

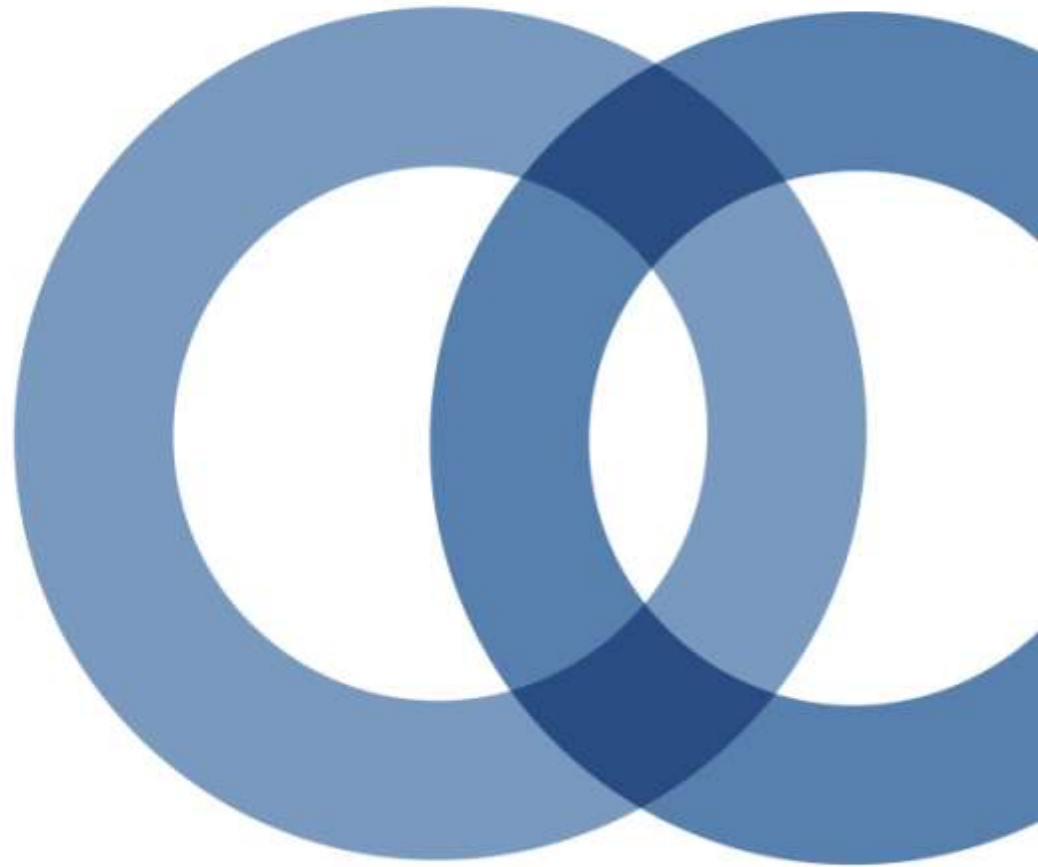


Estate Planning... more than just a will

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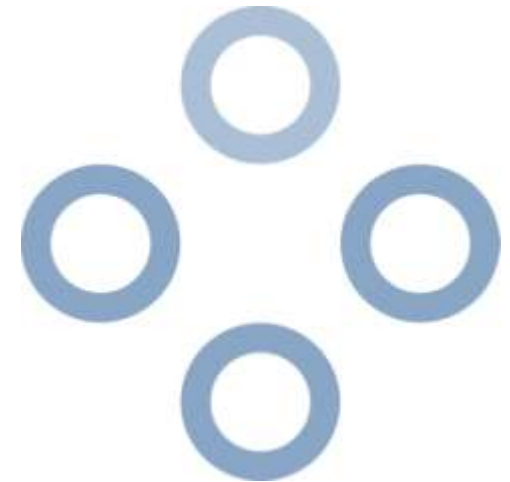
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Outline

- What is estate planning?
- Ensuring your Will is effective
 - Tax considerations
 - Testamentary trusts
- Choosing an executor
- Modern Estate Planning – more than your Will
 - Enduring Power of Attorney
 - Superannuation
 - Charitable legacy



General advice

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What is estate planning?

