



A Guide to Estate Planning



Estate planning is more than just preparing a valid Will. It's about making sure your family is provided for and you're your assets go where you want them to after you die.

A good estate plan will:

- ▶ Ensure that the ownership and control of your assets passes to your intended beneficiaries in the correct proportions.
- ▶ Minimise tax being imposed on the income and capital gains earned on those assets.
- ▶ Protect those assets should a beneficiary be involved in any legal difficulties, for example, bankruptcy or divorce. Essentially, a good estate plan can provide you with peace of mind and minimise potential complications for your beneficiaries.

Working out what you need

Firstly, have you considered whether you have sufficient assets accumulated to provide for your family and pay off any debts in the event of your death? If you determine there is a shortfall, your financial adviser will be able to suggest some ways for you to make up the shortfall. Then, when you consider your estate planning needs, have you thought about who will inherit your assets, which assets they'll inherit and in what proportions? If you are injured and unable to control your investments, have you chosen someone to manage your affairs for you whilst you are recuperating?

You should review your estate planning needs on a regular basis, and particularly when an important event occurs, such as:

- ▶ Marriage
- ▶ Divorce
- ▶ The birth of a child
- ▶ The death of a relative that you have provided for
- ▶ Commencement of employment
- ▶ Change of employment
- ▶ Retirement

Each of these events can be a life-changing experience for you and your family and should trigger a consideration of your estate planning needs and objectives. At any stage of your life, estate planning is important and it should be considered and reviewed regularly. Estate planning is an important part of your overall financial plan and it shouldn't be left until it is too late.

An estate planning checklist

Take a moment to consider the following questions:

1. Do you have a valid Will?
2. Has it been reviewed/updated since the last significant event in your life?
3. Does your Will provide adequate protection to ensure your assets are not inappropriately diminished?
4. Do you know how much money your family would need if you were to die today?
5. Do you have a funding strategy in place?
6. Are you and your family financially protected if you were to suffer a serious illness/injury?

7. Are you and your family financially protected if you were to become totally and permanently disabled?
8. Do you know how much money you and your family would need if you were unable to work, or you suffered a serious illness/injury?
9. Is your income protected?
10. Are the protection measures you have in place sufficient for your family's needs?
11. Have you appointed someone to look after your affairs if you die or become incapacitated?
12. If you are a business owner, have you considered exit strategies from your business?
13. If you are a business owner, have you planned for the future of your business after you pass away?

If the answer to any of the above questions is 'No', then it's possible that you have a gap in your true estate planning needs.

Estate Planning – Why the need, asset protection and tax issues

Estate Planning is the lifetime process of the efficient management of your personal and financial assets to ensure the value of your Estate is not eroded in death by:-

- ▶ Un-timely asset realisations during market downturns.
- ▶ Inappropriate ownership structures, e.g. sole owner vs joint ownership.
- ▶ Unnecessary death duties (capital gains tax, stamp duty, etc.).
- ▶ The transfer of wealth to beneficiaries when it is least required.
- ▶ The transfer of wealth to beneficiaries who themselves or their partner may be facing insolvency, litigation, marriage settlements or other financial impairments.

It is also the task of making sure your Estate is protected during your lifetime from the prospects of personal bankruptcy, possible litigation as a consequence of business directorships and professional responsibilities, marriage disputes, business succession planning, accidents and poor health.

Assets which fall outside your Will

You should note that the under mentioned assets fall outside your Will and are therefore not captured by the Estate administration process:-

- ▶ Assets held jointly with another party, in this instance, the 'right of survivorship' operates and the asset passes automatically to the survivor. Assets which may be owned jointly include:
 - ▶ family home
 - ▶ bank accounts, equity investments
 - ▶ motor vehicle and house contents
- ▶ Trust assets, i.e. discretionary family trust assets are held for the benefit of designated beneficiaries, therefore do not form part of a deceased beneficiary's estate. However, the Trustee, at its discretion, may distribute assets to the deceased whereupon the distribution may form part of the deceased's estate assets.
- ▶ Superannuation Fund assets (these are held in trust with payment on death at the discretion of the Trustee)

- ▶ You may make a 'Binding Non-lapsing nomination' for each other as your beneficiary which will provide the Trustee with a clear and legally binding indication of your preference.
- ▶ The person(s) you nominate must be a dependant for Estate Planning purposes.

