

We usually consider Estate planning as the planning around what you would like to happen to your assets when you die. It is also the process of deciding and formalising, while you're still healthy, how you want to be looked after if you became unable to manage your own affairs.

Documents such as Wills, powers-of-attorney, insurance and superannuation beneficiary nominations are components of the estate planning process – but in isolation, they don't form an effective, structured estate management plan.

An estate plan gives you the opportunity to:

- Nominate someone to act on your behalf if you become unable to make your own decisions
- Decide whether your superannuation assets and insurance will be included in your estate
- Use trusts or other structures to protect your assets and gain tax benefits
- Protect vulnerable family members
- Specify arrangements for the smooth transfer of your business interests

Why is estate planning important?

With family units becoming more complex it is time to start the conversation as estate planning has become even more important in today's society because it helps to ensure you are looked after during your lifetime according to your wishes and that on your death your assets will be managed and transferred according to your wishes, in the most financially efficient and tax effective way.

What if I don't have a Will?

If you die without a Will, this means that you have died 'intestate'. If your estate is reasonably large or complex this can cause problems for different people that may have a claim. Most states of Australia have specific legislation which sets the rules as to what happens and the property of an intestate estate will usually be distributed to close family members.

How can an estate plan benefit me?

There are several important benefits of estate planning, including:

- **Peace of mind.** The biggest benefit of estate planning is the peace of mind it provides, ensuring that your hard-earned assets will be distributed according to your wishes.

- **Financial support for the people you care about.** By developing a comprehensive estate plan, you can guarantee that your assets go to the right people.
- **Eliminates disputes.** A clear Will and a good estate plan will help your loved ones amicably resolve arguments, disputes and even messy legal battles about the fair distribution of your assets.
- **Tax-effective.** With help from legal and financial professionals, you can distribute your assets in a way that minimises the tax obligations your beneficiaries will face.
- **More than just money.** Estate planning is about much more than just dividing up your finances; it also allows you to ensure that you receive the medical care you want, that your children are properly cared for if you die unexpectedly.

45% of Australians do not have a valid will

NSW Trustee & Guardian 2019

A Will is a formal document that gives you the opportunity to:

- Appoint an executor and trustee
- Specify how and to whom you would like your assets to be distributed
- Appoint a guardian for children who are minors at the time you die
- Establish one or more trusts to transfer your wealth to beneficiaries' tax effectively while maximising the protection of those assets
- Make specific gifts to charities or establish your own charitable foundation, and
- Express your wishes regarding your funeral arrangements

In order to make a valid Will, you must be over 18 years old. If you are younger than 18, you will need the consent of the court.

Who should be an executor?

When you make your Will you need to designate an executor. The executor is the one you entrust to administer your estate and see that your wishes are carried out. If you wish, you can name more than one person to act as executor. In many cases the executor manages and distributes the estate with the assistance of a solicitor. The executor is expected to administer the estate in a time-efficient manner, according to the terms of the Will. Some of the tasks include:

- Responsibility for funeral
- Obtaining probate
- Collecting any debts or investment income
- Claiming life insurance
- Protecting and insuring any assets of the estate
- Selling assets
- Distributing the remainder on the estate

The executor can be a beneficiary. There are a large amount of responsibilities placed on a person when they become the executor of an estate, and administering an estate can take many months (sometimes years) and you should discuss this with the intended person before you nominate them in your Will. The executor has a right to be paid for his or her time and trouble in administering your estate if they are not a beneficiary. You must keep your Will in a safe place. If the Will is mislaid, it may be presumed to have been revoked. Solicitors hold Wills on behalf of clients, usually at no charge. You should keep a copy of your Will and note on it where the original is kept. It is advisable to tell your executor where your Will is kept.

Power of attorney – protecting your interests

Have you ever stopped to consider who would manage your affairs if you had an accident or became unwell and were unable to make decisions for yourself?

Even if you are married and your partner is in good health, your partner is not permitted to sign for you, or make decisions on your behalf, without a formal power of attorney previously granted by you, authorising them to act in this way.

An enduring power of attorney is a legal document in which you authorise someone you trust to make decisions and sign documents on your behalf if you are no longer able to do so. It is an important component of estate planning. You do not want the administration of your financial affairs to be in limbo for months, or even years, because you have lost capacity but no one has the authority to take control.

You can appoint your partner, another trusted family member, friend or a professional trustee company to act as your attorney.

An enduring power of attorney will prevent the government from intervening in your affairs if you suffer an accident, illness or loss of mental capacity.

It is possible to limit a power of attorney to a certain timeframe (eg while you are overseas) or to making decisions in certain areas only (eg medical power of attorney).

Case study – Second Marriage

John and his new wife, Grace, were having lunch with a lawyer friend, David, sharing stories about their recent wedding. John and Grace had lived together for 12 months before getting married and were astounded when David told them that their marriage may have revoked the Wills they had made as a de facto couple.

Sure enough, John and Grace's Wills did not state that they were to remain valid in the event of marriage. This oversight meant that if either of them died, their estates would be divided according to the governments formula rather than their specific wishes.

If John had died, Grace would have to share his assets with John's children, from his first marriage. The fact that Grace was now pregnant brought home to them the urgent need to start the conversation and get their affairs in order.



The benefits of trusts

There are many different types of trusts. In the context of estate planning, trusts are an extremely valuable tool that can bring much needed flexibility to the distribution of your assets, often saving many thousands of dollars in tax for your beneficiaries, as well as protecting the interests of your beneficiaries over the long term.

Testamentary trusts

A trust is a legal structure in which money or other assets are held under the administrative control of an independent third party, the trustee. The trustee is responsible for looking after the trust assets in the best interests of the beneficiaries of the trust.

While many people create trusts (eg family trusts) during their lifetime to protect their assets or minimise tax, it's also possible to establish a trust under your Will which is activated when you die. This type of trust is called a testamentary trust.

Your Will must appoint a trustee for the testamentary trust. The trustee is responsible for administering the trust assets, in the way your Will specifies, for the benefit of the trust beneficiaries. As the trust has been created under your Will, it is common for the executor to be appointed to act as trustee, although this may not always be appropriate.

Almost every Will should give the beneficiaries the opportunity to hold assets in a testamentary trust as there are clear tax advantages over inheriting assets in their own name. These advantages apply for children who are minors, as well as income-earning adults and pensioners.

Testamentary trusts can last for many decades following your death and can provide benefits to multiple generations of your family.



Need more information?

If you would like professional assistance with the preparation of your estate plan, contact us at fiducian.com.au

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