Structuring your affairs during your lifetime to:

- Ensure your wealth is passed securely and effectively to your intended beneficiaries after your death
- Minimise tax
- Protect your assets from legal claims
- Put plans in place to manage your finances if you no longer have capacity to do so.

Estate planning is not just the Will but the strategy that provides the right result



What do you want to achieve for your beneficiaries?

- Control & flexibility in the way the estate is distributed
- Access to lump sums
 - To reduce debt
 - To enhance lifestyle
- Tax efficiency
- Asset protection
- Roadmap for administration



What are the risks of inadequate estate planning?

Inadequate estate planning can result in:

- Intestacy: where your assets are distributed based on a formula
- A legal challenge to the estate
- Distribution of wealth to unintended beneficiaries (eg ex-spouse)
- Inefficient distribution as tax and Centrelink impact not considered



What is required in a modern estate plan?

- Will incorporating testamentary trusts (for tax and asset protection)
- Enduring powers of attorney and enduring guardians
- Superannuation death benefit planning
- Insurance planning



**Modern Estate Planning
ensuring your Will is
effective**



Your Will

Your Will is a legal document which ensures that your assets are distributed after your death according to your wishes.

Some issues to consider in making your Will include:

- How do you want your assets distributed?
- Who should you appoint as executor?
- Are any of the beneficiaries in business, likely to be sued, become bankrupt, be under 18 or have special needs (eg a severe disability)?
- Are any of the beneficiaries in a unsteady marriage?



Your Will – Using a Testamentary Trust

What is a testamentary trust?

- Incorporated in Will
- Spreads assets and income between beneficiaries
- Trustee discretion
- Children / grandchildren not subject to punitive tax

Benefits of a testamentary trust

- Flexibility
- Asset protection against bankruptcy, family law
- Tax advantages



Informal Wills

Formal requirements may be dispensed with by the Court

A “document” does not have to be paper and parts of documents may be relevant

- Although a “soft copy” Will has been accepted already in Victoria
See *Re Will of Trethewey*[2002]VSC 83 and
- Audio tape meets s21 Interpretation Act
See *Treacy v Edwards* [2000]NSWSC 846



Wills for people who lack testamentary capacity

Court has power for a Will to be made or altered, in specific terms approved by the court, or partially or fully revoked.

The Will must be one that the person would likely to have been made - what the person would have done



Choosing an Executor



The role of an executor and the key risks

Role	Key risks
Manages and protects financial affairs of deceased	Knowledge and skill to deliver complete estate administration
Proves the Will and obtains Grant of Probate from Supreme Court	The last Will made with capacity
Settles all debts	Identified, assessed and paid with “on notice” statutory protection - especially taxation
Distributes or transfers estate to correct beneficiaries as per the Will	Family claims, Will construction



Choosing the right executor

We suggest find an executor who can meet all of these criteria:

- Time – do they have time to properly execute your Will?
- Geography – Are they located near your assets and beneficiaries?
- Willingness – Do they want to take on this responsibility?
- Trustworthy – Will they carry out your wishes?
- Independent – Will they be fair in the instance of family conflict?
- Expertise – Are they aware of all their duties and equipped to perform them?



Choosing an Attorney



The need for an enduring power of attorney

We have a growing seniors population

- By 2050, there will be over 1.1 million people with dementia*
- On average, people live with dementia for around 8 years; some may live for more than 20 years.*

This means ageing issues such as short and long term illnesses can affect ability to self manage financial and personal/lifestyle affairs

An **Enduring Power of Attorney** gives you the power to choose a friend, relative or Perpetual to manage your lifestyle or financial affairs should you become incapacitated

* Source: Alzheimer's Australia Annual Report 2009/09 and Alzheimer's Australia Research information brochure 2009



What are the risks in appointing an attorney?

Managing assets for someone else is highly responsible and in advising an attorney you need to be aware that your client is the donor, not the attorney

If you are an attorney you need to have:

- Judgement
- Expertise
- Willingness to seek appropriate advice
- Impartiality
- Legal compliance



What goes wrong?

