

INFORMATION SHEET

- ESTATE AND ASSET PLANNING AND PROTECTION



Robinson Locke Lawyers

Estate and Asset Planning and Protection is about making sure that the assets you have are held in the most tax effective and secure way both during your life and after you pass on. The more advanced planning advice is usually the result of collaboration between us, your accountant and your financial advisor.

While not everyone requires asset planning advice, almost everyone needs to plan what is to happen to their estate when they pass on. So we will start with the essentials.

ESTATE PLANNING AND PROTECTION - THE ESSENTIALS

A VALID AND UP TO DATE WILL

This is the essential estate planning tool. You mustn't die without one.

We have a separate Information Sheet entitled "Why do I Need a Will?" which explains the ramifications of not having one. Just ask us for a copy.

AN ENDURING POWER OF ATTORNEY

A power of attorney authorises another person to make decisions and sign documents on your behalf that are legally binding on you.

An *enduring* power of attorney remains effective beyond the point at which you lose the legal capacity to make decisions for yourself, whether that loss of capacity is temporary or permanent. It ceases upon your death.

Without an enduring power of attorney, your spouse or children will not be able deal with your assets without obtaining the Public Trustee's consent, which is a potentially cumbersome and intrusive process. A common example given of the difficulties this can cause is where your spouse could be prevented from selling the family home in order to purchase another home better suited to your needs.

Despite the apparent simplicity of the standard form enduring power of attorney, there are important questions to consider, for example, deciding to whom the power is to be given, the need for a "back up" attorney in the event that your primary attorney is no longer able to act for you (very important if you and your spouse are "getting on a bit") and the need for specific authority to allow your attorney to enter into transactions conflicting with your own interests.

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ESTATE PLANNING AND PROTECTION – MORE THAN JUST THE ESSENTIALS

A TESTAMENTARY DISCRETIONARY TRUST IN YOUR WILL

Essentially, a Testamentary Discretionary Trust allows flexibility to enable your estate to be distributed in a tax effective manner and assists in protecting your estate from claims by third parties associated with your beneficiaries.

If you have children, young or old, a Testamentary Discretionary Trust can be a fantastic investment made on their behalf, even if your estate is modest. The cost of preparing your will to include a Testamentary Discretionary Trust can be vastly outweighed by the potential tax savings you are giving to your children and there is the added peace of mind that comes with knowing that you have taken steps to protect your estate in the hands of your spouse and children.

If you are unsure whether your estate is large enough to justify including a Testamentary Discretionary Trust in your will, don't forget:-

1. that your estate could be larger than you think when you include the value of your home, superannuation and life insurance proceeds; and
2. that the taxation benefits to your beneficiaries flow from your beneficiaries' financial position at the time they inherit from you, not your financial position. Even if your children earn only an average income, the ability to divert income to your grandchildren year after year and pay little or no tax on that distribution can add up to big tax savings. *This valuable benefit cannot be accessed as effectively in any other way.*

If you would like further information in relation to Testamentary Discretionary Trusts, please ask us for a copy of our Information Sheet entitled "What is a Testamentary Discretionary Trust and Why Do I Need One?" if we have not already provided one to you.

AN ADVANCE HEALTH DIRECTIVE

An Advance Health Directive enables you to make a binding statement as to your future health care notwithstanding that you may lose your ability to communicate your wishes.

NOMINATION OF YOUR SUPERANNUATION DEATH BENEFIT

Various forms of binding nomination can be made to divert your superannuation death benefit to a particular person or persons. You should always seek professional advice prior to making a nomination as there may be adverse taxation implications depending upon the nature of your superannuation contributions and the relationship between you and your nominated recipient. A binding nomination should not be made lightly.

A superannuation death benefit paid directly from your super fund to a recipient does not form part of your estate which may be an important consideration if there is the possibility of a family provision application or claims by creditors.

These are matters for specific advice.

OWNERSHIP OF LIFE INSURANCE POLICIES

It is important to consider who "owns" your life policy to determine who will receive the payout and how that fits within your estate plan.

OTHER THINGS TO CONSIDER

It is great to plan what is to happen to your estate, but don't ignore the estates where you stand to inherit! It is wise to be proactive in relation to these estates especially if you are also to be an executor.

Questions you should ask yourself are:-

1. Do my parents have valid wills and do I know where they are?
2. Do I have a sufficient understanding of my parents' financial affairs to enable me to identify investments and properties they own and to locate documentation in relation to them?
3. Would my parents consider establishing a Testamentary Discretionary Trust in their wills?

In limited circumstances and for a limited amount of funds, it is possible to establish a testamentary trust after death which will attract some of the tax benefits available under a properly established Testamentary Discretionary Trust. If you find yourself in the position of beneficiary or executor of an estate, you should seek our advice as to whether such a trust could be appropriate. Do not delay in seeking our advice as strict time limits apply.

ASSET PLANNING AND PROTECTION

A REVIEW OF THE YOUR CURRENT ASSET / BUSINESS INTEREST HOLDING STRUCTURES

Your structures should be reviewed to determine if they are appropriate and whether any changes should be made to assist in:-

1. Protection of assets from claims by creditors or litigants, including structuring to discourage potential litigation;
2. Reduction of taxation obligations;
3. Clarification of partner or shareholder rights and obligations;
4. Planning for business succession in the event of the inability of you, your business partner or other key personnel to continue in the business including the need for appropriate insurance and a Buy/Sell Agreement; and
5. Planning for smooth succession of control of your family trust, your family company or your self-managed superannuation fund.

A PLAN OF STRUCTURES TO HOLD FUTURE ASSETS OR BUSINESS INTERESTS

Care should be taken to establish the best structure for future asset acquisitions or business ventures taking into account the goals listed above.

Thank you for taking the time to read this information sheet.

WANT TO KNOW MORE

Please feel free to contact Gary Hugill of our office on (07) 3210 5209 if you have any queries, whatsoever.

Robinson Locke

Please note that this information sheet is intended to provide general information only. It must not be relied upon in lieu of proper, specific legal advice taking into account your particular circumstances.