or getting divorced
- having children, including step-children and adopted children
- moving house, interstate or overseas
- buying real estate or other valuable assets
- family separation involving other family members
- buying, selling or operating a business
- setting up a family trust or company, or
- if you have family members with special needs or children who are vulnerable.

What's involved in estate planning?

There are three main tools that can help you with your succession planning.

1. A Will
2. Powers of Attorney
3. Superannuation nominations

Making a Will

A Will is a legal document that outlines how you want your assets and possessions distributed upon your death. It can cover a range of special requests including providing for children, guardianship or your charitable objectives.

What happens if you don't have a Will?

Dying without a Will is called 'dying intestate'. When this happens, the court will appoint an administrator and your assets will be distributed according to a strict state-based 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.

What should you consider when preparing a Will?

- Who do you want to be your beneficiaries?
- Who will you choose as the executor of your Will?
- Do you have any specific bequests?
- What assets need to be included?
- What are the tax implications?

When should you update your Will?

Your Will should be reviewed and updated whenever there are major changes in your life, such as:

- marriage, separation or divorce
- birth of children
- death of family members
- significant changes to the value of your assets
- significant changes to the way you own assets, such as the formation of a family trust or self-managed superannuation fund
- entering a new business or change to existing business structures, or
- retirement.

What is not distributed through your Will?

- Assets owned in joint names pass directly to the surviving owner.
- Superannuation benefits are generally governed by the superannuation fund trustee. However, a binding nomination can be made to certain eligible beneficiaries including your estate.
- The payout from a life insurance policy where you have nominated a beneficiary to benefit directly from the policy.

Testamentary trusts

A testamentary trust can be established in a Will and results in the trustee looking after the assets on behalf of the beneficiaries. It can be 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 tax rates.

A testamentary trust can also protect assets from spendthrift beneficiaries or the creditors of bankrupt beneficiaries who may be at risk of losing assets they would otherwise personally inherit.

Powers of Attorney

A Power of Attorney is a legal document in which you 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 rules relating to powers of attorney vary from state to state and there are different types of Powers of Attorney; each with a different purpose:

General Power of Attorney 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 timeframes or asset boundaries. For example, you can nominate someone to operate a specified bank account or sell a specific asset while you are overseas. All General Powers of Attorney become void if you lose your mental/legal capacity to make decisions.

Enduring Power of Attorney is similar to a General Power of Attorney, but it is not automatically revoked if you become mentally incapable. Someone appointed under an Enduring Power of Attorney can make important financial decisions in the event of your absence, illness or incapacity.

Enduring Guardian Advanced Health Directive allows you to nominate someone to make health care decisions on your behalf. It is not revoked if you lose your mental capacity. Some of the decisions that a Guardian can make include those relating to your future medical, surgical or dental treatment and other health care, including palliative care and life-sustaining measures. These include:

- 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 healthcare, and
- whether to have life-sustaining treatment withheld or withdrawn.

Superannuation nominations

Your superannuation savings do not automatically 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. Correspondingly, 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 minor child, someone who is financially dependent on you, or someone with whom you are in an interdependency relationship with, can be taxed at up to 32 per cent.

What happens to your super when you die?

The trustee of your superannuation fund has the ultimate discretion about who to pay your superannuation savings to, unless you have a valid binding nomination.

What is a binding nomination?

A valid binding nomination gives you certainty about who will receive your super savings. It allows you to choose which of your eligible beneficiaries will receive your benefits at the time of your death.

It must generally be updated at least every three years, and witnessed by two adults who are not beneficiaries in your nomination.

How do you get started?

Estate planning is a complex area that requires careful consideration. You will need the expertise of a solicitor and accountant, and consider the guidance of a financial adviser.

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

Children are the most important consideration for your Will

Without question, the most important consideration when preparing your Will is your children, 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.

Another consideration where minor children are involved is tax management. It is important to get the right advice to ensure your Will is structured correctly.

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