



Estate Planning – an overview

ESTATE PLANNING

Whilst a Will is an important part of any good Estate Plan, the practice of Estate Planning involves much more. Estate Planning is a holistic approach to preparing a succession plan. It is the process of making sure you have suitable arrangements in place to ensure that all your testamentary wishes are captured and a transition plan is in place for all of your assets (however they may be owned).

Estate planning involves planning not only for death but also for the possibility of legal incapacity before death.

MAKING YOUR WILL

A Will is legal document by which you record a number of important decisions. Anyone over the age of 18 (or in some circumstances under 18) who is of sound mind is able to make a Will.

By making a Will you decide who should be your Executor. This is the person who is responsible for administering your Estate and ensuring that the terms of your Will are carried out. The role of Executor can be complex and demanding. As such, you should give careful thought to who you appoint to this role.

Your Will also enables you to decide who should be the beneficiaries of the assets which you own personally in your own name, such as your house, bank accounts, investments, car and personal items. Assets such as your superannuation, life insurance, property owned by a trust or held as joint tenants with another person cannot be gifted by your Will. However, as part of the Estate Planning process, you are generally able to nominate a beneficiary for these types of assets or decide who will take control of them.

Nominating a Guardian for young children is another important decision made by making your Will.

Without a valid Will, the law in your State will determine who is responsible for administering your Estate and how your assets will be distributed.

TESTAMENTARY TRUSTS

A testamentary trust is a way of providing for beneficiaries in your Will. It is a tax effective structure that can also provide your beneficiaries with asset protection for their inheritance. As a testamentary trust is created by your Will, it does not come into existence unless you pass away.

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DISCRETIONARY TRUSTS

In a nutshell, if you have a Family, Discretionary or Unit Trust, as part of the Estate Planning process it will be necessary to review the governing documents for the Trust (such as the Trust Deed, Deeds of Variation and Financial Statements) to determine who has current control of the Trust and how this control can be assigned to someone else.

Depending on your situation and wishes, the Estate Planning steps to deal with Trusts can be simple and straightforward. Or in some cases, more complex arrangements may need to be implemented to secure, as far as may be possible, your wishes and intentions.

SUPERANNUATION

Superannuation is another type of asset that cannot be properly dealt with by the terms of your Will. However, as part of the Estate Planning process we will review your Superannuation documents and assist you to nominate beneficiaries for your entitlements. The process will be different depending on whether you have a Self-Managed Superannuation Fund or alternatively superannuation held in an industry, retail or public sector Superannuation Fund.

There are some limitations on who can be nominated as a beneficiary of your superannuation entitlements. There are also some important 'inheritance' type tax implications to be aware of.

COMPANIES

If you have any companies, we will review the governing documents (such as the constitution and latest ASIC annual return) and assist you to ensure control of the company (and the assets it may own) will pass to the persons you intend.

ENDURING POWERS OF ATTORNEY

An Enduring Power of Attorney is a legal document that gives another person the authority to make personal (including health) and/or financial decisions for you. It is an important part of making an Estate Plan, by which you decide who should step in to make decisions for you and manage your affairs, should the need arise in the future.

ADVANCE HEALTH DIRECTIVE

An Advance Health Directive is a formal way to provide instructions for your future healthcare. It will come into effect if you become unable to make decisions for yourself due to age, illness or incapacity.

As part of the Estate Planning process, the nature of and need to make an Advance Health Directive will be discussed. Depending on your wishes and circumstances, it is not always necessary to make an Advance Health Directive.

REVIEW

Once you have an Estate Plan in place, it is important to keep it under review. There are a number of changes in your personal circumstances that may affect your arrangements. Changes in your asset structures can also cause your wishes not to be carried into effect.

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