

Estate Planning

In simple terms, estate planning is about ensuring that your estate passes to the right people, at the right time in the most financially efficient and tax effective way possible. Planning ahead to ensure the people you care about are financially protected in the future is one of the most important things you can do. It encompasses much more than just making a Will.

Asset Protection

As is commonly the case, the devil is in the detail and the best time to look at asset protection strategies is long before you ever think you will need them. Simply put, asset protection involves structuring your estate so that:

1. "At risk" persons or entities carry the financial risk,
2. "Low risk" persons or entities hold the assets and wealth, and
3. You are insured against all "insurable" risk.

The sources of financial risk are varied and include banks and financial institutions, business creditors and law suits. There are many types of business structures available in Australia, each of which attracts differing legal and taxation consequences and there are many common traps that can be easily avoided with the right advice at the right time.

Business Succession Planning

Every business with two or more owners needs to consider what would happen to the business if one of the owners departed due to premature death, total and permanent disability ("TPD") or a traumatic illness. A comprehensive business succession plan (or "business Will") can address the need to protect the ongoing viability of the business for the remaining owners while ensuring the departing owner or his or her estate is looked after financially. This can be achieved through a Buy Sell Deed whereby the

departing owner's interest is transferred to the remaining owners automatically with the purchase price funded through insurance. Insurance can also be used to ensure that the business is compensated sufficiently so it can continue to trade and meet liabilities through what is often a very difficult time.

Will

A Will is a legal document which ensures that on your death your assets and wealth are distributed according to your wishes. Your Will appoints an executor who is the person who will distribute your assets to your nominated beneficiaries. A properly drafted Will should provide for a tax effective means of protecting and distributing your assets whilst avoiding costly and traumatic disputes after your death. If you die without making a Will your assets will be distributed according to a rigid formula known as the laws of intestacy. You can also use your Will to appoint guardians of any minor children and express your funeral wishes.

Testamentary Trust Will

Depending on your circumstances your beneficiaries may benefit greatly from the taxation and asset protection benefits offered by a Will which includes testamentary discretionary trusts ("TDT's"). Under a TDT Will, rather than gift your estate directly to your beneficiaries, your estate is gifted to a TDT or TDT's which your beneficiaries effectively control. The beneficiaries can invest the funds held in the TDT as they see fit and distribute income to a wide range of beneficiaries, including minors, in a tax effective manner.

Power of Attorney

A Power of Attorney is a legal document which authorises another person such as a trusted friend or relative to make decisions on your behalf. While a Will operates on your

death, a Power of Attorney operates during your lifetime. You can appoint an Attorney to make decisions on financial matters and also in relation to your future health care. If you do not have a Power of Attorney and become incapable of making decisions for yourself, then unless someone applies to be appointed as your administrator or guardian your affairs may be handled by a government official for a fee.

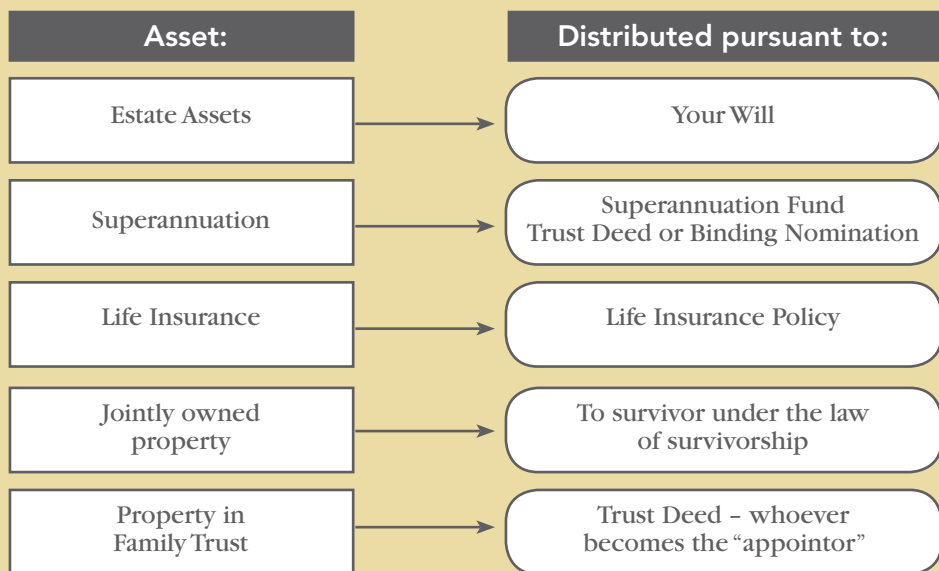
Advance Health Directive

An Advance Health Directive, also known as a “living will”, is a document which allows you to give directions about your future health care should you lose the capacity to make decisions. It can include instructions to withdraw medical treatment designed to prolong life. It can also include general wishes relating to your religious or spiritual beliefs, palliative care and treatment you may or may not wish to receive in the event that you are terminally ill and incapable of making decisions. Making your wishes known in an Advance Health Directive

means your next of kin does not have to make the decision for you.

Dealing with non estate assets

Assets which form part of your estate when you die (“estate assets”) will pass to your beneficiaries according to your Will. Estate assets include bank accounts, shares and real estate in your own name. Often however the bulk of your assets will be made up of “non-estate assets” such as property owned with another person jointly, superannuation, life insurance and assets held in a family trust. Equally as important as making a will is ensuring that these non-estate assets pass to the right people at the right time. These assets can be structured so that they will form part of your estate after your death (for example so they pass into a TDT under your will) or they can be passed directly to the intended beneficiaries (for example if there are likely to be claims against your estate by disgruntled beneficiaries or creditors). A diagram showing how estate and non-estate assets are distributed is set out below:



The laws in this area are complex and it is strongly recommended you seek professional legal advice.

For further information please contact our office 07 5443 1566