

Taking care of your loved ones after you're gone

Most of us put a lot of time and effort into creating and managing wealth throughout our lives. But few of us put enough thought into how our wealth will be distributed after our death – estate planning.

What is estate planning?

Estate planning is a process which ensures that your property, money and other assets are distributed according to your wishes after your death. Effective estate planning can help minimise potential tax consequences for your loved ones and other recipients of your estate.

The process involves three steps:

- 1 reviewing your current financial situation
- 2 deciding what you wish to achieve for your intended beneficiaries in the event of your death, and
- 3 in conjunction with your solicitor, setting in place the appropriate arrangements to support and realise your wishes.

Why do I need an estate plan?

If you don't have an estate plan, it could mean your assets are distributed to people you did not wish to be beneficiaries. It could also mean people you did intend to benefit from your estate end up paying more tax than may otherwise have been the case.

What estate planning tools are available?

A valid will plays a vital role in any good estate plan. A will is a legal document that provides direction for the executor of your estate in distribution of your assets to the beneficiaries you wish to receive them.

Some other estate planning tools you may wish to use include:

- a testamentary trust
- a binding nomination for payment of your superannuation death benefit, and
- life insurance.

How do I create a valid will?

While the rules around creating and administering a valid will differ between states and territories, there are generally a number of common requirements:

- the will must be in writing
- it needs to be signed by the person making the will and two independent witnesses at the same time
- the witnesses must not be beneficiaries or related to a beneficiary of the will
- the witnesses must be aged at least 18, and
- the person making the will must be at least 18 (or under 18 if married) and of sound mind.

While there are many do-it-yourself will kits available, it is recommended you seek specialist legal advice to avoid complications and ensure your will is valid.

Once you've created a valid will, there are a number of situations where it may become invalid or require a review. This depends on the relevant legislation in your state or territory. Generally though, a will should be reviewed when:

- you marry or divorce
- you enter or leave a defacto relationship
- you have children, or a child dies
- a beneficiary or the executor dies
- your insurance cover or superannuation holdings change significantly, or
- an asset covered by the will is sold.

What is a testamentary trust and why might I need one?

A testamentary trust is a trust created by a will which can assist in distributing income to beneficiaries. It can also help protect assets from financial or other difficulties that may arise, in particular bankruptcy.

What is a binding nomination for my superannuation death benefit?

There are two types of nominations you can make about your chosen beneficiaries

of your super death benefit – non-binding and binding. In both cases the nominated beneficiaries need to be your legal personal representative or a dependant – such as your spouse, child or someone financially dependent on you. With a non-binding nomination, following your death, the fund trustee will be guided by your nomination when distributing your super benefit. The trustee however, is not legally bound to follow your request if they believe someone else should receive the benefit.

However, if you've made a binding nomination, the trustee will have to pay the benefit to your nominated beneficiary or beneficiaries providing all the required conditions are satisfied. It's also important to review your nominations at least every three years.

Unless you have a valid binding nomination, the super fund trustee will decide who to pay your superannuation benefits to. It's important to note that super fund trustees are not bound by the instructions in your will.

What role can life insurance play in my estate plan?

By taking out an appropriate level of life insurance, after your death the loved ones you've nominated as beneficiaries will receive a lump sum benefit that may help secure their financial wellbeing after you are gone.

Who can help me set up my estate plan?

We can provide guidance on the overall process of estate planning, and in particular the superannuation and life insurance aspects. Estate planning is a specialist area of advice and you will need specialist legal advice to draft all required documentation, make a valid will and testamentary trust, if this is appropriate to your circumstances.