

# Estate Planning

## What is Estate Planning?

Estate Planning is more than simply making a Will. It involves a complete assessment of where you are now, deciding whom you would like to inherit everything that you have worked for during your life, and formulating a plan to best achieve your wishes.

Estate Planning also takes into account circumstances where you are not able to take care of your financial, legal, personal and lifestyle decisions during your lifetime due to injury, illness or old age.

pass according to the terms of your Will, so you can't leave them in your Will. There also may be circumstances where Trusts should be established after your death, or life interests created to best quarantine and preserve your assets to ensure that they remain available for distribution as you wish.

## Wills

A Will is one of the most important documents you will

*If something happens to you, ensure that your loved ones have the future you wish for them and leave your beneficiaries a legacy, not a struggle.*

A large problem in the Estate Planning arena is that people often misunderstand the true function of the various documents that fall under the Estate Planning banner, and what can and can not be dealt with in a Will.

For example, assets held jointly, superannuation with a valid binding death benefit nomination in place and money held in a family trust are assets that, upon your death, will not

ever sign in your life. It is your final say as to how you would like your Estate to be distributed once you have passed away and it can only be contested in court. Estate Planning is more than simply drawing a Will.

In order to ensure that your wishes are carried out upon your death, you need a well written, clear and accurate Will drawn in accordance with current Succession Laws. The

*Don't leave your Will and Estate Planning until it is too late*



Planning for death is generally an issue that is neglected by many. Around 40% of Australians die each year without a Will and much of the remainder die with outdated Wills that do not reflect their current needs at their time of death. We work so hard for so long, accumulating belongings, real estate, investments and savings and we often have strong ideas of who we would like to benefit from our efforts when we die but never make the time to get our intentions onto paper in a way that our beneficiaries are gifted with what is precisely intended. Estate Planning is often put on the back burner behind more pressing daily demands, but if you have children, loved ones or anything of worth (and most of us do!) then it really should be made a non-negotiable on your "To Do" List this year.

*Failing to plan is planning to fail.*

Will needs to be drafted taking into account your complete personal and financial circumstances and its existence in the context of other laws such as taxation and Family Provision legislation. Such an approach ensures that, as far as possible, taxes and family provision claims are kept to a minimum and your assets end up benefiting those whom you wish in the most feasible way.

### Can my Will be challenged?

A Will can be challenged for a variety of reasons ranging from improper execution through to claims that it did not adequately apportion your assets to potential or actual beneficiaries. For example, a partner of the deceased may contest the Will if they feel that they have not been adequately provided for, or that they received an unfair proportion in comparison to the deceased's children.

Comprehensive Estate Planning can ensure that the legal formalities are satisfied so that the scope for a dispute about the terms of a Will are reduced.

### Testamentary Trusts

A Testamentary Trust is simply a trust, a structure that most of us are familiar with, the only difference being that it is created under the terms of your Will. The Trustee named in the Will

controls the assets of the Trust and can be the same person who was appointed as Executor or a beneficiary of the Trust. For example, an adult child can be the Trustee of their own trust, and can also be Executor.

Testamentary Trusts can be used for a variety of purposes including to allow flexibility to care for young children, to minimize taxation via income splitting between a number of beneficiaries, to protect spendthrift beneficiaries from themselves and/ or to protect inheritances from a beneficiary's creditors or relationship breakdown as far as possible.

Wills incorporating one or more Discretionary Testamentary Trusts are a more complex Will and should be considered once you have a solid picture of the exact nature of your assets and personal situation so as to ensure accurate planning and optimal use.

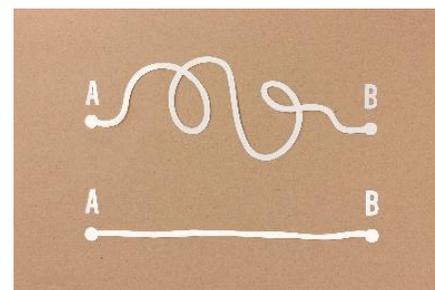
### Guidelines for Testamentary Guardians

What future do you envisage for your children? If you have young children, your Will should allow for the appointment of one or more Testamentary Guardians to care for your children in the event that you have died. We are also able to help you prepare Guidelines to your Testamentary

Guardians to provide a detailed outline of your thoughts and wishes for the care and upbringing of your children.

