CLEARSTONEWEALTH

Guide to Estate Planning

Estate Planning-

Peace of mind for you and your loved ones

Estate Planning is about ensuring that, in the event of your death, the right assets get into the right hands at the right time. While no-one likes to think about it, ignoring your estate plans can lead to significant distress, confusion and poor outcomes for your family at the worst possible time.

Are these concerns for you?

Some common areas that need consideration in a comprehensive estate plan include:

- Do you have a will that's been written with tax efficiency and estate protection in mind?
- Are there sufficient assets to provide for your dependants or loved ones?
- Have you considered who to trust with raising your children, and managing your estate?
- Do you understand what will happen to your super upon death?
- Do you have other assets or structures that would not be controlled by your will, such as trusts, businesses or a SMSF?
- Are there risks you face from events other than death, such as being sued, losing mental capacity, or becoming bankrupt?
- If anything happens, do those around you *know* what assets you have and what to do?

These issues are relevant for individuals and families of all ages, and there can be serious consequences if ignored.

How ClearStone Wealth can help

ClearStone Wealth are ideally placed to help you implement an effective Estate Plan. Our experienced financial planners can work with you to identify your wishes as well as any issues that need to be dealt with.

We can also coordinate any specialist Legal or Accounting advice needed to ensure an optimal plan. We have agreements with specialist estate planning firms to access cost effective advice and documentation, whilst our team at Max Tax & Accounting are available to ensure a tax-effective and coordinated plan.

About this guide

The purpose of this guide is to give you a basic understanding of the many considerations that go into a comprehensive estate plan, and give you the confidence to seek specialist advice to address your family's specific concerns.

We look forward to being of assistance to ensure that you have peace of mind.

A Comprehensive Estate Plan

The purpose of Estate Planning is to ensure that your loved ones are protected, and receive the best possible financial result from the transfer of your wealth in the event of your death.

There are a variety of interlinked factors to consider, which is the reason for our comprehensive approach of utilising the specialist skills of a financial planner, solicitor, and accountant as required by your unique situation.

For instance, most people understand the role of a Will in determining the distribution of their estate, but certain assets (especially superannuation) are not controlled by the will, and there are many choices (with important tax and other consequences) that can be made.

In the following pages we will answer some of the common questions that arise in our discussions with clients, in order to help you on your Estate Planning journey.

Your Will

Can I make a will myself?

Many people think making a Will is a simple exercise, and that it is something they can do themselves.

In fact, there are a lot of things that can, and do, go wrong with do-it-yourself Wills. Peoples' affairs are often more complex than they realise. They can wrongly identify beneficiaries, or fail to properly give away everything they own. There are also certain assets that cannot be given away by a Will (see 'Property you cannot give by will' below).

Opting for an apparently "cost-effective" off-the-shelf Will can result in delay, uncertainty and substantial legal costs to your family and estate as many of the problems that occur can only be resolved by expensive Court proceedings.

What is an Executor and what do they do?

An executor is the person or persons you appoint to carry out the terms of your Will after you die.

Some duties of an executor include:

- ✓ Looking after your funeral arrangements
- ✓ Obtaining a grant of probate (if necessary)
- ✓ Collecting your assets
- ✓ Paying your debts (including income tax), and

- ✓ Distributing your assets to your beneficiaries in accordance with the terms of your will.

Who should I appoint as my Executor?

Your executor should be a responsible and trustworthy person, preferably of your own age or younger.

Your executor can be your spouse, a friend, a relative, or your solicitor.

You can appoint an alternate executor who will act as your executor only if your first appointed executor dies before you or is unable to act for whatever reason.

Property you cannot give by will

Certain Property you cannot be given by will. For example:

Property held as joint tenants

If you own property with another person you may hold it either as 'joint tenants' or as 'tenants in common' If you hold property as joint tenants, the property passes automatically to the surviving joint owner (or owners) when you die, therefore the property does not form part of your estate. It is easy to confuse the two therefore it is important you are aware how your property is owned.

Property held in a trust

This property passes to, or is held for, the beneficiaries of your trust in accordance with the terms of your trust deed.

Superannuation

Your superannuation arrangements may not entitle you to dispose of your superannuation assets by will (however the rules differ from scheme to scheme).

