An Estate Planning Survival Guide
The purpose of this Will and Estate Planning guide is to help you prepare for the smooth transition of your wealth to your beneficiaries. The information herein will provide you with an overview of the entire Estate Planning process. It is essential that your eventual Will is structured by a solicitor that specialises in Estate Planning.

Why have an Estate Plan?

`Estate planning` refers to the organisation of your assets in a tax efficient manner, to ensure your money and property are transferred to your beneficiaries in line with your wishes. The realisation of the goals you have set in life – goals such as your children’s education, your family’s economic independence, continuity of a family business or your charity support – are continued through your estate plan.

A key document in your estate plan is your Will. If you were to die without a Will (intestate), your estate could face the following consequences:

- the distribution of your property would be governed by a legislated formula
- the person with authority to administer your estate would not necessarily be someone you would have chosen
- the cost of administering your estate could be higher, and distribution to your beneficiaries could be delayed
- your estate and/or beneficiaries may incur higher level of taxes
- your estate may be more open to a dispute.

It is important for your peace of mind, and your family’s future, that you develop an estate plan as part of your complete financial plan.
Do your homework ......

1

Know What You Have

Before you can establish your estate plan, you must identify your assets & liabilities. This list might include:

- Investments such as shares & managed funds
- Pensions, Annuities
- Property (residential & commercial)
- Personal property (cars, jewellery, art)
- Business interests
- Insurance policies
- Assets held in companies, trusts and partnerships
- Loans to family, friends and related entities
- Superannuation

Keeping a centralised, up-to-date record of all your assets and liabilities will allow you to easily review your estate plan.

2

Know How You Own Your Assets

It is important to know not only what you own, but how you own it, because both the form of ownership and designation of beneficiaries will influence your estate plan.

Assets in your name solely – form part of your estate and are distributed by your will.

Assets owned jointly – we recommend reviewing each asset’s ownership and/or nomination to determine the implications for your estate plan.

- Any property you own as ‘joint tenants’ with another person will pass directly to them and cannot be gifted within your will. If owned as “tenants in common”, your share passes into your estate and is distributed in accordance with the will.

- Superannuation/pensions – You may nominate your estate or a beneficiary to directly benefit.

- Life insurance – You may nominate your estate or a beneficiary to directly benefit.

- Asset held in private companies and trusts – In general death does not affect these entities and strategies need to put in place to ensure that the value and control of these entities are maintained as desired
Look ahead. Taking time out to create a vision for your future is an important part of preparing your estate plan.

What Should Your Estate Plan Achieve?

While your goals are unique to your situation, here are some common objectives you may wish to consider:

- Maximising the value of your assets
- Minimising tax payable by your estate and/or beneficiaries
- Providing an income for your family
- Appointing guardians for your children and dependents
- Ensuring appropriate trustees for your children’s and dependent’s trusts
- Distributing assets according to your wishes
- Making sure your estate has sufficient liquid assets to settle liabilities after your death
- Leaving a legacy to a charitable foundation

The answers to above questions will determine what your estate plan will look like.

Funding Your Estate Plan

In the event of your death, there may be insufficient assets to implement your estate planning objectives. The proceeds from life insurance policies can be used to ensure there is sufficient capital to fund your plan. The proceeds may be used to pay off the mortgage, fund investment loans, for education expenses and/or to provide ongoing life expenses.

If you are a private business owner insurances may also provide liquidity to your business partners to fund the purchase of your shareholding in the event of your death, thus protecting the value of your estate.

The level of cover you require depends on what you want to achieve and can be calculated with careful planning and the help of your adviser.
Choose how you want your estate distributed

One of the decisions that you must make in planning your estate is deciding how and when you distribute your assets. There are four options to consider:

**Gifting assets**

‘Gifting’ refers to the passing of assets onto your beneficiaries whilst you are still alive. This method allows your beneficiaries to benefit from the gift by simplifying and reducing the administration costs of your estate. It is important to consider whether it is viable to transfer assets now, taking into account capital gains tax, land tax, stamp duty and Centrelink ‘gifting’ or deprivation rules (if relevant). You should also, if necessary, keep a record of any lifetime gifts to ensure a fair distribution of your estate to your beneficiaries.

