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Fact Sheet - Estate Planning

This document provides some additional information to help you understand financial planning concepts in relation to **estate planning**.

For more information, please contact the DPM Private Wealth team on (03) 9621 7000 or email info@dpmfs.com.au.

An effective estate plan protects your estate and the interests of your beneficiaries in the event of your death and is important to ensure that your assets are transferred according to your wishes in the most effective and efficient manner.

Jointly held trust and superannuation assets are not necessarily dealt with by the terms of the Will. These are usually considered 'non-estate' assets. However there may be specific State legislation that classifies non-estate asset as 'notional estate' for the purposes of a Family Law challenge.

Outlined below are some factors to consider when developing your estate plan.

Your Will

Your Will is the document that directs how your estate is to be distributed amongst your nominated beneficiaries.

Dying without a Will or an invalid Will is known as dying Intestate. In such an event, laws are in place in each State to determine how your estate will be administered. This may result in your estate assets being distributed against your wishes as well as incurring unnecessary tax liabilities for your beneficiaries.

Most people wrongly believe that their Will covers all of their assets, so special care should be taken to ensure that the ownership and control of your assets, including 'non-estate' assets pass to beneficiaries in the way you intend.

You are required to nominate an Executor in your Will. Your Executor has the duty of carrying out your wishes and is granted power to administer your estate. This is likely to include collecting assets, paying off any debts and distributing the benefits to those entitled.

Careful consideration is required when choosing an Executor. It is recommended you discuss the appointment with the person you have chosen prior to making the Will. Estate beneficiaries, your solicitor, accountant or a public trustee may be appointed as your Executor.

Superannuation

Superannuation assets are excluded from your Will. Any benefit payable upon death is distributed by the Superannuation Trustee in accordance with the Trust Deed. This usually gives the Trustee the discretion to decide who should receive your Superannuation entitlements. Eligible beneficiaries are detailed in superannuation legislation and include your legal personal representative and your 'dependents'. A dependent for this purpose includes; your spouse, your children, any financial dependent or a person in an interdependency relationship with you.

A Binding Death Nomination is a written declaration to the Trustee outlining of the beneficiary or beneficiaries who you wish your superannuation entitlements to be paid to. The nomination is able to be amended or cancelled at any time via written declaration to the Trustee.

Testamentary Trusts

A Testamentary Trust is a trust created pursuant to your Will and may have several significant advantages. There are different types of Testamentary Trusts, including Discretionary Trusts and Special Disability Trusts. 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.

As with any trust, the trustee must act according to the terms of a trust deed and has the duty and responsibility to look after trust property for the benefit of others. Appointing a trustee may involve a financial cost and as the trustee will have discretion over the assets, you should carefully consider who you appoint as trustee.

The terms of the trust deed of a testamentary trust are contained in the Will.



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As with most trusts, a testamentary trust will normally give the trustee:

- The discretion to allocate income and capital among any of the Beneficiaries,
- Wide powers of investment, and
- The power to wind up the trust at any time.

If the gains derived by a trust are allocated to the beneficiaries, then those beneficiaries are liable to pay tax on those gains at their normal marginal tax rates. It is therefore a common practice for the trustees of a discretionary trust to distribute any derived gains to those beneficiaries who have the lowest marginal tax rate in the distribution year. This is one of the main advantages of using testamentary trusts.

Normally if a beneficiary of a trust is under 18 years of age then the trust income that is distributed to that person is taxed at penalty tax rates. Under these rates the child only has a limited tax-free threshold. However if the income derived by the trust was generated from inherited assets then the child will be taxed at normal adult tax rates.

A Testamentary Trust may also provide asset protection for beneficiaries of your estate who may face certain legal claims on their assets, divorce or bankruptcy for example. Until such time as the trustee exercises their discretion to pay an income or asset entitlement to a beneficiary, all trust assets and income remain the property of the trustee. However, if the trust is established in contemplation of frustrating the claims of, for example, legitimate creditors, the courts may effectively unwind the arrangement.

These and other factors, require careful consideration by your solicitor in conjunction with your Private Wealth Consultant.

Power of Attorney

Granting a Power of Attorney means that you legally appoint a person or an organisation to make decisions, sign documents, and act on your behalf in various matters.

When you grant a Power of Attorney you may choose to limit the actions which the attorney can perform on your behalf (Limited Power of Attorney) or give the attorney wide powers to undertake actions on your behalf (General Power of Attorney).

Specific details as to the powers under a Power of Attorney are determined by the State legislation to which the Power of Attorney relates. This may present difficulties if for example you have property in more than one state.

Enduring Power of Attorney

One of the limitations of a Power of Attorney is that it generally ceases when the person suffers a loss of mental capacity. This can be overcome with the use of an Enduring Power of Attorney. This type of Power of Attorney does not cease on mental incapacity and can therefore provide an important tool in estate planning.

Medical Treatment and Lifestyle Decisions

It is important to note that different States have different ways of dealing with medical and lifestyle decisions for a person who is mentally incapable of making such decisions.

Such methods may include:

- Power of Attorney (Medical Treatment) – attorney has the power to give and, in certain circumstances, withhold consent to medical treatment on your behalf.
- Enduring Guardianship – guardian has the power to make personal and lifestyle decisions for you should you lose mental capacity, including decisions as to where you live and who you live with.
- Enduring Power of Attorney – attorney has the power to act on your behalf during your life, in relation to your investments and other financial matters.
- Advance Health Directive – a document in which you can express your wishes about medical treatment and how you would like your body to be dealt with in the event of an accident.



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As State based requirements differ, it is important to seek advice from an appropriately qualified legal professional on these and other issues when putting together your estate plan.

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