

ESTATE PLANNING

What is estate planning?

Most people use “estate planning” to refer to a will and the decisions made about what happens to property after a person’s death.

However, a comprehensive estate plan also means thinking about:

- Superannuation and life insurance, which are each dealt with according to the rules of the fund or policy and any nominations you have made;
- An enduring power of attorney which takes effect while you are still living, but unable to make decisions for yourself. This covers a wide range of circumstances, including overseas travel, incapacity following injury, illness or dementia;
- An enduring guardian appointment
- Possibly entering into certain transactions during your life time, for reasons such as the minimization of tax on capital gains or superannuation death benefit, or to reduce the exposure of your estate to claims and attacks on your Will by persons you do not wish to benefit.

Will

Your Will states what happens to your property after your death. Your instructions can be as simple or as complex as you wish- the important thing is that everything you own is included.

You can revoke your will, and make a new will, at any time. Alternatively, in some circumstances you can alter an existing will by a simple “codicil”.

You should consider changing your will if:

- You have married or re-married or entered into a de facto relationship;
- Your relationship breaks down;
- There are changes in your family situation, for instance new children or grandchildren, nieces or nephews for whom you would like to provide
- Any beneficiary has died or changed his or her name;
- Any beneficiary goes bankrupt or is under pressure from creditors;
- Any beneficiary has a marriage or relationship breakdown;
- Any beneficiary becomes the recipient of a means tested pension;
- A child or other dependant becomes disabled or has some other change of circumstances;

- An executor moves overseas or becomes unsuitable to act;
- You acquire or dispose of major assets;
- You have established a family trust or superannuation fund;
- You have made a bequest of specific property that you subsequently sell or give away; or
- There is a major change in your financial circumstances, for example a large inheritance or lottery win.

In general, it is wise to think about whether your will still reflects your wishes every three to five years.

You should think about a **testamentary trust** in your will if, for example, a beneficiary has special needs, is a spendthrift or may become bankrupt, or is in a high tax bracket.

Your relatives’ Wills

Circumstances may arise where you should consider asking your parents or anyone else under whose Will you will be a beneficiary to leave your inheritance in some other manner, such as to your children or into a trust. These circumstances would include the likely breakdown of your marriage or de facto relationship or if you are engaged in a high risk business or vocation where you may suffer large losses or be sued.

Superannuation & life insurance

An important part of estate planning is identifying which of your assets will *not* be dealt with by your will. **Superannuation** and **life insurance** are two common examples of significant assets that need to be considered apart from your will.

Your superannuation will generally pass to whomever you have named in your death benefit nomination form - one or more people or your estate. The taxation consequences of superannuation payments mean that careful advice is needed. Likewise, the proceeds of a life insurance policy are paid to the person you have named in the policy.

Power of attorney

Sound estate planning also includes arrangements for decisions and actions on your behalf while you are still alive. Most commonly, you will want the confidence that someone you trust will make both financial and lifestyle decisions for you. Giving someone an “enduring” power of attorney allows him or her to make financial decisions for you if you need assistance managing your affairs.

The persons you appoint can do most things you could do yourself, such as:

- Collect rent, dividends or other money owing to you;
- Operate bank accounts;
- Pay medical or other bills;
- Ensure your tax affairs are kept in order;
- Sell your motor vehicle or other items you can no longer use;
- Sell your home and arrange other suitable accommodation.

Failure to put an enduring power of attorney in place could result in your affairs coming under the control of the NSW Public Trustee and Guardian and/or someone you would not want involved in this way.

Health care and medical treatment

Giving someone enduring guardianship allows him or her to make lifestyle decisions for you if and when you are no longer able to do so.

This person, your “guardian”, can make decisions such as:

- Where you live; and
- What health care and other personal services you receive.

Left out of a Will?

If you have been left out of a relative’s Will, you may be eligible to make a claim. We are experienced in this type of dispute and can advise you regarding your rights.

Need to know more?

Thinking about your will and estate planning means considering your present situation, relationships with people close to you and what may happen in the future. Our lawyers are familiar with the issues that arise and will help you find the best solution.

Important Information

These brief notes are for your general information. They are not a complete guide to the subject and cannot take account of your own particular circumstances. It is very important that you take competent professional advice before taking any action.

Sometimes we will need to liaise with your accountant and/or financial planner to ensure that all relevant considerations are taken into account and the best estate plan formulated.