

Estate planning – more than writing a Will

Estate planning is a vital component of any financial plan. Estate planning is aimed at protecting the assets you have acquired during your life and ensuring they are used on your death to continue to provide for your family and loved ones. Estate planning is more than just a will.

An estate plan covers all assets

Your Will is an important part of an effective estate plan, but not the only part. Your Will documents the distribution of the assets you own personally, but an estate plan also develops strategies for distributing your non-estate assets including superannuation, company assets, trust assets and business assets. For many people it is these “non-estate assets” (i.e. assets which pass outside your Will) where the majority of wealth is held. Therefore, it is extremely important you consider who is to control those assets when you are no longer around.

What is estate planning?

Estate planning is the process of defining your goals and then mapping out a way to achieve them through organising your financial affairs as efficiently as possible. An effective estate planning strategy will combine an understanding of your financial plan and investment structure with your lifestyle and personal goals. The objective is to develop a structure during your lifetime that will allow you to continue to accumulate wealth, to protect your wealth and then distribute your wealth efficiently upon your passing.

The ultimate goal is for your assets to be transferred in the way you want, to the people you want, in a tax effective way and to minimise the ability for your estate to be attacked as a result of unforeseen events such as bankruptcy, divorce, family dispute, business failure, and litigation. It is a balancing act between complete financial efficiency and asset protection.

The advantages

There are a number of advantages in taking the time to have an estate plan professionally prepared.

- Clearly documenting your wishes now will reduce the burden on your family when you pass and will also go a long way to preventing family disputes.
- It will minimise the amount of unnecessary tax paid by your beneficiaries.
- It will help protect your family's assets from excessive court costs incurred in defending legal claims against your estate. This is an important consideration if, for example, you have been married previously or have children from different relationships. In some cases the costs of both the applicant (in bringing the application) and your estate (in defending it) are paid from your estate.
- It will allow you to move towards retirement with a clear idea of what will happen in the future, allowing you to feel comfortable, secure and most importantly to enjoy life!

If you don't take the time now to prepare an estate plan taking into account your personal circumstances and those of your family, then you risk some potentially catastrophic results. See “Fact Sheet – Simon and Regina's lost legacy”.

Do I need to prepare an estate plan?

Set out below are a number of questions to help you assess what (if anything) you might need to do about your estate planning requirements. If having completed the questionnaire you are concerned, then you should contact McMahon Clarke Legal. We are happy to discuss your circumstances over the phone at no charge.

Q: Do you have a Will? If you don't, then you should contact us immediately.

Q: If you do have a Will, then have there been any “significant events” in your life since your Will was prepared? For example, have you been married, divorced, or had children? If so, then you should contact us immediately because your Will is likely to need updating.

- Q:** Are you or your partner in a high risk profession (e.g. doctor, lawyer, engineer or other professional or business owner)? If you are, then you need to make sure your Will and your partner's Will are drafted to protect your assets upon your passing.
- Q:** Do you have young children (under 18 years of age)? If so, does your Will nominate a guardian of the children in the unfortunate event both parents pass away? If not, then you should contact us immediately as your Will needs updating.
- Q:** If you have nominated guardians in your Will, then have you given any thought to what instructions you would leave with your guardians about raising your children? Accepting a position as a guardian is a significant commitment which is much easier to accept if you, as a parent, leave detailed instructions with your Will about how you would like your children to be raised. Your preferences with regards, to education, religion, discipline, medical treatments are a few of the important issues on which your guardians would probably like to know your views. McMahon Clarke Legal can customise a set of Guardianship Guidelines for you to leave for your guardians in the unfortunate event they are needed.
- Q:** Have you given anyone a power of attorney to attend to your affairs if you are incapacitated? For example, if you were hospitalised for a lengthy period, would a loved one be able to attend to your affairs until you had fully recovered?
- Q:** Do you have business partners? What happens when one of you retires, dies or is permanently incapacitated? Can you buy your partner's share of the business or will you "inherit" a new business partner who you don't know and who does not understand your business? You should have a business succession plan in place to deal with these situations so the business can continue to run smoothly.
- Q:** Do you have a family (discretionary) trust? If so, then have you considered who will control your trust when you pass away, or whether your trust deed appropriately deals with the possibility control may be given to more than one person (for example, if you have a number of children). It is possible your trust deed needs amending to make sure the trust can be effectively managed by future generations.
- Q:** Do you have investments in superannuation? While superannuation is not a personal asset and may not form part of your estate, the trustees of your superannuation fund may elect to pay your death benefits directly to your estate. If your Will does not accommodate superannuation proceeds, then your family could lose the bulk of your nest egg in unnecessary taxation.

Implementation of your estate planning strategy

Once we have worked with you and your financial advisor to develop an estate planning strategy to suit your needs, we will prepare the documents necessary to implement your estate plan. This may include some or all of the following depending on your circumstances:

Our services

<ul style="list-style-type: none"> • Wills <p>Including simple wills or more complex wills incorporating a variety of testamentary trusts depending on your wishes.</p>	<ul style="list-style-type: none"> • Powers of attorney <p>Including powers of attorney for financial matters, personal matters and medical matters.</p>	<ul style="list-style-type: none"> • Establishing trust structures and amending the terms of existing trusts <p>Including family trusts, unit trusts, investment trusts and superannuation fund trusts.</p>	<ul style="list-style-type: none"> • Instructions to the guardians of your children <p>This is very important if you have young children.</p>	<ul style="list-style-type: none"> • Business succession agreements <p>Including shareholder agreements, buy-out agreements, partnership agreements, funded and unfunded business succession agreements.</p>
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McMahon Clarke Legal specialises in estate planning and wealth management for private clients. We work with you to develop an estate plan that takes into account your personal circumstances.

For more information contact a member of our private client team on 07 3831 8999 or info@mcmahonclarke.com