



Focus on Estate Planning

Estate planning is more than just writing a Will. It ensures your wishes are fulfilled and your estate is distributed the way you want in the event of your death or incapacitation.

Call 03 9017 4114 or
email admin@mylife.com.au

What is estate planning?

Estate planning gives you peace of mind that everything will be in order if you die unexpectedly or become unable to manage your affairs.

The structure of an estate plan will vary according to your personal circumstances, but every estate plan has the same goal - to ensure your accumulated assets are managed and transferred according to your wishes in the most financially efficient and tax effective way.

How does estate planning work?

You can utilise tools such as Wills, Powers of Attorney, insurance policies and trusts to help manage your affairs as part of estate planning. These tools all ensure your affairs are managed the way you would like.

What does a will do?

Generally, your Will forms the basis of your estate plan and determines the distribution of your assets to your beneficiaries in line with your wishes. It also allows you to:

- Choose your executor;
- Appoint a guardian for any minor children;
- Establish a trust to transfer your assets tax effectively;
- Make specific gifts to charities; and
- Establish a trust for minor children or another purpose.

Why you need estate planning

Estate planning will:

- Provide for and protect loved ones with specific needs, including children;
- Ensure your children's inheritance receives increased protection if a relationship breaks down;
- Ensure you receive professional advice on how to structure your assets to gain available tax advantages;
- Ensure your wishes are recorded in legally binding documents, free from ambiguity; and
- Provide you with peace of mind knowing, should you die or be unable to legally manage your affairs, that they will be managed by someone you trust.

There are legal disadvantages imposed on those who do not adequately document their wishes before they die. For example:

- Dying without a legally valid Will, called 'dying intestate', can be costly and create added stress for loved ones at an already difficult time; or
- Certain life events, such as marriage, divorce or the birth of a child, can also trigger the need for estate planning advice or a review of your existing plan.

Why do you need a will?

Dying without a Will means you risk your estate being distributed according to strict legislative requirements rather than according to your wishes, losing the choice of who benefits from your estate.

An intestate estate (where there is no valid Will) is more difficult to administer and will take longer to be finalised, potentially resulting in increased costs.

What is an executor?

Every Will needs an executor; a person (or persons) or trustee company you choose to carry out your wishes.

Your executor is responsible for the entire administration of your estate, from funeral arrangements to the ongoing management of your assets until the estate is completed. Other duties include:

- Confirming the Will is legally valid (obtaining a grant of probate in some states);
- Preparing a statement of your assets and liabilities;
- Advising beneficiaries of their entitlements;
- Lodging tax returns, if required;
- Protecting your assets pending distribution (including, for example, superannuation, insurance, safekeeping of valuables and re-investment of surplus funds);
- Establishing trusts; and
- Paying beneficiaries.

What is a power of attorney?

A Power of Attorney is a legal document that ensures someone you trust will manage your affairs.

You can appoint trusted family members, friends or a professional trustee to act as your Attorney.

A way to plan for your future is to make an Enduring Power of Attorney prepared by a solicitor. An Enduring Power of Attorney will prevent government intervention should you suffer from an accident, illness or loss of mental capacity.

An Enduring Power of Attorney is an important element of your estate planning.

It allows you to make a choice in advance as to whom will protect you and your assets if you are no longer able to manage your affairs.

What types of trusts are there?

Inter vivos trusts

An inter vivos trust is created between living persons. Once the trust is established, the assets in the trust do not form part of your personal estate.

Testamentary trusts

These are created by a Will and give the trustees discretion to split the income between a family for a period of time.

Although future changes in taxation laws may have an impact on these trusts, they are currently tax effective because the trustee can vary the income paid depending on their other tax liabilities.

Family trusts

Family trusts preserve assets or capital for successive generations. They provide secure income for certain beneficiaries, either for life, a specified period or until a particular event.

Children's trusts

These are generally established in Wills and are managed for children until they reach the age of 18 or older as determined by the provisions of the Will.

Charitable trusts

A charitable trust can be established during your lifetime or through your Will. It is often more effective to establish the trust during your lifetime which is generally more tax effective for you as well.

Why consider using a trust?

Apart from distributing your assets through a Will, you are also able to distribute assets via trust.

A trust is a legal structure used to hold assets that can be owned by an individual, family or business. It is a useful vehicle if you want to:

- pass on a family business;
- make a gift to charity; and/or
- be flexible in distributing your assets for tax purposes.

The rules governing the trust are detailed in a trust deed and the trustee of the trust has specific instructions regarding the assets. Trustees generally exist to protect assets and minimise tax and may be drawn up by your solicitor.

To find out more about how estate planning applies to you, contact MyLife Financial Planning today on 03 9017 4114.

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