

Estate Planning – Terms and Details

Will – this is the document that deals with your assets and appoints guardians for your children. Drawn up by a solicitor, this legal document distributes assets as a percentage to your chosen beneficiaries. You may also nominate a “calamity clause” – a back-up beneficiary in case your first choice is not alive. For example, *“my spouse to receive 100% of my assets, but if he’s not alive my assets to be divided equally between my brothers”*.

Executor – this is the person who will collect all your assets and distribute them according to the Will. You can give them the right to sell assets and if nominating multiple people, to act alone or together. They can get professional advisers to assist them.

Power of Attorney – this document appoints someone to act on your behalf for all *financial decisions*, in case you’re unable. For example, you’re overseas and need to resolve an issue on your bank account. It can also be *Enduring*, meaning the nominated person can act on your behalf if you’re mentally incapacitated, for example in a coma.

Enduring Power of Guardianship – similarly, this document appoints someone to act on your behalf but is aimed at *medical or lifestyle* decisions. For example, what treatment you’re to receive while in hospital or where you’ll live once you’re recovered. It’s usually *Enduring*, because you’re usually mentally incapacitated when this type of document is used. *This document needs to be witnessed by a solicitor when signing.*

Letter of Wishes – this document contains a lot of info which can’t be included in the Will. Wishes in relation to assets which you may *have effectively controlled* during your lifetime, but will not form part of the estate, for example assets in family trusts, superannuation funds or when you’re acting as a Trustee for a Trust. Your *funeral arrangements* as well as any specific gifts or wishes are also explained in this document, for example if you wish to leave a specific piece of jewellery to someone. If you wish to *exclude anyone* from the will, you will detail the reasons why here. If anyone challenges your will, this document will help the judge make a decision on why someone was excluded and that you didn’t simply forget. It also contains the names of *your professional advisers* such as accountants or solicitors, which may assist your Executor in seeking help from them.

Testamentary Trust – a special Trust which only starts upon your death. Once the Executor has distributed all the assets, it goes into a Trust, with the Trust as owner. You nominate beneficiaries (such as your spouse and children) who benefit from the assets, but as they are not the owners, they do not have control over it. You nominate rules for the Trust, such as how much income is distributed, when the Trust is dissolved and what happens with the capital left. The major benefit of this, is that the assets are protected in family court proceedings (divorce) or bankruptcy, as the beneficiary does not own the asset. Young or vulnerable beneficiaries are also protected, as the assets are held in Trust to take care of them, so cannot be spent by irresponsible guardians or spendthrift kids. You appoint a **Trustee** who makes the decisions and follows your wishes, so they have a lot of power over the Trust. Many people nominate multiple Trustees who act together, to ensure best interest of the beneficiaries are maintained.

Things to consider

Discuss some difficult scenarios with your family and make a few important decisions. For couples, you may wish the surviving spouse to inherit everything, BUT you need to have a back-up in case you pass away together. Here are some important things to consider:

- Who should receive my assets – who are my beneficiaries?
- If my partner and I die together, who will look after my children?
- If my family die together, who should receive my assets? *(The standard clause is for the estate to be divided 50% to each set of parents; however if for either spouse both parents are no longer alive then 'their' 50% is divided equally among that spouse's siblings)*
- Who should execute my wishes – who should be the Executor of my will?
- Who should be appointed to make financial, lifestyle and medical decisions on my behalf if I lose the ability to make these decisions myself?
- Are there any threats to my estate, who are likely to contest my will?
- Are there any specific wishes I would like noted?
- If deciding to use a Testamentary Trust, what are the rules for the Trust and who will be the Trustee? *(Read more about this in the Testamentary Trust document)*