### Statement of Wishes

Obviously planning a funeral can be a very emotional time in which significant decisions are needing to be made, and often family and friends may have different understanding of what your wishes would be. Leaving detailed instructions may seem unnecessary or insignificant to you whilst you are alive and many are happy to "leave the arrangements in the hand of my loved ones", however detailed instructions to guide your Executor, family and friends can make their job a whole lot easier during an emotional time and save arguments between those who are left to make the arrangements. We can assist you in preparing a detailed Statement of Wishes to be stored with your Estate Planning documents to guide your Executor as to your wishes surrounding your funeral and memorial services.



## What Estate Planning can be done for your affairs while you are alive?

### **Enduring Power of Attorney**

If you are unable to look after your *financial and legal affairs* if you are permanently or temporarily incapacitated through illness, accident or old age you will need a trusted friend or relative to do this for you as your Attorney.

You may feel that you are currently in control of your affairs and that you are too young, or do not require assistance from family or friends, however nobody knows what is around the corner and having your affairs in order brings great peace of mind.

An Enduring Power of Attorney document allows you to nominate a person or group of people who will step in to take care of your legal and financial affairs for you when you are no longer able to. Making the appointments now, whilst you have the opportunity to do so means that you are able to control who takes the reins when you no longer can.

If you do not have an Enduring Power of Attorney when you need one, then your next of kin would have to apply to the

Guardianship Tribunal for the appropriate authority which is a lengthier and more complex process than simply putting an Enduring Power of Attorney in place. This would also mean that that you can't necessarily control who is making these important decisions for you.

### **Appointment of Enduring Guardian**

Similarly to an Enduring Power of Attorney, an Appointment of Enduring Guardian is the appointment of someone, or a group of people, to make decisions for you where you are not in a position to do, however these are decisions pertaining to your *health, lifestyle and wellbeing*. That is, what medical treatment you are to receive, where you are to live, what therapies you are to receive etc. It is important to understand that this appointment only operates in situations where you are incapable of making your own decisions such as if you were in a coma, or seriously injured, and is only operable for that period of incapacity. Advanced Health Care Directives can also be incorporated into this document (often referred to by people as "non-resuscitation directions") which clearly states how you would want to be treated in an end of life situation.

### ***I'm interested, but how much will it cost?***

The following is an indication of the fees charged by us during the year 1 July 2017 to 30 June 2018.

The fees as outlined are a guide and may vary depending on specific client requirements, family structure and the assets profile of the client coupled with the time taken to meet those requirements. We do strive to keep our Estate Planning fees within the range as far as possible. All fees are quotes inclusive of GST.

**Standard Will** - \$545.00 (incl. GST)

**Enduring Power of Attorney** - \$275 (incl. GST)

**Appointment of Enduring Guardian** - \$275 (incl. GST)

**Will incorporating Discretionary Testamentary Trust** – base fee \$1,100\*

**Funeral Wishes** - \$175 (incl. GST)

**Guidelines to Testamentary Guardians** - \$175 (incl. GST)

\* The fees quoted are based on our work in receiving instructions, advising on the requirements to best meet the client's needs, liaising with the

accountant or financial planner if required to clarify the basis on which the assets are held, preparing the Will incorporating one or more Discretionary Testamentary Trusts and where appropriate, preparing Guidelines to Trustees as to the operation of the Trusts and ensuring the Will is executed correctly.

### *What do I do next?*

The above information is a brief summary of the Law surrounding Estate Planning and we understand that not all of the information may be relevant to your circumstances. If you would like to be proactive and get your affairs in order (and tick a huge "To Do" off your list!) follow the Steps outlined on this page or get in touch if you would like any further information.

We look forward to working with you.

## THE ESTATE PLANNING PROCESS



### STEP 1

Complete our Estate Planning questionnaire and return your completed questionnaire via email to [jaime@scarffamilylaw.com.au](mailto:jaime@scarffamilylaw.com.au) or drop it into the office.



### STEP 3

Once your questionnaire has been received, we will contact you to arrange a meeting. We may ask you to bring along certain documentation that is required such as property Title searches, Trust Deeds etc. During the meeting you will have the opportunity to ask questions and seek advice on your Estate Planning legal issues.



### STEP 5

After you have signed up, if you so choose, the original documents are retained by us in our safe custody facility (free of charge) and you are provided with copies for your records. Letters are sent to your and Executors, Attorneys and Guardians explaining their duties and responsibilities.

### STEP 2



Contact your proposed Executors, Testamentary Guardians and Trustees to ensure they are willing and able to take on the role and pass and advise them to look out for correspondence from us once your matter is finalized.

### STEP 4



Your documents will be drafted and emailed to you for your review and comment. Any requests for amendments can be made over the phone or via email. Once you are happy with the documents, contact our office to make an appointment to come in and sign the final version.

*Scarf Family Law - We're real, we're relatable.*

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