ACUITY
WEALTH MANAGEMENT

Estate planning guide

Protecting your family and your legacy

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Introduction

Estate planning is the process of arranging your assets and financial affairs in a way that ensures the transfer of your assets to your beneficiaries in accordance with your wishes and in a tax-effective manner.

Although it may seem like a clinical and objective process, the aim of estate planning is to minimise any potential conflict and emotional heartache for those who are left behind after you're gone. In addition to making the necessary arrangements to care for your loved ones, an effective estate plan also includes provisions for your own comfortable lifestyle in your twilight years.

An estate plan typically includes a legal will, as well as other documents that reflect your wishes such as how you would like to be cared for medically and financially, should you become unable to make these decisions on your own in the future.

Key benefits of Estate Planning

Legally binding

The instructions in your estate plan are legally binding. You are able to specify how and when your beneficiaries will receive your assets when you pass away.

Minimise taxation

You can structure your affairs in such a way as to legitimately minimise taxation.

Protect your assets and wealth

With a clear plan, precise instructions, and appropriate structures in place you can have certainty about the administration of your estate.

Protect against litigation and potential disputes

Your beneficiaries will have a clear understanding of your wishes thereby eliminating the potential for misunderstandings and family disputes.

Your affairs are in order

Estate planning gives you the peace of mind that you have made all the necessary arrangements for your estate and your legacy to be managed according to your wishes.

The importance of Estate Planning

What is a will?

A will is a document that outlines who you will leave your assets and personal belongings to when you pass away. It is essential to not only have a will, but to ensure that it is valid and kept up to date.

It is estimated that almost half of all Australians die without a will, or "intestate."

If you die intestate, or your will is deemed invalid, a court-appointed administrator will assume responsibility for paying any outstanding bills and taxes from your estate. The balance of your estate will then be distributed according to a predetermined formula, which may not be how you intended your assets to be allocated. If you die intestate and don't have any living relatives, your estate will be paid to the state government.

It is also important to understand that your will only considers your *estate assets*, which will be managed by your will, and not your *non-estate assets*, which are outside of your will.

Estate assets are those assets that are usually held in your name and generally include:

- Funds held in bank accounts or term deposits
- Shares
- Property
- Personal assets or other valuables such as art, collectibles, motor vehicle etc.

Non-estate assets which do not fall under the jurisdiction of your will include:

- Superannuation savings
- Assets held in a trust

An effective estate plan must therefore take into account both your *estate* and *non-estate assets* and ensure that the transfer of your wealth to your beneficiaries is carried out in such a way that is legally binding and in accordance with your wishes.

Key components of Estate Planning

An estate plan aims to avoid any uncertainties over the administration of probate, and to minimise any taxes or other expenses your beneficiaries may incur from the transfer of your estate. Key components of an estate plan typically include:

- A will
- Superannuation death nominations
- Testamentary Trust
- Powers of Attorney
- Power of Guardianship
- Anticipatory direction

Testamentary trusts

Many wills involve testamentary trusts. A testamentary trust is really just another way to pass on your wealth. However, instead of passing assets directly to a beneficiary via the will, they are transferred into a trust with a nominated beneficiary, or beneficiaries, placed in control of the trust.

Testamentary trusts may be established to protect assets and to determine how and when certain beneficiaries may be able to access income or capital from your estate.

Reasons for creating a testamentary trust may include:

- The beneficiaries are minors (younger than 18 years of age).
- The beneficiaries have diminished mental capacity.
- You do not trust the beneficiary to use their inheritance wisely (for example; if they are bankrupt or have substance abuse issues).
- You do not want family assets split as part of a divorce settlement.

A trust will be administered by a trustee who is usually appointed in the will. A trustee must look after the assets for the benefit of the beneficiaries until the trust expires. The expiry date of a trust will be a specific date such as when a minor reaches a certain age, or a beneficiary achieves a certain goal or milestone, such as getting married or attaining an academic qualification.