Life insurance policies

If you nominate a beneficiary to receive the proceeds of your life insurance policy, this nomination takes precedence over the terms of your will. If you wish for the proceeds of your policy to go to someone other than your nominee you must change your nomination. For more information regarding your life insurance policy you should consult your financial planner.

Testamentary Trust Will

Testamentary trust wills are becoming increasingly popular. Under this type of will your assets are held on trust for your beneficiaries by a trustee when you die.

This is in contrast to a standard will where your assets are left outright to your beneficiaries in their personal capacity when you die.

The main benefits of using a testamentary trust Will instead of a standard Will include:

(1) *Asset protection benefits:* by leaving your assets to your beneficiaries by way of trust your assets are protected if a beneficiary becomes bankrupt or gets separated after you die.

(2) *Ability to separate control:* vulnerable beneficiaries (including disabled beneficiaries, drug dependent beneficiaries and minor beneficiaries) can benefit from the trust structure and the ability to separate control. By appointing a trustee to manage your vulnerable beneficiaries' inheritance you can ensure their inheritance isn't needlessly wasted.

(3) *Taxation benefits by splitting income:* see below example.

Testamentary Trust Will – Splitting Income Example

Samantha and her husband receive incomes that place them in the top marginal tax bracket of 45%. They have 3 children each less than 18 years of age, none of whom works.

Samantha is about to inherit $500,000 from her recently deceased mother in a combination of real estate and cash. The anticipated annual investment returns from the inheritance will be:

Rent	$20,000
Interest	$25,000
Taxable Income	$45,000

Samantha compares how much disposable cash her family will have if the $500,000 is inherited directly by her, or through a testamentary discretionary trust.

Scenario 1: Samantha inherits in her own name

Taxable Income	$45,000	
Tax on $45,000	**$27,000**	(45% tax)
Disposable cash	$20,250	

Scenario 2: Samantha inherits as trustee of a testamentary discretionary trust

Under current taxation laws, Samantha can allocate the trust's income to her three children in equal shares. The taxable income for each child is $15,000.

Taxable Income	$45,000	
Tax on $15,000 (Child 1)	**$ Nil**	(Within tax free threshold)
Tax on $15,000 (Child 2)	**$ Nil**	(Within tax free threshold)
Tax on $15,000 (Child 3)	**$ Nil**	(Within tax free threshold)
Disposable cash	$45,000	

In summary, the after-tax cash saving of using the testamentary discretionary trust will is **$24,750**

Is it necessary for me to review my existing will?

The general rule is that you should review your will every two or three years or when your personal circumstances change. This is to ensure your will remains up to date and reflects your current wishes. For example, you should review your will:

- ✓ If you or anybody mentioned in your will changes their name
- ✓ If your executor dies, becomes unwilling or unsuitable to act due to age, ill health or for any other reason
- ✓ If you are diagnosed with a serious medical condition
- ✓ If you have plans to travel overseas
- ✓ If a beneficiary dies
- ✓ You have specifically left any property which you subsequently sell or give away, or put in trust, or which changes its character or name
- ✓ If you marry or divorce
- ✓ If you enter or end a domestic partnership or personal relationship
- ✓ If you have children
- ✓ If you have matrimonial difficulties

Does getting married or divorced affect the validity of my will?

Marriage

If you have a will in New South Wales and you subsequently get married the general rule is that your will becomes void, therefore it is important that both you and your partner make a new will after you get married.

Some people request to have their wills finalised before they get married, for example if you plan to marry overseas you may wish to make your wills before you leave as a precautionary measure. In this case, you must expressly mention your intention to marry your significant other in your will in order to prevent your will from becoming void after you get married.

Divorce

Getting divorced (or ending a domestic partnership or de-facto relationship) can affect the validity of your will and your legal obligations to your partner. This area of law is complex and is not uniform throughout Australia. If you are contemplating divorce (or ending a domestic partnership or de-facto relationship), or have been divorced since making your will, you should consult a solicitor immediately.

Enduring Power of Attorney

What is it?

