

Estate planning

Time to change your estate planning arrangements?

Key points

- It is important to review your estate planning arrangements regularly
- Changes in your circumstances could mean that your documents are invalid
- Some of your documents may lapse and become invalid after a certain period of time

1. Once you have your estate planning arrangements in place, it is important to be aware of when they should be reviewed.
2. You should review your Will and estate plan every 12 months or whenever your circumstances or the circumstances of a person mentioned in your Will changes.
3. Some examples of circumstances that would require you to review your Will and estate plan are if:
 - (a) the law about Wills, succession, taxation or superannuation changes
 - (b) your financial circumstances change
 - (c) you acquire assets in another country
 - (d) your personal or family circumstances change (for example, you begin a relationship or end a relationship)
 - (e) a beneficiary, executor or trustee dies, changes their name, becomes bankrupt or loses capacity
 - (f) the circumstances of any of your dependants change (which could increase the risk of a challenge to your estate)
 - (g) you transfer assets or begin to hold assets that you cannot gift under your Will (for example, in a trust, superannuation or company structure).

Changing your assets

4. If you have left specific gifts under your Will and you later deal with the gift (i.e. you or your attorney sell or mortgage an asset that is gifted under your Will), that may alter the gift under your Will resulting in the intended beneficiary not receiving the benefit of the gift.
5. This could increase the risk of that beneficiary attempting to contest your Will or making a claim against your attorney. Any challenge to your estate could substantially delay the administration of your estate and result in significant costs being incurred.

Marriage, divorce and separation

6. If, after making your Will and Enduring Power of Attorney, you divorce, marry, end a de facto relationship, enter into or terminate a civil partnership, this may cause your Will or Enduring Power of Attorney to be partially or fully revoked. Entering into a de facto relationship does not automatically revoke your Will.
7. Your superannuation Binding Death Benefit Nominations may not be affected (which means that an ex-spouse could still be nominated as a beneficiary).
8. If you subsequently separate or are otherwise estranged from a spouse or civil partner (other than a de facto), this will generally not cause your Will, Enduring Power of Attorney or Binding Death Benefit Nomination to be revoked.
9. After any of these events, it is essential for you to review your estate plan and potentially update the relevant documents.

10. Wills and Enduring Powers of Attorney can be made in contemplation of marriage, divorce or entering into civil relationships so they do not need to be re-written when the event occurs. The law is different in each state of Australia. To be valid they require proper drafting.

Superannuation lapsing Binding Death Benefit Nominations

11. If you have made a lapsing Binding Death Benefit Nomination for your superannuation, it will lapse three years after the date it was made. We recommend that you diarise this date and, at least a month before the nomination lapsing, you arrange for the superannuation fund to have the necessary forms sent to you to have the nomination renewed. We will not send you reminders on this.
12. Failing to remember this date may affect the outcome of your estate planning.

Maintaining your estate plan

13. We will not send you reminders of any dates or events mentioned in this information sheet, so it is critical that you take the appropriate action if any of these circumstances arise for you.
14. If you wish to change your Will or any other aspect of your estate plan you must ensure that the necessary legal requirements are completed correctly, otherwise your wishes may not take effect as intended.
15. For further information see our website: <https://www.cgw.com.au/expertise/succession-and-estate-planning/> or contact a member of our estate planning team.

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