

## • WHAT IS • ESTATE PLANNING?



Estate planning aims to ensure that on your death:

- there are sufficient assets to meet your wishes
- the transfer of ownership and control of those assets passes to the appropriate person(s) or entity
- the ownership or control passes to the beneficiary at the right time

A key issue is to identify which assets will be part of your estate. Generally, assets owned in your own name form part of your estate and can be disposed of by your Will; these are known as Estate Assets. Examples are real property, shares, cash investments and interests in assets held as tenants in common.

Tenants in common have a discrete share in property. Upon death of a tenant in common, the interest in the property does not automatically pass to the other tenants but passes in accordance with the deceased tenant's Will.

Assets controlled but not owned (or wholly owned) by you are Non Estate Assets. For example:

- jointly owned assets held as joint tenants (e.g. real estate and investments) pass automatically to the surviving joint tenant.
- your superannuation (subject to member direction and trustee discretion) is legally owned by the trustee of the super fund and is held on your behalf. The trustees of the super fund have discretion to decide where benefits are paid on death. So, your super is an asset that does not form part of your estate. You are able to make a beneficiary nomination to the trustees to indicate your preferred beneficiaries (but the trustees still have ultimate discretion). Some superannuation funds allow you to elect a Binding Nomination which removes the trustee's discretion.

- life insurance proceeds – where someone else is the policy owner or nominated beneficiary.
- allocated pensions or annuities that have a reversionary beneficiary.

Joint tenancy involves the right of survivorship that belongs to the surviving joint tenant. That is, upon death of a joint tenant the remaining joint tenant(s) assume total ownership. At common law joint tenancy is presumed in absence of a contrary intention.

There are several components of estate planning that need to be considered, and are briefly discussed here. Should you require more detailed information please refer to our Fact Sheets on these subjects.

### Wills

Will-making is very important and an essential part of estate

planning. Your Will provides instructions on exactly how you want your estate assets distributed. In particular, a valid Will determines who will be in charge of the administration of your estate and how the assets of the estate are to be distributed after your death.



## Testamentary Trusts

This is a trust established by the Will that comes into effect upon the death of the Will-maker. The primary purpose of a testamentary trust is to manage estate assets to provide asset protection and to maximise after tax income for beneficiaries.

The trust is managed by a trustee who has the discretion to control the distribution of both capital and income to the beneficiaries. The decision can take into account their other income sources and taxation legislation.

## Powers of Attorney

A Will takes care of your estate when you die, but it does not take care of your financial affairs if you are absent for an extended period or become physically or mentally unable to manage your own affairs. If you have not made any arrangements, you run the risk of having your affairs handled by a guardian or even the public trustee.

A Power of Attorney is a formal document by which one person (the donor) appoints another person (the attorney) to act on their behalf in relation to their property and financial affairs.

This is a separate document to your Will and only operates during your lifetime. All authority given to your attorney ceases on death.

## Disclaimer

This Fact Sheet has been prepared for general information purposes only and not as specific advice to any particular person. We are financial planners and not qualified to give specialised legal advice in this complex area. Detailed legal advice should be sought from a qualified adviser.

We can assist you to prepare an outline of your estate plan for your legal adviser. Should you wish to seek advice in relation to Estate Planning we recommend you consult an Estate Planning Specialist.



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