



ESTATES 101 SERIES

ESTATE PLANNING 101



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ESTATE PLANNING 101

WHAT IS ESTATE PLANNING?

Estate planning is a phrase used to refer to the process of planning and preparing your Will, appointing a decision maker when you cannot decide things for yourself anymore, and dealing with assets or interests that may need to be managed or protected when you die or lose capacity.

For people who have companies and trusts, the estate planning process also includes identifying what happens to these entities when you pass away and to what extent, if any, you can control who takes over for you when you're gone.



The needs and complexity of a person's estate planning will vary for each person as the make-up of each person's assets, liabilities and family dynamic is different, not to mention their personal views and objectives.

Estate planning typically includes:



Will



Enduring Power of Attorney



Advance Health Directive



Superannuation

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WHAT IS A WILL?

A Will is a document that records your wishes about how you want your assets distributed when you pass away. It is also used to appoint a person to be responsible for winding up your affairs. This person is called the Executor of your Estate.



An Executor (also known as 'Legal Personal Representative') is the person who is responsible for protecting, realising, collecting and administering the Estate of a deceased person.

Your Will records many essential instructions as to how to manage your affairs when you die, including:



Who receives your assets when you die



What your funeral wishes may be



Who is to become guardian of any minor children you leave behind



Distribution and identification of equal and unequal shares



Whether you wish to be buried or cremated



Who is to take over the family business or family trust (if applicable)



Who is to take guardianship of your pets

“As each person is different, so is each person’s Will. Your Will should be tailored to your needs.”



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WHAT IS AN ENDURING POWER OF ATTORNEY?

An Enduring Power of Attorney ('EPA') is a document that allows you to appoint another person to make decisions on your behalf when you're not able to make the decision yourself.

An EPA can appoint someone to manage your financial decisions and/or your personal/health care decisions. You can appoint one or more attorneys and express how multiple attorneys are to make decisions; for example, jointly and unanimously or by majority.

“An EPA is a very broad and powerful document so who you ultimately decide to appoint should be someone you trust completely.”



WHAT IS AN ADVANCE HEALTH DIRECTIVE?

An Advance Health Directive provides you with the opportunity to document your personal / health care wishes more definitively and in relation to situations where, for example, you are in a coma or are suffering a terminal illness.

Some benefits of providing such a document can include:

- Providing you the opportunity to direct what type of health care you may wish to receive in these situations
- Relieving the burden on your attorney / family to make decisions in these situations
- Having your wishes binding on family and health care providers

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WHAT IS A TESTAMENTARY DISCRETIONARY TRUST?

A Testamentary Discretionary Trust ('TDT') is a type of trust that can be created in your Will for those you want to benefit. The TDT comes into effect upon your death and consists of the assets of your Estate that you specify are to go to the Trustees of the TDT in your Will. A TDT can exist for up to 80 years.

The beneficiaries of the TDT can be a single person or can be a class of beneficiaries. For example, the primary beneficiary of a TDT may be a child, and the secondary beneficiaries may be any children or grandchildren of the primary beneficiary. The terms of a TDT can be tailored to suit your needs and can be drafted flexibly to allow for the Trustees of the TDT to decide who receives the income and/or capital of the TDT, when and in what shares.



Generally speaking, by being a discretionary trust, the beneficiaries of the trust do not have a specific and defined interest in the trust, but simply a mere entitlement to be considered when the Trustee exercises their discretion as to who will receive benefit from the TDT.

The benefits of having a TDT can include:



Asset protection for some or all of your beneficiaries



Tax benefits for some or all of your beneficiaries



Protection for vulnerable beneficiaries



An opportunity for a person to have control over the management of their assets after their death for the benefit of certain individuals or groups

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REASONS FOR TDT USE

The reason TDTs are used for asset protection is because there is a separation of the ownership and enjoyment of the assets of the TDT. The Trustee of the TDT legally owns the assets and controls the TDT. The Trustee holds the assets on trust for the benefit of the beneficiaries in the TDT. It is only when the Trustee exercises their discretion to distribute an asset or interest in the TDT to a beneficiary and transfers that interest to the beneficiary that the beneficiary then owns and controls that asset or interest.

TDTs are particularly useful where you have concerns that your intended beneficiary might be exposed to:



Bankruptcy



Intellectual impairment



Relationship breakdown



Being spend-thrift or wasteful



Substance abuse

“There are various ways to frame a TDT to offer the right kind of flexibility to achieve your objectives.”

WHAT IS A BINDING DEATH BENEFIT NOMINATION?

A Binding Death Benefit Nomination is a legal document that “binds” the trustee of a Superannuation Fund by forcing the trustee to pay the member’s death benefit to the person or persons nominated in that member’s Binding Death Benefit Nomination.

You can only nominate a dependant or your **Legal Personal Representative** as the beneficiary of your death benefit under a Binding Death Benefit Nomination.

A dependant includes your spouse, children (of any age) and persons in an interdependent relationship (eg. elderly siblings who live together).



A personal representative or legal personal representative is the Executor named in the Will, or in the absence of such, a person appointed by a court to administer the Estate of a deceased person.

ABOUT BENNETT & PHILP

Established in 1984, Bennett & Philp is a mid-tier law firm based in the heart of Brisbane offering end-to-end legal solutions for both business and individual clients. Our team offers a broad range of services to support both Australian and international clients across every stage of business and life.

AREAS OF PRACTICE

We provide personalised service across six core areas of specialisation:



Business Advisory
Services



Disputes & Litigation



Intellectual
Property



Property & Real
Estate



Compensation
Law



Wills & Estates

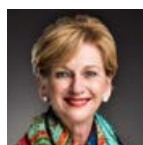
MEET OUR TEAM

With 15 Directors and over 70 team members across six different service areas, you can rest assured that our experienced team can give you the practical and solutions-oriented legal advice you need for any occasion.



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Contact us today and talk to us about how we can assist you in your situation.