People don't make a Power of Attorney - or not soon enough

Attorneys are not given proper advice and explanation of their responsibilities

People select the wrong attorney

- financial abuse or mismanagement: accelerated inheritance
- using funds for own benefit
- family mistrust

People do not clarify correctly issues of capacity



Superannuation



Superannuation and estate planning

Superannuation is NOT automatically covered by your Will

- Generally either paid to a dependant or your estate
- You need to make a provision in your Will or a binding nomination for your superannuation is paid to your estate
- Death benefits can be paid as a lump sum, an income stream, or a combination of both.
- Death benefit income streams can only be paid to tax dependant beneficiaries e.g. spouse and children under the age of 18



Superannuation - death benefit nominations

- Non-binding do not bind the trustee to pay the benefit in a certain way. The death benefit is distributed at the discretion of the trustee.
- Binding nomination may offer certainty:
 - trustee must comply with request
 - cannot be challenged provided nomination is valid at the date of death.
- Must be renewed every three years

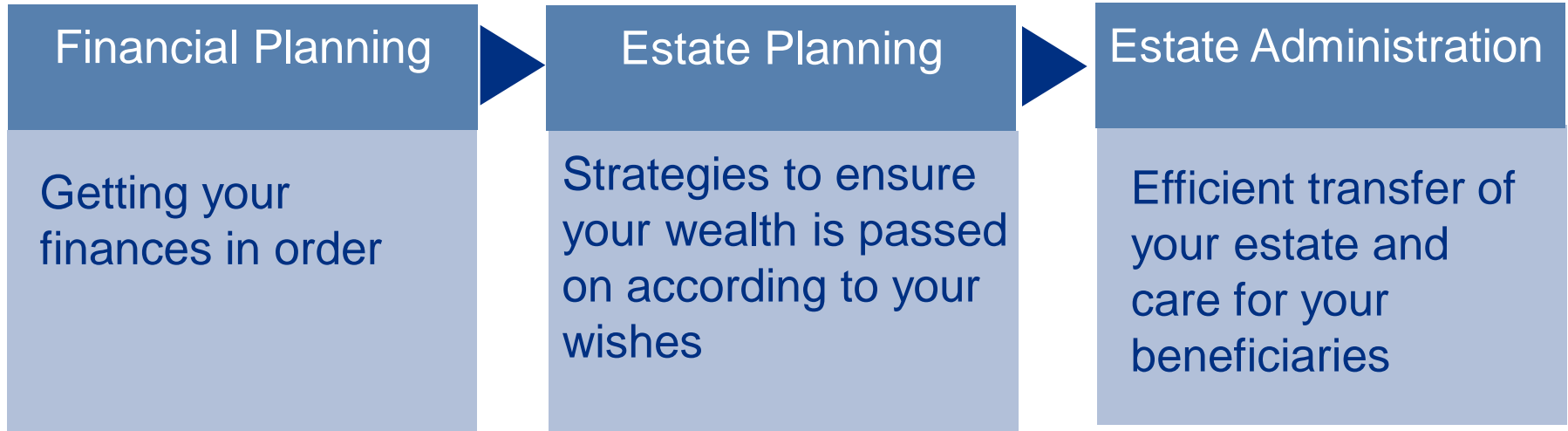


Summary

- Important to make/review your Will when key life events happen
- Consider who should receive which estate assets to reduce tax payable and ensure a fair distribution
- Consider the use of a testamentary trust to protect beneficiaries in a tax effective manner
- Do you need to use life insurance to adequately provide for your family?
- Do you want to give back to your Community?
- Consider strategies to minimise potential superannuation death benefits tax
- Make/update death benefit nominations for your super fund



Your estate – how Perpetual can help



Perpetual advice and services

- Superannuation
- Investments
- Insurance
- Charitable giving

- Enduring Power of Attorney
- Wills
- Trustee Services

- Executorial services
- Asset management
- Tax returns
- Legal process
- Trustee services