**Living trusts**

A trust is a legal arrangement in which you place property “in trust” for the benefit of one or more beneficiaries, and name a trustee to manage the trust. This may be used as a form of conditional giving of assets during your lifetime, as you may act as trustee and determine who will receive any distributions from the trust. However, you should then consider who would be named as trustee following your death, and any capital gains tax, land tax or stamp duty arising from the transfer of assets into the trust.

**Distributing assets through your estate**

Assets held directly or where the estate is a beneficiary will be distributed by the will. A will that is properly drafted allows for an equitable distribution of your estate in line with your wishes.

**Distributing assets outside your will**

Depending on the ownership structure many assets may be passed directly to your beneficiaries. For example, your superannuation/pension fund may be passed directly to your spouse or dependent children by putting in place a binding nomination with the trustee of your super fund. This can be an efficient approach to transferring your wealth. Indeed, the need for probate may be avoided if all assets are passed directly to your beneficiaries. The drawback to this approach is that it’s often difficult to split assets fairly between beneficiaries and there is no option for additional tax planning.
“I want to leave my children enough that they feel they can do anything, but not so much that they do nothing.”
Warren Buffett

Minimise taxes and administration fees

While there are no death taxes in Australia, the value of your estate may be reduced by a tax-inefficient transfer of your wealth. An example would be the payment of your superannuation benefit to a non-dependent child (usually over the age of 18). Distributing superannuation to non-dependents is subject to 17% tax while distributing to a dependent (including a spouse) is free from tax.

A guiding principal for any estate plan is to minimise the tax and administration costs. This can be achieved by putting in place a comprehensive estate plan.

Appointing an Executor

Selecting an Executor is a key decision in the preparation of your will, as they are responsible for the settling and managing of your affairs after your death. Typically one of the below would be appointed:
- your spouse
- your children
- family member
- a friend or associate
- your lawyer/accountant
- a professional trustee

Your executor should be capable of either handling your affairs or overseeing administration with the assistance of professionals, as there is an extensive list of duties:
- Obtain authority to administer the estate by applying for a grant of probate or letter of administration if necessary.
- Notify all beneficiaries named in the will.
- Manage the property or goods left in the will.
- Value the estate and keep a list of the valuation.
- Complete income tax returns and get a clearance from the Australian TaxOffice.
- Pay all debts owing, including selling assets if necessary.
- Establish trusts if relevant.
- Distribute cash and/or assets to beneficiaries according to the provisions in the will.

Naming an alternate is also wise in the event your appointed executor(s) cannot serve. Some people prefer the services of a corporate executor (trust company or law firm) to take over the responsibilities of an individual Executor.
Use of Testamentary Trusts

Testamentary trusts are outlined in your will and take effect upon your death. A testamentary trust provides for a named beneficiary to receive payments of income at any frequency you choose. The trust can also reserve the capital for specific purposes and direct how it is to be used. There are many reasons for the creation of a testamentary trust. Some examples may include:

- Allow for the tax effective management of your assets.
- Provide for your underage children and/or prevent children from accessing an inheritance too young.
- Protect funds that are left to benefit a person who is not capable of managing the money.
- Provide for children from a previous marriage while separately providing for your present family.
- Keep wealth within your blood line.

Trustee.

If you plan to create a trust, consider the people you would like to name as trustee and as a backup, or successor trustee. A trustee is the person or persons who invests and distributes the trust money for your children or other trust beneficiaries. If you have minor children, the trustee would make payments to their Guardians. The trustee can also make direct payments of your children's expenses. The job of trustee ends when the trust ends, usually when your youngest Child reaches a certain age, or at any date you specify.

