

InfoSheet: Estate Planning

Estate planning may include Wills (including Testamentary Trust Wills), Powers of Attorney, Appointment of Enduring Guardian and Advance Health Directives.

Estate planning is more than simply making a Will. Estate planning involves a careful analysis of an individual's:

- wishes
- personal relationships
- financial and business structures
- intention for the disposal of their assets on death
- current taxation, superannuation and other relevant laws which impact on estates and beneficiaries.

In addition, the estate planning process takes into consideration assets such as:

- joint tenancies (where the surviving joint owner inherits automatically)
- superannuation and life insurance proceeds
- assets held in discretionary trusts
- life interests, pensions and annuities.

The estate planning process

At Kells The Lawyers we fully review your personal and business circumstances. A review could include:

- how you hold assets
- superannuation nominations (particularly binding nominations)
- life insurance policies
- pensions and other entitlements
- family circumstances (e.g. second marriage/stepchildren)
- capital gains tax implications
- consideration of the financial and personal position of your beneficiaries
- taxation effects on your beneficiaries.

It is important that we are fully aware of your family and financial circumstances to ensure that adequate arrangements are made for your beneficiaries.

Testamentary Trust Wills

A testamentary trust is a trust established by your Will on your death. Some or all of your assets may be held in a trust for each of your beneficiaries. A testamentary trust can benefit your beneficiaries by:

- reducing the tax they pay
- protecting your beneficiaries from claims by creditors, bankruptcy, family law proceedings
- preserving capital gains tax exemptions
- preserving pension entitlements
- limiting access to your assets to ensure the value of the asset is maintained.

Powers of Attorney

We recommend all clients make a Power of Attorney. This document appoints someone to act on your behalf to manage your finances.

If you lose capacity (dementia, a stroke or serious accident) and have not appointed an attorney, a family member or friend may need to go to Court to be appointed to manage your affairs, or your finances may be managed by a government department – both of which may be time consuming, costly, inconvenient and restricting for your family.

You must make a Power of Attorney before you lose mental capacity. See our InfoSheet on Powers of Attorney for more information.

Appointment of Enduring Guardian

A Power of Attorney does not allow anyone to make medical, health or lifestyle decisions on your behalf.

You can appoint someone to do this by appointing them as your guardian. They can only make decisions if you lose mental capacity.

You must make the Appointment of Enduring Guardian before you lose mental capacity. See our InfoSheet on Appointing an Enduring Guardian for more information.

Advance Health Directives

This is a document prepared in addition to your Appointment of Enduring Guardian. It allows you to be more specific in stating what treatment you require, especially if you are diagnosed with a chronic or terminal illness, or if you have strong views on what medical treatment you receive.

This is a document that can be prepared after consultation with your treating doctors and family members and held with your Appointment of Enduring Guardian document.

Estate planning encompasses a total review of present circumstances, investment and business structures and personal relationships. These details are then used to plan a Will and related structures to maximise the benefits and protection available to persons sharing in the estate of the deceased person.

Regular review (often in close collaboration with your financial planner or accountant) is essential to ensure your estate plan remains appropriate in an environment of changing laws and personal circumstances.

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