A power of attorney is a legal document that allows you (the "principal") to nominate one or more persons (referred to as "attorneys") to act on your behalf. An enduring power of attorney gives your attorney the authority to manage your legal and financial affairs, including buying and selling real estate, shares and other assets, operating your bank accounts and spending money on your behalf.

For succession planning purposes, we recommend clients appoint a special Power of Attorney called an Enduring Power of Attorney. An Enduring Power of Attorney is unique because it continues to operate even after the principal loses mental capacity.

Having an enduring power of attorney is particularly important if you are married or in a de-facto relationship. For example, if you are married and you become incapacitated because of a disability, your partner can use the enduring power of attorney to sell jointly owned assets to free up cash for medical, living and other expenses.

When does my attorney's power come into effect?

The attorney's authority over your financial matters can commence immediately, on the date of your choosing, or when you lose decision-making capacity.

Who can be my attorney?

Anyone can be your attorney as long as they are over 18 years of age.

What considerations must my attorney take into account when making decisions on my behalf?

Your attorney must act in your best interests. Unless they are expressly authorised, they cannot gain a benefit from being your attorney.

Contact us for more information on appointing an enduring power of attorney.

Appointment of Enduring Guardian

What is an Appointment of Enduring Guardianship?

An enduring power of attorney cannot be used for health or lifestyle decisions. It is essential that you appoint an enduring guardian to make health or lifestyle decisions on your behalf should you lack the necessary capacity to make these decisions yourself.

Your enduring guardian's powers only come into effect and remain active while you are unable to make medical and lifestyle decisions yourself.

When making medical or lifestyle decisions on your behalf your guardian must act in your best interests, wherever possible, make the same decision that you would have made in the circumstances, and avoid situations where the guardian has a conflict of interest.

What sort of decisions can my enduring guardian make?

Your enduring guardian may:

- ✓ Choose where you live if you cannot care for yourself (for example, in a hostel or nursing home);
- ✓ Decide what health care you receive (for example, treating doctor, community healthcare);
- ✓ Decide what other personal services you will receive (for example, home support services);
- ✓ Consent on your behalf for you to receive certain minor and major medical treatments; and
- ✓ Access your medical records.

Who can be my enduring guardian?

Anyone can be your enduring guardian — provided they:

- ✓ Are over 18 years of age; and
- ✓ Do not provide any of the following services for a fee or reward to you:
    - Medical services (for example, your GP or community nurse)
    - Accommodation (for example, the manager of an aged care facility where you live), or
    - Any other services to support the activities of the daily living of the person appointing the guardian
- ✓ Are not the spouse, parent, child or sibling of any person providing the above services to you.

What happens to my Super?

The Estate Planning implications for superannuation are complicated, and this is an area that is commonly overlooked or underappreciated.

Beneficiary Nominations

Firstly, it is important to consider that only certain people qualify as dependants and may therefore be nominated to receive your superannuation (and potentially life insurance within super) in the event of your death. This includes a spouse, de-facto, former spouse, child (including an adult child) and financial dependants, as well as the member's Legal Personal Representative or Estate.

It is also important to understand that many beneficiary nominations are Non-Binding on the Trustee (that is, they will still have discretion on how to pay out the benefit) as opposed to Binding (which must be followed as long as the nomination is valid). Pension accounts also have the option of Automatic Reversion, where the pension continues to your surviving spouse after your death.

Form of Benefit

Some funds will allow a benefit to be paid out as a pension to the recipient, instead of as a lump sum. There are tax and access consequences to this which need to be considered.

Tax treatment

The tax treatment of any superannuation death benefit can be complex – at best, the whole benefit can be tax free (for example a lump sum paid to your spouse), and at worst taxed 30% (lump sum to a non-dependant child from an "untaxed" fund). There are also various scenarios for pension benefits.

The best approach is to look at the tax-specifics of your current funds, and to consider what beneficiary options are available and weigh up the pros and cons of each option.

To further complicate the matter, some funds also pay an additional "anti detriment" amount, which is intended as a refund of the contribution taxes paid over your career. This can be a sizeable amount over and above your balance, and needs to be considered.

Self Managed Super Funds (SMSF)

Control and continuation of a SMSF should be considered by a SMSF expert. The legalities of control are complicated, and investment and tax considerations can be equally so.

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