Appointing a Guardian

A guardian is the person who will become the legal custodian of your (minor) children should you die. Choose someone you trust, and who understands what you think is best for your kids. Discuss your desires with the person or people you want to appoint to ensure they are willing to take on the responsibility. Remember that a good choice for a guardian when your children are younger may not be a wise choice when they are teenagers. The appointment of a guardian may be challenged in the courts.
“Never say you know a man until you have divided an inheritance with him.”
Johann Kaspar Lavater

Preparing a Letter of Wishes

A Letter of Wishes is intended to provide some guidance to Executor(s) and Guardian(s) of your estate plan on how to carry out your wishes and may include:

- Instructions to the Trustees of any trust on how to manage the assets and when to distribute the capital/income of the trust.
- Guidance for the Guardians on how the children/minors are to be brought up i.e. where to live and/or preferred schools.
- Instructions to the Executor on how to administer the estate or what your desired funeral arrangements are.
- Explain why certain family members have been excluded as beneficiaries, or why unexpected beneficiaries have been included.

A letter of wishes is a separate document to the will and is non-binding. It is more flexible than a will as it can easily be changed or replaced to reflect a change in your wishes or circumstances. If your will is challenged after your death, the letter can be taken into account to demonstrate to the courts why you made certain decisions.

Establish a Living Will

Part of a complete estate plan includes planning for possible illness, accident, or other disability that leaves you unable to manage your affairs. Important documents to have in place are:

- An Enduring Power of Attorney is where you appoint a person to make financial and legal decisions for you, in the event you lose the mental capacity to make your own decisions. In the event you appoint your spouse as Attorney, this would allow them, for example, to sell a jointly held asset without having to apply to the Guardianship Tribunal for permission.

Given the powers you are giving an Attorney it is important to consult a solicitor so that you fully understand the decisions that your designated attorney can make on your behalf. You should consider appointing both a primary and alternate attorney, in the event that your primary attorney predeceases you or loses capacity.

- An Appointment of Enduring Guardianship is a legal document that empowers another person to make decisions for you in areas such as accommodation and/or health and services, if you lose the mental capacity to make your own decisions. Having this document in place removes the requirement for your family to apply to the Guardianship Tribunal for the appointment of a Guardian, should you unexpectedly lose capacity. You can appoint one or more people that you trust to make decisions for you and they can act either individually or jointly. The appointment of Enduring Guardian can also set out your desires for your medical treatment and lifestyle, and should be considered if you have a particular view as to what decisions should be made, such as whether life support should be terminated.
“The finest inheritance you can give a child is to allow him to make his own way, completely on his own feet.”
Isadora Duncan

Let someone know

After you have gone through the steps of developing an estate plan it’s important to communicate your plans to any Executors, Guardians and Trustees that you appoint, so that they understand the requirements of the role and are happy to take on the responsibilities.

It may be beneficial to communicate the provisions of the will to the beneficiaries to reduce the risk of disputes or confusion at a later stage.

Keep track of accounts and important information

One of the most difficult roles for an executor and family members is to gather the information required to settle the estate. Eliminate this concern by centralising all household information including birth certificates, passports and other legal documents, bank accounts and insurance policy numbers, and phone company and electricity account details. Once you have documented your important information, store a copy in a safe place and let someone close to you know where it is.

Review and update regularly

Review, and if necessary, update all information at least once a year. By updating your estate plan, you’ll get a snapshot of where you are on an annual basis. This gives you the opportunity to trace your progress and, if need be, to revise the plan when appropriate, so it continues to reflect your wishes.
How can Stanford Brown assist you in the preparation of your Estate Plan?

Stanford Brown recognises the importance of a properly constructed estate plan to ensure a professional and orderly transfer of your wealth to your beneficiaries.

We hope to minimise the stress and confusion to your family at a difficult time. We can help with every part of the process including:

- Help develop estate goals
- Outline strategies to maximize the size of your estate.
- Liaise with practitioners on your estate planning team.
- Regularly review your plan & store important documents.
- Track lifetime gifts made to beneficiaries
- Communicate with beneficiaries and help with administration.

It is important to work with competent estate planning specialists to ensure that you and your family receive the best outcomes.
Estate Planning Checklist

☐ Do you have a Will?
☐ If so, when was it last reviewed?
☐ Do you have a testamentary trust in your Will?
☐ If you have minor children, have you appointed a Guardian for your children?
☐ Do you have a Letter of Wishes in place?
☐ Do you have an Enduring Power of Attorney?
☐ Have you appointed a Guardian to make medical and lifestyle decisions if you lose capacity to do so?

Disclaimer
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