Powers of Attorney

Powers of attorney and appointments of guardianship are important mechanisms that come into play should you become legally or intellectually incapacitated due to illness or injury.

If someone loses the capacity to make financial or lifestyle decisions for themselves, and they have previously made a power of attorney and appointed a guardian, they will have a greater assurance that those matters will be dealt with as they would have wished. Without these appointments in place, decisions regarding their assets, healthcare and lifestyle, may be made by someone who isn't familiar with their wishes.

Appointing someone as your power of attorney gives them the legal authority to look after your affairs on your behalf. Generally speaking, there are three different types of power of attorney:

A **general power of attorney** is where you appoint someone to make financial and legal decisions for you, usually for a specific period of time, for example if you're overseas and unable to manage your legal affairs at home.

An **enduring power of attorney** is where you appoint a person to make financial and legal decisions for you if you lose the capacity to make your own decisions.

A **medical power of attorney** can make only medical decisions on your behalf if you become unable to do so yourself.

You can prepare a few other documents to help your legal appointees and family as you grow older, including:

An **enduring power of guardianship** gives the nominated individual the right to choose where you live and make decisions about your medical care and other lifestyle choices, should you lose the capacity to make your own decisions.

An **anticipatory direction** records your wishes about medical treatment in the future, in case you become unable to express those wishes yourself.

An **advance healthcare directive (or living will)** documents how you would like your body to be dealt with if you lose the capacity to make those decisions yourself.

Naturally, the documents you choose to draw up will depend on your situation, and the responsibilities you are happy to entrust to others.

What about Superannuation?

Any savings you have in superannuation do not form part of your estate and as such your will cannot control how your superannuation assets will be distributed. However, most superannuation funds allow you to nominate who you want your death benefit paid to, either as a non-binding or binding nomination.

If you don't nominate someone, the super fund trustee will decide who your money goes to. This can lead to delays and the potential for disputes within the family.

Binding nomination

A binding nomination leaves your super fund trustee with no choice as to who will receive your death benefit. You choose whether the money goes to:

- One or more dependants, or;
- Your legal personal representative, who must pay out the money according to your will.

Non-binding nomination

A non-binding nomination provides guidance to the super fund trustee as to who should receive your superannuation benefits. However, the trustee still has the final say, especially if you nominate someone who isn't financially dependent on you.

Capital Gains Tax

While most bequests received by a beneficiary under a will are not subject to taxation, there may be capital gains taxation implications should the beneficiary subsequently dispose of those assets. Capital gains tax is a complex area and the degree to which it is applied is largely determined by the type of the asset, when it was acquired, and the particular taxation situation of the beneficiary. We strongly recommend engaging the professional services of an accountant to assess any taxation implications of your estate planning strategy.

Leave behind fond memories

Don't let your legacy be a family feud you created

Estate planning is a complex area and can be subject to litigation from family members or other dependents who may seek financial redress if they feel aggrieved. Should this eventuate, the costs of legal action may be incurred by the estate - even if the estate wins - thereby reducing the value of the estate available for distribution. Accordingly, we strongly recommend our clients to have a clear and well-structured estate plan to ensure their legacy is protected and transferred to their beneficiaries in accordance with their wishes.

Most of us want to be remembered in a good light after we pass away, as someone who made a positive impact on those we cared for. This is where an estate plan can help. You can use an estate plan to create a legacy to leave behind something meaningful after you're gone – whether it be for family, your local community or a charitable cause you care about.

Create an estate plan while you are healthy and of sound mind

If you wait for an illness or injury to strike before thinking about an estate plan, you may not get it done or may not be in the best position to articulate your wishes clearly. Estate plans that are created or amended during illness, or towards the end of life, increase the likelihood that issues over your capacity to execute a will or trust may eventuate. This is not to say that plans cannot be altered late in life, but they do require extra care.

Next Steps

For a confidential discussion about how an estate plan may apply to your particular circumstances, please feel welcome to contact us.

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