



Fact Sheet

Estate Planning

An effective estate plan provides details and instructions on how you want to distribute your assets after you die.

The purpose of this fact sheet is to help you understand estate planning concepts that relate to a personal financial plan.

This includes:

- ⇒ Wills
- ⇒ Death benefit nominations
- ⇒ Testamentary trusts
- ⇒ Power of Attorney
- ⇒ Enduring Power of Attorney
- ⇒ Enduring Guardianship
- ⇒ Advance Health Directive

Will

Your Will is the document that directs how your estate is to be distributed amongst your nominated beneficiaries upon death.

A will does not cover all assets, so special care should be taken to ensure the ownership and control of all your assets including 'non-estate' assets, pass to beneficiaries in the way you intend.

You are required to nominate an executor in your Will. The executor has the duty of carrying out your wishes in the Will and is granted power to administer the estate. This generally includes collecting assets, paying off any debts and distributing the benefits to those entitled.

Careful consideration is required when appointing the executor. It is recommended you discuss the appointment with that person prior to making your Will.

In addition to estate beneficiaries, executors may also be your solicitor, accountant or a public trustee (but should not be your private wealth adviser).



Superannuation

Superannuation is a non-estate asset and is therefore excluded from your Will. The superannuation trustee will distribute the funds in accordance with the Trust Deed. This normally gives the trustee the discretion to decide to whom superannuation monies should be paid.

Eligible beneficiaries are detailed in superannuation legislation and include your legal personal representative and your 'dependents'.

A dependent for this purpose includes your spouse, your children, any financial dependent or a person in an interdependency relationship with you.



Death benefit nominations

A binding death benefit nomination allows you to nominate who will receive your superannuation benefits in the event of your death and ensures the trustee is legally bound by your wishes. The nomination is able to be amended or cancelled at any time and is sometimes required to be renewed every three years.

A non binding death benefit nomination is used only as a guide by the trustee when deciding who should receive your death benefit.

A non-lapsing death benefit nomination is a binding death benefit nomination that does not lapse. Unlike binding death benefit nominations which lapse if not renewed at least every three years, a non-lapsing nomination will remain in force until such time it is amended or revoked by the client.

Testamentary trusts

Testamentary trusts may assist to distribute your estate to your beneficiaries in a more tax-effective manner. It may reduce the likelihood of a successful challenge to your Will.

The trustee must act according to the terms of a trust deed and has the duty and responsibility to look after trust property for the benefit of others. Appointing a trustee may involve a financial cost and as the trustee will have discretion over the assets, you should carefully consider who you appoint as trustee. The Will contains the terms of the trust deed of a testamentary trust.

A testamentary trust will normally give the trustee:

- ⇒ the power to wind up the trust at any time.
- ⇒ wide powers of investment, and
- ⇒ the discretion to allocate income and capital among any of the beneficiaries

If the gains derived by a trust are allocated to the beneficiaries, those beneficiaries are liable to pay tax on those gains at their normal marginal tax rates. Trustees therefore normally distribute any derived gains to those beneficiaries who have the lowest marginal tax rate in the distribution year. This is one of the main advantages of using testamentary trusts.

If a beneficiary of a trust is under 18 years of age, the trust income that is distributed to that person is taxed at penalty tax rates. Under these rates, the child only has a limited tax-free threshold. However if the income derived by the trust was generated from inherited assets then the child will be taxed at *normal adult tax rates*.

A testamentary trust may also provide asset protection for beneficiaries of your estate who may face certain legal claims on their assets, divorce or bankruptcy. Until such time as the trustee exercises their discretion to pay an income or asset entitlement to a beneficiary, all trust assets and income remain the property of the trustee. However, if the trust is established in contemplation of frustrating the claims of, for example, legitimate creditors, the courts may effectively unwind the arrangement.

You should carefully consider these issues in conjunction with your financial adviser and solicitor.





Power of Attorney

Granting a Power of Attorney means you legally appoint a person or an organisation to make decisions, sign documents and act on your behalf in various matters.

When you grant a Power of Attorney you may choose to limit the actions which the attorney can perform on your behalf (Limited Power of Attorney) or give the attorney wide powers to undertake actions on your behalf (General Power of Attorney).

Specific details as to the powers under a Power of Attorney are determined by the state legislation to which the Power of Attorney relates. This may present difficulties if you have property or assets in more than one state.

Enduring Power of Attorney

A Power of Attorney ceases if the person loses mental capacity. An Enduring Power of Attorney, however, does not cease on mental incapacity and can therefore provide an important tool in estate planning.

Powers of Attorney (POA) cease to exist on the death of the person for which you hold the POA.



Medical treatment and lifestyle decisions

It is important to note different states have different ways of dealing with medical and lifestyle decisions for a person who is mentally incapable of making such decisions.

Such methods may include:

- ⇒ Advance Health Directive – a document in which you can express your wishes about medical treatment and how you would like your body to be dealt with in the event of an accident.
- ⇒ Enduring Guardianship – guardian has the power to make personal and lifestyle decisions for you should you lose mental capacity, including decisions as to where you live and who with
- ⇒ Power of Attorney (medical treatment) – attorney has the power to give and in certain circumstances, withhold consent to medical treatment on your behalf
- ⇒ Enduring Power of Attorney – attorney has the power to act on your behalf during your life, in relation to your investments and other financial matters

As state based requirements differ, it is important to seek advice from an appropriately qualified legal professional.



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