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ACCOUNTING

Fact Sheet: Estate and Succession Planning

INDIVIDUALS

What is Estate Planning?

Estate planning ensures that the wealth you have built is transferred to your beneficiaries smoothly, tax-effectively and most importantly, according to your wishes. An estate plan includes your will as well as any other directions on how you want your assets distributed after your death. It includes documents that govern how you will be cared for, medically and financially, if you become unable to make your own decisions in the future.

Key documents might include:

- Will
- Superannuation death nominations
- Testamentary trust
- Powers of attorney
- Power of guardianship
- Anticipatory direction

If you have made a binding nomination in your super or insurance policies, the beneficiaries named in those policies will override anyone mentioned in your will. If you have a family trust, the trust continues and its assets will also be distributed according to the trust deed, no matter what is written in your will.

Prepare a Will

A Will takes effect when you die. It can cover things like how your assets will be shared, who will look after your children if they are still young, what trusts you want established, how much money you'd like donated to charities and even instructions about your funeral. It is recommended that everyone 18 years and over should make a Will. Making a Will is the only way you can ensure that when you die, your estate will be distributed according to your wishes.

What happens to my estate if I die without a Will?
If you die without a Will (called intestate), your assets will be divided by a pre-determined government formula, with certain family members receiving a defined percentage of your assets. If you die intestate and have no surviving relatives, as defined by the government formula, the State government will receive your estate.

What is a Testamentary trust?

A testamentary trust is a trust set out in a Will that only takes effect when the person who has created the Will dies. Testamentary trusts are usually set up to protect assets.

Here are some reasons why you would create a testamentary trust:

- The beneficiaries are minors (under 18-21 years old)
- The beneficiaries have diminished mental capacity
- You do not trust the beneficiary to use their inheritance wisely
- You do not want family assets split as part of a divorce settlement
- You do not want family assets to become part of bankruptcy proceedings

A trust will be administered by a trustee who is usually appointed in the Will. 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.

Make a Power of Attorney

A Power of Attorney is a legal document where you appoint an Attorney to manage your financial and certain legal affairs, such as signing legally binding documents on your behalf. An Attorney cannot make decisions about your lifestyle, medical treatment or welfare.

Once I have a Power of Attorney, will I lose control of my finances?
No. The appointment of an Attorney gives formal authority for the chosen individual to manage your financial and legal affairs, according to your instructions.

Appoint an Enduring Guardian

An Enduring Guardian is a person you choose to make decisions on your behalf in areas of lifestyle and health such as accommodation and services. An Enduring Guardian only comes into effect if you can no longer make decisions for yourself due to incapacity.

Appoint an Anticipatory direction

An anticipatory direction records your wishes about medical treatment in the future, in case you become unable to express those wishes yourself.

Considerations for minimising tax for your beneficiaries

- Nominate your spouse and dependent children to be the recipients of your superannuation. Death benefits paid to your dependants are tax-free.
- Incorporate a testamentary trust into your Will. This could create capital gains tax savings as well as ongoing income tax savings for your beneficiaries, especially if you have young children or grandchildren.
- Consider holding your key investments (other than your family home) in a family trust. This may create tax savings now as well as ongoing tax savings for your beneficiaries, note legal and tax advice is required.
- Bequeath assets with low or no capital gains tax liabilities to beneficiaries with high marginal tax rates and vice versa.

What cannot be in a Will?

- An asset owned by a discretionary trust
- Life insurance policies where you have nominated someone as a beneficiary
- Superannuation and retirement income streams which have current 'binding nominations' to be distributed directly to dependants, or income streams which are 'reversionary' or where the trustee uses discretion to pay a beneficiary directly
- Assets which have 'joint tenancy'

CHECKLIST – ESTATE PLANNING STRATEGY

Some examples of the issues you should consider are:

Families with minors

- ☐ Have you nominated a guardian for your children?
- ☐ Should your Will make provision for investment income to be paid through a Trust to protect the minor's interests?
- ☐ Do you have sufficient assets in the estate to provide an income stream to the minors?

Families with children who may be facing bankruptcy, divorce, or own a business

- ☐ Does your Will cater for a testamentary trust for each child to protect your assets from creditors?
- ☐ Does your Will protect your assets if a child faces divorce so your assets do not pass to your children's ex-spouses?
- ☐ Bankruptcy?

Multiple marriages and children from other marriages

- ☐ Does your Will ensure that children from all your marriages will be looked after?
- ☐ Do you need your Will to ensure that your assets pass to your children and not those of your current spouse?
- ☐ Does your Will protect your current spouse from the claims of previous spouses?

- Does your Will need to provide for an ex-spouse?

Families with members who are disabled or infirm

- Does your Will have a trust structure to provide for the long-term care of family members who are disabled or infirm?

Families with a large amount of superannuation

- Should you make a binding nomination with your superannuation fund to provide certainty as to who will receive your superannuation death benefits?
- Will your superannuation benefits be paid in the most tax effective manner?

Families with siblings who may be spendthrifts

- Does your Will provide a structure that will prevent spendthrift children from squandering your assets?
- Do you want your Will to have provisions that will maintain your assets for the benefit of your grandchildren?

Families that own a family business

- Will your family business pass to those who you want to control it?
- Will the control of the business pass in the most tax effective manner?

BUSINESS OWNERS

Essential to have a succession plan in place

A succession, or exit plan outlines who will take over your business when you leave. A good succession plan enables a smooth transition with less likelihood of disruption to operations. By planning your exit well in advance you can maximise the value of your business and enable it to meet future needs. Even if you don't intend to leave the business soon, it is still important to have a succession plan. This is because life is unpredictable. **There are two main options to consider when developing a succession plan:**

Retention planning – keep it in the family

Many owners choose to keep the business in the family when they leave. If you plan to transfer your business to a family member you need to consider the legal obligations as well as the impact on family relationships.

Buy-sell planning

Buy-sell agreements are legally binding contracts which control when owners can sell their interests, who can buy an owner's interest, and at what price. They are mostly used to ensure the smooth continuation of a business after a potentially disruptive event, such as an owner's retirement, incapacity, or death.

What happens if I don't have a succession plan?

Quite simply, without a succession plan the results can be disastrous. This is particularly so in the case of an unexpected event such as an illness, death, or financial issue. A succession plan is essential to securing the future of your business. Without a plan, the future of your business, which you worked hard to build, will be left to chance once you've gone. With so much at stake a succession plan is vital and will help you to:

- Maximise the value of your business if you decide to sell
- Unlock the value by enhancing the marketability of your business
- Exit your business with maximum profitability and the foundations laid for its continued success.

YOUR LEGAL AND FINANCIAL HOUSEKEEPING

Once your paperwork is in order, it will help your executor and family if you list the legal documents you have and where they are kept.

Keeping a record of your personal information and notes on how your legal documents, assets and investments are arranged can also help you.

If you like, Imagine Accounting can assist you to manage all your important personal information online. The advantage of having it online, is that all your vital information is in one place. This makes it simple and easy for you or your family to locate your documents.

Here is a list of key documents which you may want to compile:

- Birth certificate
- Marriage certificate
- Will
- Enduring power of attorney
- Advance healthcare directive (also called a living will)
- Personal insurance policies
- House deeds
- Home and contents insurance
- Deeds and insurance policies for any other real estate you own
- Bank account details
- Superannuation papers
- Investment documents (securities, share certificates, bonds)
- Medicare card
- Medical insurance details
- Pensioner concession card
- Any pre-payments of funeral investments

Want to know more about establishing an Estate or Succession Plan? Contact Imagine Accounting:

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