Wills

The principle reasons for maintaining a properly drafted Will are to:

- ▶ Ensure that after your death, your property and wealth is distributed to those who you intend to receive it.
- ▶ Minimise capital gains and income taxes, as well as avoiding adverse effects on benefits payable to your beneficiaries such as Disability Pensions and Allowances.
- ▶ Provide for your spouse and family.

A Will contains your expressed wishes and instructions concerning distribution of your Estate and only becomes effective upon your death. The Will covers all your property and interests.

Should you not have an enforceable Will, your Estate would be administered under the laws of 'Intestacy' and distributed according to a statutory formula. This may see your Estate distributed to family members who you would not normally intend to receive an interest.

An Executor would be named in your will (usually a spouse/child or professional adviser) and when appointed would help to facilitate the division of the estate according to the Will makers wishes. An Executor can also be a beneficiary.

Testamentary Trusts

A Testamentary Trust is a trust drafted within the structure of your Will to manage your Estate assets after death. The Trust is only effective upon your death. In the event of your death, you could appoint your children or a surviving spouse as Trustees, who would control the assets but not own the assets.

The advantages of a Testamentary Trust to you are:-

- ▶ It allows the Trustee greater flexibility to appropriate your Estate income and assets to those beneficiaries who are best placed to receive them.
- ▶ Provides opportunities to avoid or defer unnecessary death taxes such as capital gains, stamp duty, etc.
- ▶ Testamentary Trusts can be a single or 3 generation Testamentary Trust.
- ▶ As ownership does not pass to a beneficiary, Social Security Pensions and allowances asset test assessments will not be affected, thus preserving the beneficiaries existing entitlements.
- ▶ Testamentary Trust can be established under a will for either specific assets or for the residue of the estate. In your case you could assign proceeds of your managed fund investment to provide the assets for the trust.
- ▶ Income passed to minors will not be caught under penal rates of tax, rather a minor beneficiary will receive adult tax free threshold and relevant MTR.

Powers of Attorney

Ensure that you have established an Enduring Power of Attorney:-

- ▶ An Enduring Power of Attorney is irrevocable upon you becoming mentally incapable and is particularly useful as illness may prevent a person from attending to normal financial matters. The Attorney will have complete control over your financial affairs. The powers do not extend to medical or health treatments.
- ▶ The death of the Grantor/Donor automatically voids the Power of Attorney.
- ▶ As spouses often travel together, it may be advisable to appoint another party as your Attorney. Due to the extensive Powers generally drafted into the document, it is important only a trusted person should be appointed as Attorney (consider from example Children or trusted professional).
- ▶ Medical Powers of Attorney may also be considered which will give an empowered person the ability to make medical decisions on your behalf.

Guardianship

Enduring guardianship can be granted to authorise someone to make medical, personal or lifestyle decisions on behalf of someone without the capacity to make their own decisions – for example young children.

It is possible to appoint more than one Guardian. Guardians appointed jointly can have either the same or different decision making areas. If in same area, in making decisions they must agree and act together.

The most common functions performed by guardians are:-

- ▶ Where the principal lives;
- ▶ What health care the principal receives;
- ▶ What services the principal requires; and
- ▶ To give consent to medical and dental treatment.

Case study

Estate planning is about ensuring you are taken care of in the case of incapacity. Mike, a widower, has two children, Sally and Darryl. He was on excellent terms with his daughter, but unfortunately, in later years, his relationship with his son had begun to deteriorate. When Mike suffered his first stroke, he lost the ability to take care of his own finances. He had not appointed anybody as his attorney to take over on his behalf. Darryl sought and was granted the position of attorney by the Courts. Where Sally would probably have taken a more compassionate approach to the use of Mike's funds, Darryl turned out to be quite brutal. Over the years, there were instances where expenditure that might have led to an improvement in Mike's quality of life, was refused. Unfortunately, these instances were somewhat subjective, and on the surface, Darryl's custodianship could not be flawed. He diligently managed his father's affairs in a way that would both retain their value and to an outsider, appear as though they were completely in Mike's interest. Had Sally been involved, it is likely that more money would have been spent on Mike and his care, than turned out to be the case. She would almost certainly have moved him from the nursing home where he was staying. She felt it was substandard and a cause of considerable stress to her father. This situation could easily have been avoided had Mike appointed Sally as his attorney in the first instance.

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Pinnacle Wealth Management work with a network of referral partners within the legal profession.

If you are looking to review your own circumstances and would like Pinnacle to point you in the right direction, please contact our office.

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