

## Estate Planning

Estate Planning is arguably the most important strategy of the financial planning process. This area serves to ensure that the hard-earned assets accumulated over a lifetime are passed on in accordance with your wishes upon death.

Estate planning is a specialist area and it is therefore important that advice is sought from a lawyer that specialises in estate planning. Issues regarding taxation and asset protection can be avoided by the careful drafting of a personalised estate plan.

### Wills

A Will is a legal document that provides instructions as to the distribution of assets upon death. If you die without a Will, state legislation determines who will receive your assets. This can result in substantial legal costs, lengthy delays and your estate being distributed against your wishes.

A Will includes the following:

- ✓ An Executor who is responsible for administering your estate
- ✓ Your beneficiaries
- ✓ A Guardian if you have minor children (under 18 years of age)

Additionally, a Will can also include provision for establishing Testamentary Trusts. This can be an effective mechanism to distribute assets tax effectively and provide ongoing asset protection.

A Will should be reviewed at least every 3 years or whenever a major event occurs in your family (marriage, divorce, defacto relationships or death of a beneficiary). Additionally, your Will should be reviewed if a meaningful change in the value of your assets occurs.

### Testamentary Trusts

A testamentary trust is established through a Will. Testamentary trusts may be fixed or discretionary:

- A fixed trust allocates capital and income generated within the Trust in fixed proportions to beneficiaries,
- A discretionary trust uses the trustee's discretion to distribute capital and income generated within the trust in proportions which can vary from year to year, providing maximum flexibility.

Only assets that form part of your estate can be placed into a testamentary trust.

The qualities of a testamentary trust include:

- ✓ Distributions can be made to beneficiaries in terms of their tax status and other criterion.
- ✓ Beneficiaries under 18 years of age are taxed as adults.
- ✓ The assets held in the trust are owned by the trustee for the benefit of beneficiaries. As such, the assets may be protected should any of the beneficiaries be faced with marital breakdown or bankruptcy.
- ✓ The distribution of income and capital from a testamentary trust can provide a control measure for spending habits of spendthrift beneficiaries.
- ✓ The trustee can control the assets in trust until the beneficiaries are capable of controlling the assets themselves.
- ✓ Bankrupt beneficiaries can be provided for.

## **Powers of Attorney**

A Power of Attorney is a document which grants authority to another person to make certain decisions on your behalf if you are unable to do so.

A Power of Attorney is a separate document from the Will and operates only during the individual's lifetime. The attorney cannot alter your Will or transfer the power of attorney to someone else unless specified.

The various types of attorneys include:

- An enduring Power of Attorney (Legal and Financial) provides authority over your financial affairs until death.
- An enduring Power of Attorney (Medical) provides authority over the medical needs.
- An enduring Power of Attorney (Guardianship) provides authority over lifestyle decisions (such as where you will live) if you lose capacity to make those decisions for themselves.

Powers of Attorney should be reviewed every three years in conjunction with your Will.

**Please contact us for specific advice on any of these topics.**

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