

Estate Planning

Although considerable emphasis is placed on wealth creation and protection, a vital aspect of your financial strategy is how your wealth will be distributed after your death or if you become incapacitated to make your own financial decisions.

Estate planning is the planning and documentation of your wishes for the distribution of your wealth following death or disablement, including assets you own personally as well as assets you control. Whilst not an exhaustive summary we have outlined below some general issues to be considered.

A Will

A Will is the first step in ensuring the distribution of your estate is actioned in accordance with your wishes. It is important to ensure that 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 the whole or part of your estate and nominates second choice beneficiaries, should your first choice predecease you
- Bequeaths monetary value or a percentage of your estate rather than a specific asset, as there is the risk that an asset may not be in existence at the time of distribution of the estate
- 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.

Appointment of Guardians

A guardian appointment is usually included in the Will as a safeguard in the event that both parents die to determine who looks after minor children. It is important to make sure the guardian is capable of handling all of the responsibilities associated with looking after minors.

Testamentary Trust

A Will can also include provision for establishing a Testamentary Trust, which can be regarded as a protection vehicle for your assets whilst providing some tax effectiveness when distributing your estate.

If your Will incorporates a Testamentary Trust, upon your death your assets would be transferred into a discretionary trust (or multiple trusts) rather than directly to your beneficiaries.

Each of your primary beneficiaries (eg your children) could be the trustee of their own individual trust. This would allow them to control the distribution of capital and income to themselves, or amongst a range of secondary beneficiaries (eg a spouse and children).

Decisions regarding distributions of income and capital can be made on an annual basis after considering each beneficiary's personal income and taxation circumstances.

Importantly, income distributed from a Testamentary Trust to minors is taxed at normal adult marginal tax rates.

A Testamentary Trust may provide some protection in the event of family breakdown or bankruptcy).

It's important to ensure the Trust is controlled by someone suitable to avoid poor asset management decisions.

Power of Attorney

The Power of Attorney is a separate document from the Will and operates only during the lifetime of the donor. It is a formal document by which one person (called the donor) appoints another person (called the attorney) to act on your behalf.

There are three types of Power of Attorney:

1. General Power of Attorney

This can provide the attorney with restricted or unrestricted authority over the donor's financial affairs (but not their health care). It but lapses if the donor loses mental capacity

2. Enduring Power of Attorney

This provides the attorney with authority over the donor's financial affairs (but not their health care) until they die. It extends beyond any loss of mental capacity.

3. Enduring Medical Power of Attorney

This provides the attorney with authority over the medical needs of the donor if the donor is unable to make these decisions themselves (whether temporarily or permanently).

A Power of Attorney may only be granted to someone who is over the age of 18 and who is of sound mind at the time of the grant and capable of fully understanding the nature and purpose of the document they are signing.

The attorney is not able to do anything illegal while operating under a Power of Attorney, nor are they able to prepare a Will on behalf of the donor or transfer the Power of Attorney to someone else unless specified.

Non-Estate Assets

Although a Will constitutes a vital part of your estate planning arrangements, not all of your assets can be dealt with through a Will. This includes the following:

Superannuation assets

The Trustee of the superannuation fund is required to distribute your superannuation monies (including any life insurance benefits paid as a result of the death of the member) in accordance with the Trust Deed. You usually have the option of informing the Trustee of your preferences in relation to the distribution of your funds, however this may or may not be binding on the Trustee.

Jointly held assets

If assets are held as joint tenants then upon the death of one of the owners the asset automatically passes to the other owner. Assets held as tenants-in-common are able to be disposed of as part of a Will

Life insurance policies

Depending on the ownership of the policy, benefits can be paid to: the deceased's estate and therefore distributed through their Will (when the owner of the policy is also the insured person); a person who has been nominated as the beneficiary of a policy by the deceased owner (in which case the beneficiary automatically receives the proceeds of the policy); or any third party which owns the policy

Assets owned by a Trust

These assets are legally owned by the Trustee of the Trust and therefore are not able to be dealt with through a person's Will.

Assets owned by a company

Only the deceased's shares in the company may be dealt with through their Will.

We help you get the most out of your Super.

www.super-focus.com.au

5229 6882

office@super-focus.com.au

