



Advice Guide – Estate Planning

How to read this document

Managing your finances to meet your day to day requirements as well as your long-term goals can be a complex task. There are all sorts of issues you need to consider such as taxation, legislation, protecting your wealth and assets, associated costs and the inherent risks of investment. When undertaking a financial plan it is important that you understand how these issues will impact on you and what you should expect over time.

This document contains general information about the benefits, costs and risks associated with certain product classes and strategies. It is designed for use in conjunction with a Statement of Advice that takes into account the circumstances and objectives of an individual. Before making a commitment to purchase or sell a financial product, you should ensure that you have obtained an individual Statement of Advice prepared by WARR HUNT Pty Ltd.

As legislation may change, you should ensure you have the most recent version of this document.

Please contact your Adviser if you do not understand anything, or need further information or clarification.

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Estate planning

An effective estate plan includes tax effective Wills to protect your estate and the interests of your beneficiaries in the event of your death.

Jointly held assets, trust assets and superannuation however, are not necessarily dealt with by the terms of the Will. These are usually considered 'non-estate' assets for estate planning purposes. Note there may be specific State legislation that classifies non-estate assets as 'notional estate' for the purposes of a Family Law challenge.

It is therefore important to have a considered and comprehensive estate plan to ensure all assets are transferred according to your wishes in the most effective and efficient manner. Outlined below are some factors to consider when developing your estate plan.

Your Will

Dying without a Will or an invalid Will is known as dying intestate. In such an event, laws are in place in each State to determine how your estate will be administered. This may result in your estate assets being distributed against your wishes as well as incurring unnecessary tax liabilities for your beneficiaries.

Your Will is the document that directs how your estate is to be distributed amongst your nominated beneficiaries.

Most people wrongly believe their Will covers all their assets, so special care should be taken to ensure the ownership and control of all your assets including 'non-estate' assets, pass to beneficiaries in the way you intend.

You are required to nominate an executor in your Will. The executor has the duty of carrying out your wishes in the Will and is granted power to administer the estate. This is likely to include collecting assets, paying off any debts and distributing the benefits to those entitled.

Careful consideration is required when appointing the executor. It is recommended you discuss the appointment with that person prior to making the Will. In addition to estate beneficiaries, executors may also be your solicitor, accountant or a public trustee.

Your superannuation

Your superannuation is an asset *excluded* from your Will. Any benefit payable upon death is distributed by the superannuation trustee in accordance with the Trust Deed. This usually gives the trustee the discretion to decide who should receive your superannuation entitlements. Eligible beneficiaries are detailed in superannuation legislation and include your legal personal representative and your 'dependents'. A dependent for this purpose includes your spouse, your children, any financial dependent or a person in an interdependency relationship with you.

Death benefit nominations

A **non-binding death benefit nomination** is used only as a guide by the trustee when deciding who should receive your death benefit.

A **binding death benefit nomination** allows you to nominate who will receive your superannuation benefits in the event of your death and ensures the trustee is legally bound by your wishes. The nomination is able to be amended or cancelled at any time and is required to be renewed every three years.

A non-lapsing death benefit nomination is a binding death benefit nomination that does not lapse. Unlike binding death benefit nominations which lapse if not renewed at least every three years, a non-lapsing nomination will remain in force until such time it is amended or revoked by the client.

Testamentary trusts

A testamentary trust is a trust created pursuant to your Will and may have several significant advantages. There are different types of testamentary trusts, including discretionary trusts and special disability trusts, which is a trust established for a vulnerable person.

Testamentary trusts may assist to distribute your estate to your beneficiaries in a more tax-effective manner and may reduce the likelihood of a successful challenge to your Will.

As with any trust, the trustee must act according to the terms of a trust deed and has the duty and responsibility to look after trust property for the benefit of others. Appointing a trustee may involve a financial cost and as the trustee will have discretion over the assets, you should carefully consider who you appoint as trustee.

The terms of the trust deed of a testamentary trust are contained in the Will. As with most trusts, a testamentary trust will normally give the trustee:

- the discretion to allocate income and capital among any of the beneficiaries;
- wide powers of investment, and
- the power to wind up the trust at any time.

If the gains derived by a trust are allocated to the beneficiaries, those beneficiaries are liable to pay tax on those gains at their normal marginal tax rates. It is therefore a common practice for the trustees of a discretionary trust to distribute any derived gains to those beneficiaries who have the lowest marginal tax rate in the distribution year. This is one of the main advantages of using testamentary trusts.

Normally if a beneficiary of a trust is under 18 years of age, the trust income that is distributed to that person is taxed at penalty tax rates. Under these rates, the child only has a limited tax-free threshold. However if the income derived by the trust was generated from inherited assets then the child will be taxed at normal adult tax rates.

A testamentary trust may also provide asset protection for beneficiaries of your estate who may face certain legal claims on their assets, divorce or bankruptcy. Until such time as the trustee exercises their discretion to pay an income or asset entitlement to a beneficiary, all trust assets and income remain the property of the trustee. However, if the trust is established in contemplation of frustrating the claims of, for example, legitimate creditors, the courts may effectively unwind the arrangement.

These and other factors require careful consideration in conjunction with your solicitor and financial adviser.

Power of Attorney

Granting a Power of Attorney means you legally appoint a person or an organisation to make decisions, sign documents and act on your behalf in various matters. When you grant a Power of Attorney you may choose to limit the actions which the attorney can perform on your behalf (Limited Power of Attorney) or give the attorney wide powers to undertake actions on your behalf (General Non-enduring Power of Attorney).

Victoria also allows you to appoint a Supportive Attorney. This role is designed to help professionals assist you in making a decision. Where the decision does not involve a significant financial transaction, the supportive attorney can take reasonable steps to implement the decision on your behalf.

Enduring Power of Attorney

One of the limitations of a Power of Attorney is it generally ceases when the person suffers a loss of mental capacity. This can be overcome with the use of an Enduring Power of Attorney. This type of Power of Attorney does not cease on mental incapacity and can therefore provide an important tool in estate planning.

Medical treatment and lifestyle decisions

Different states have different ways of dealing with medical and lifestyle decisions for a person who is mentally incapable of making such decisions. Such methods may include:

- Enduring Power of Attorney – attorney has the power to act on your behalf during your life in relation to your financial matters and lifestyle decisions, such as where you live and with who
- Power of Attorney (medical treatment) – attorney has the power to give and in certain circumstances, withhold consent to medical treatment on your behalf
- Advance Health Directive – a document in which you can express your wishes about medical treatment and how you would like your body to be dealt with in the event of an accident.

The specific details of all these powers are determined by the state legislation to which the Power of Attorney relates. This must be considered where assets are owned in other states and it is important to seek advice from an appropriately qualified legal professional on these for your estate plan.