



Estate Planning

Some of the most commonly asked questions about Estate Planning are discussed on this page.

1. Why is Estate Planning important?

Estate planning is essential to the short term and long term goals of your family. The process of estate planning will depend on the individual circumstances of your family.

Estate planning is the legal process of documenting and structuring matters relating to your assets, your Will, superannuation, your business, loans, wishes for dealing with a family trust or other trust, and perhaps putting a Power of Attorney and Appointment of Enduring Guardian in place.

There are many different factors that will affect what is most suitable for you, including the make up of your family (i.e. second marriages, de facto partners, step-children etc).

2. Who is involved in the Estate Planning process?

If your circumstances are fairly straight forward, it may be as simple as preparing a new Will, Power of Attorney, and Appointment of Enduring Guardian.

However if your assets and circumstances are more complex, sometimes your accountant, financial planner, banker and insurance consultants are involved to assist with their own area of expertise and give the best possible outcome.

3. What are the different forms of assets?

Many people think they can leave all of their 'family assets' to their beneficiaries under the terms of their Will. This is not always the case, particularly with regard to superannuation, companies, jointly owned assets, trusts and life insurance policies, for example. It is also important to determine who has ultimate control over these assets.

It is crucial that you seek legal advice with relation to your assets so that appropriate arrangements can be made now, to ensure your intentions are fulfilled in the future.

4. What about my Superannuation?

There are certain rules that apply to superannuation entitlements and how they are dealt with after you die. There are different rules that govern who the beneficiaries of your superannuation will be, and types of beneficiary nominations you make. These rules dictate who will receive your superannuation entitlements. Most people are surprised to learn that unless they have made a 'binding nomination', their superannuation is distributed at the discretion of the trustee of the superannuation fund in accordance with the trust deed.



5. Business Arrangements

You may run or be involved in a business for which you have particular intentions to take effect in the future either during your lifetime, in retirement or after your death. To action your intentions, it may be necessary to transfer ownership or restructure the ownership of assets, including shares in companies, any trusts, or other business assets. One pertinent feature of your business arrangements should be to achieve the highest possible protection of your assets.

6. Do I need to have corporate trustee from my SMSF?

Many clients wonder if they should have a corporate trustee for their self-managed superannuation fund (SMSF).

Generally the reason why clients might not have a corporate trustee is because they want to avoid the cost of setting up a company. However, there are a number of benefits of having a corporate trustee – and it might even end up saving you money down the track.

Some of the benefits of having the corporate trustee are:

- (a) It is clear that the interests of the superannuation fund are separate to the individual members because the legal title to the assets is held by the company.

Having a company as trustee can help if there is a claim against the individuals because it is easier to provide that the assets are held on trust for the superannuation fund.

This can be particularly useful in New South Wales where you cannot disclose a trust on the title to land.

- (b) For administrative efficiency, if there is a sole member fund they can also be the sole director. This means there is no need for a second person to sign all documents (like annual financial statements), and can significantly reduce issues in your estate planning.
- (c) Having a corporate trustee allows a smoother transition on the death of a trustee or member (or any other change of trustee). If there are individual trustees, on the death or retirement of a trustee, you need to prepare documentation for the change of trustee and transfer all assets of the fund to the new trustees.

If there is a corporate trustee, there is no need to change title to the assets but only the directors the company have to change.

We can offer advice on the issues relating to the legal aspects of your future business arrangements.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.