

Estate planning is an important part of your overall financial plan to protect the wealth you have accumulated for the benefit of your family. This includes ensuring you have considered and implemented the following aspects:

- Your Will
- Powers of Attorney
- Advance Care Directive
- Guardianship Considerations
- Testamentary Trusts

A common misconception is that a person's assets will automatically pass to a spouse or family on death. However the following assets, which can be of substantial monetary value, may not necessarily form part of a person's estate:

- The family home (if owned as joint tenants, it automatically passes to the remaining joint tenant);
- An individual's superannuation entitlement (e.g. a person's death benefit)
- The proceeds of life insurance policies (depending on ownership); and
- Assets owned in trusts and companies.

If there is no Will, there are different rules depending on the value of the estate.

Without an appropriate record of how you intend to distribute your assets, there is the risk that intended beneficiaries may receive little, or none, of your estate. Estate planning is a complex area and appropriate professional advice should therefore be obtained before making any decisions in this area.

In planning your Will, it is important to consider the following factors which will form the basis of your instructions:

1. What assets do you have now and potentially in the future to dispose of under your Will?
2. What assets are in trusts, companies and superannuation funds?
3. Who do you wish to leave those assets or control of those assets to?
4. Who do you wish to appoint as Executor to administer your Estate?
5. Who do you wish to appoint as Guardian of your minor children?
6. What are your wishes if you become mentally or physically impaired?

## The Executor

The Executor is responsible for collecting and selling assets, paying liabilities and distributing proceeds from your estate to beneficiaries.

The Executor should be a person with time to handle your estate after your death and also someone with business acumen, or has access to people with business acumen. Usually two are selected either to act together or one to be the substitute for the other in the event the first is unable to act. Spouses, siblings, close friends or professionals are the general choice. Please provide full names (including middle name) and addresses of the persons selected.

## Power of Attorney

A Power of Attorney appoints a person as your Attorney to deal with your legal and financial matters whilst you are alive. The choice of Attorney is yours however it should be someone that you trust as they will be able to deal with all of your legal and financial matters on your behalf.

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## Power of Attorney (continued)

A financial 'enduring power of attorney' is a legal document that remains valid even if the Nominator becomes mentally incompetent.

Attorneys can be appointed in a variety of ways. If more than one Attorney is appointed, the document can stipulate that they may act jointly or severally. If they must act jointly, the Attorneys must agree on any decision they make. If they may act jointly and severally, an Attorney can make a decision by themselves.

## Advance Care Directive

Advance Care Directives empower you to make clear legal arrangements for your future health care, end of life, preferred living arrangements and other personal matters. It replaces the former Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction with a single Advance Care Directive form.

An Advance Care Directive allows you to appoint one or more substitute decision makers to make these decisions on your behalf if you are unable to do so in the future.

## Guardian of Minors

The appointment of a Guardian is a very important decision as the Guardian will be responsible for the care of your minor children if both parents pass away while your children are under 18. Often the Guardians are different to the executors so that there is a check and balance. Please think about who you might want to act in this role. If you choose a couple select one party rather than both in the event there is a separation.

## Non-Estate Assets

It is also important to deal with assets that may be controlled by you, but are not held in your personal name. A statement of wishes may be required to deal with such matters. The statement of wishes provides direction to the Executor/s to use their powers as best as possible to ensure that:

- Superannuation proceeds and life insurance proceeds are distributed as though they were part of the estate;
- Control of any trust the deceased had whilst alive passes to the beneficiaries in the appropriate proportions; and
- Distribution of assets under the Will takes into account any benefit a beneficiary receives from assets other than through the Estate, which may include:
  - Proceeds from a life insurance policy or superannuation entitlements paid directly to a beneficiary rather than through the Estate
  - A beneficiary's credit loan account with a company or trust controlled by the deceased Assets of a trust, the control of which passes to one beneficiary to the exclusion of others

Your superannuation entitlement generally does not form part of your Estate. If you do not have a Binding Death Benefit Nomination, the trustee of the superannuation fund can decide who receives your entitlement upon death. Therefore, we recommend that you consider making a Binding Death Benefit Nomination as part of your Estate planning considerations.

## How can Brentnalls SA help?

If you would like to discuss estate planning please contact our office and ask to speak to one of our advisors. Our objective is to see your business thrive now and into the future.

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#### *Disclaimer*

*The information provided in this information sheet does not constitute advice. The information is of a general nature only and does not take into account your individual financial situation. It should not be used, relied upon, or treated as a substitute for specific professional advice. We recommend that you contact Brentnalls SA before making any decision to discuss your particular requirements or circumstances.*

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