

The Importance of Estate Planning

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Estate planning may not be the most comfortable topic to discuss, however it is an integral part of your overall financial plan. It is much more than having a standard will prepared, estate planning is about having the peace of mind that your assets and affairs will be taken care of should you pass away. An effective plan involves protecting the assets you have worked hard to acquire, which may include your home, investments, motor vehicles or other valuable items, by ensuring they are distributed to your loved ones as per your wishes.

Estate plans should not be static documents that once created are filed away permanently. They should be regularly reviewed to ensure they are relevant and accurately reflect your life circumstances as they change. Superannuation and insurance proceeds may not form part of your estate, so they will require additional planning.

What is the need for an Estate Plan?

Without a plan in place there could be a long-lasting impact on your loved ones, which is why developing an effective estate plan is important to ensure that:

1. Your wealth and assets are passed to your intended beneficiaries

The main component of estate planning is deciding which of your beneficiaries will receive your assets. This is achieved by preparing a will. Without a will, the courts will determine how your assets will be divided in accordance with legislation; this process may take years to settle and may not necessarily bequeath your assets as intended.

2. Protecting families with young children

An effective plan will ensure that your children are taken care of in the way that you would like; this will allow you to name the guardians in the event that both parents should pass away.

3. Tax liability is minimised

Having an estate plan can help to protect your loved ones from any unexpected tax consequences that arise in the administration of your estate.

4. Eliminates ambiguity

When estates are administered it can cause challenges and complications within families, particularly blended families where one party may feel they have more rights to your assets than others. Having a plan in place will enable you to choose who controls and looks after your finances and will eliminate ambiguity, in that the deceased person's intentions are clearly stated.



What may be included in an Estate Plan?

Will

Your will is a document that directs how your assets are to be distributed among your nominated beneficiaries. Dying without a will is called 'dying intestate' and means your assets are distributed in accordance with the inheritance laws of the states and territories of Australia. Without a will there is a real risk that the intention of the deceased person will not be acted on. This may result in assets being distributed to unintended beneficiaries as well as unexpected tax liabilities for your beneficiaries. It should also be noted that joint assets, trust assets and superannuation may not necessarily be dealt with by the terms of the will; therefore a comprehensive estate planning strategy is important.

Testamentary Trust

Traditionally a will passes your assets directly to the intended beneficiary, however a will does not take into account unforeseen circumstances such as beneficiaries being bankrupt, or going through family law disputes, or whether the beneficiary is a minor. A testamentary trust is another estate planning tool to help protect your assets from any legal action and it provides a greater level of control over the distribution of assets to beneficiaries in a tax effective manner.

Power of attorney

Granting a Power of Attorney (POA) essentially means that you legally appoint a person to sign documents and make decisions on your behalf. You can choose to grant a general POA or a limited POA if you want to limit the actions of the person who is looking after your affairs. Appointing an enduring POA will allow the appointed person to legally act on your behalf up until you pass away, even in the event that you become mentally incapacitated.

Medical Health Directive

An enduring POA will not entitle the appointed person to make decisions about your health care; however you can consent for you POA to make decisions regarding health care by preparing an Advanced Health Directive. This is a legal document that will set out detailed directions about your future health care which is prepared in consultation with your doctor. The Advanced Health Directive will only come into effect if your cognitive health deteriorates and you become unable to make decisions for yourself.

Binding Death Benefit Nomination

Superannuation is excluded from your will, as it is effectively held in trust. Without a valid binding death benefit nomination in place any benefit payable upon death will be distributed by the superannuation trustee in accordance with the Trust Deed. Having a binding nomination in place, means you have elected a valid beneficiary to which your superannuation benefit will be distributed. This can include your legal personal representative, the executor of your estate.

Insurances (Life, TPD, Income Protection)

It is important to consider whether insurances such as life, trauma, total & permanent disability and income protection are appropriate for your situation. Having the appropriate insurances in place will give you the peace of mind that your family members will be taken care of if you are to pass away or suffer trauma which renders you unable to work.

What happens to a Director or Trustee on death?

Director of a company

Ordinarily, if a director of a company dies, the shareholders will appoint a new director, however any surviving directors can manage the company and may appoint a temporary director if needed.

If a person is a sole director and only shareholder of a company, the person or trustee who is appointed to administer the estate of the deceased, may appoint a new person as the director of the company. This again highlights the importance for a valid will.

Trustee of a Trust

When a trust is established an appointer (or principal) will be named. The appointer has the power to remove and appoint a new trustee; this will be the case in the event that a trustee passes away. If the trustee was also the appointer, the deed of the trust will outline how a new appointer and trustee will be appointed. To avoid confusion a person can nominate in their will who is to become the appointer of the trust if they are to die.



Potential consequences for poorly drafted estate plans?

Unfortunately there are situations where neglecting an estate plan, or not having it periodically reviewed, can result in the deceased's original intentions not being met. Below is an example of a court case that highlights the importance of an effective estate plan and why they should be reviewed on a regular basis.

Ipollo & Hesford v Conti (2014)

Mrs Conti and her husband were members and individual trustees of a SMSF. Mrs Conti had made a number of death benefit nominations to her second husband over the years, however at the date of her death all those nominations had lapsed and were not valid. Mrs Conti's will requested that all her superannuation benefit go to her adult children and specifically stated that her husband would not receive any superannuation proceeds. Mrs Conti's children from her first marriage were the executors of her estate, however were not appointed trustees of her superannuation fund. The deed of the superannuation fund allowed for the surviving trustee (the husband) to appoint a new trustee. Mr Conti appointed a corporate trustee, of which he was the sole director. The new trustee then resolved to pay the entire superannuation benefit to Mr Conti. The courts held that this was correct and in the end the children missed out on their mother's superannuation benefit. A different outcome would have been achieved had the children been appointed as trustees of the fund in the event of Mrs Conti's death.

Need Help?

Whether you already have an estate plan, a will, or haven't thought about it at all, it is important to consider your current situation and ensure that you have an up to date, effective plan in place. Hall Chadwick QLD can assist by reviewing any existing plans you have in place and also developing a new plan, which may consist of liaising with estate lawyers and other advisers. We can also offer value by developing a tax effective plan that is best suited to your individual needs. If this is something you would like to discuss further, please contact our office.

To find out how we can help, contact our office:

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