

What is Estate Planning?

by Ann Janssen

When you build a house, you need more than four walls and a roof. It may look like a house, but without the internal fit out it's unlivable. It's the same with having a Will – it's only part of the structure you need.

Most people think that your Will determines where all of your assets go on your death. However the following assets are not controlled by the Will:

- **Jointly owned assets** : examples include joint bank accounts and property held as joint tenants. These assets automatically pass to the surviving joint owner, even if your Will tries to gift them to someone else. One exception to this rule is assets held as tenants in common. If you hold a property in this way, you can gift your share in your Will.

If you hold property jointly and you don't want the survivor to take ownership on your death, then we can assist.

- **Superannuation** : next to your own home, this is likely to be your largest asset, particularly if you have a life insurance component in your super.

Contrary to popular belief, your super does not fall into your estate and under the control of your Will. The trustees of your super fund retain a discretion to pay your super on death to any one or more of your 'dependants'. This term is defined under legislation to include a spouse (including same-sex couples who are registered as a civil partnership), defacto partner (including same-sex partners), children, and any other person who is essentially, financially dependent on you. Any nomination you make with the super fund can be overridden by the trustees.

Care must be particularly taken if you have a self managed super fund to ensure the appropriate control of the fund after your death, particularly if you have other family as members of the fund. A binding death benefit nomination can be the solution, but care must be taken when putting them in place, due to tax and other considerations.

We can advise you on the best course of action for your situation.

- **Life Insurance** : If you have life insurance outside of your super, the life insurance will pass to the persons you nominated in the policy. Have you checked those nominations recently? It is not unusual for them to be out of date. Life insurance can be a very powerful tool in estate planning, particularly for young families and blended families.

We will discuss the pros and cons of life insurance with you during our planning meeting.



- **Assets owned by your family trust:** A trust is a separate legal entity, and it owns the assets in its name. You may be the trustee or appointor of the trust, which means you control the trust. But you do not own the trust assets and so you can't gift those trust assets in your Will.

You can however, pass control of the trust to others, and we can show you how to do this.

What about divorces, blended families and potential claims on my estate?

It's not only our asset structures that are becoming more complex. Relationships are breaking down more often, and there are competing interests between various family members, particularly in blended family situations.

Superannuation and the unprecedented rise in property values has significantly increased the size of our inheritance, too.

Your estate plan needs to take these issues into consideration so that it can best weather any storm that comes its way.

Incapacity

And we haven't mentioned incapacity! What happens if you become incapacitated? Your Will does not activate until death, so you need other documents to handle your affairs if you can't.

Peace of Mind

One thing that our clients continually say to us when they finalise their estate plan is that they felt an immediate sense of relief and peace of mind. Some have been anxious for years beforehand, with either 'half baked' solutions or no solution at all.

Our usual turnaround time for completing your estate plan is three weeks, from our first planning meeting with you.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us info@estatefirst.com.au

