

Estate planning

Why it is more than just a Will

Key points

- Estate planning is more than just a Will. It is likely you will need to prepare additional documents to deal with assets that are not dealt with under your Will.
- Superannuation does not automatically form part of your estate. You will need to consider a binding death benefit nomination.
- Control of your trusts and companies will need to be carefully considered as the assets owned by these structures are dealt with under your Will.

1. It is a common misconception that everything you 'own' will be dealt with under your Will. This is not always the case.
2. An important part of estate planning is distinguishing between estate assets (which are divided in accordance with the Will) and other assets, entities or interests, which need to be dealt with separately. Your estate planning strategy will involve more documents than just your Will.
3. This information sheet outlines some assets that might not be estate assets.

Joint tenancies

4. Any assets you hold as joint tenants will pass to the surviving joint tenant automatically, despite any provisions in your Will.
5. Assets commonly held as joint tenants include real estate, shares and bank accounts.
6. A joint tenancy can be 'severed' so that the asset is held as tenants in common and your share can then be left under your Will. This can be done without triggering any tax or duty.
7. There are several reasons why it might be appropriate to change a joint tenancy to a tenancy in common:
 - (a) You may not want the surviving joint owner to receive the asset.
 - (b) It may be better for your share to be left to a testamentary trust under your Will.
8. However, joint tenancies can also be a useful estate planning tool, particularly if the goal is to minimise the amount of assets that form part of the estate, for example, to avoid an estate challenge.

Family trusts

9. You cannot deal with the assets in a family trust in your Will as the trust will continue after the death of the controllers.
10. Therefore, it is necessary to transfer control of the trust (as opposed to leaving the trust assets to your beneficiaries).
11. Family trusts provide great flexibility while you are alive, but this flexibility can be dangerous if control of the trust is not dealt with properly in your estate planning.
12. In your estate plan, you need to consider:
 - (a) how to leave your shares in the corporate trustee
 - (b) passing of the appointor or principal role (and with it, the power to change the trustee)
 - (c) how to deal with any money you are owed from the trust (which often arises from unpaid distributions), as this will form part of your estate.

Companies

13. Assets held in companies will remain in the company and your shares in the company will be left in accordance with your Will (except when they are jointly held).

14. It is important to check the constitution for the company as there may be unusual share rights or provisions governing transmission of shares on the death of a shareholder.

Superannuation

15. Your superannuation does not automatically form part of your estate.
16. The trustee of your superannuation fund must deal with your benefit and can decide to pay:
 - (a) your spouse
 - (b) your children
 - (c) anyone financially dependent on you
 - (d) a person you live with (subject to some additional requirements)
 - (e) your estate.
17. If the benefit is paid to your estate, it will be distributed in accordance with your Will.
18. For most superannuation funds, it is possible for you to sign a binding death benefit nomination that specifies how any superannuation benefit will be paid on your death. It is important to check the terms of the trust deed, or the requirements of your fund, to ensure they allow a binding death benefit nomination, and then to follow the rules precisely.
19. Sometimes flexibility is an important strategy, particularly for self-managed superannuation funds.
20. Binding death benefit nominations and reversionary pensions need to be considered as part of your estate plan and should not be done in isolation or without advice.

Life insurance

21. Whether life insurance is dealt with under your Will depends on the owner of the policy and if there is a nominated beneficiary.
22. If you own your own policy and there is no nominated beneficiary, the proceeds will be dealt with in accordance with your Will.
23. Where there is a nominated beneficiary, the proceeds will be paid directly to the beneficiary and will not be dealt with under your Will.
24. If your life insurance is held in your superannuation fund, the proceeds will be dealt with as part of your superannuation benefit.

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