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Estate Planning

Following on from last week's talk on insurance, I thought this week it would be good to talk about estate planning. There is some crossover when discussing issues around insurance and estate planning and I believe the two really go hand in hand. Sometime when discussing estate planning with our clients they are a little unsure what we mean. Most people know what a will is but quite simply estate planning means preparing to effectively dispose of the assets of a person's estate to maximise the goals of the estate owner.

Whilst I am not a solicitor, as a financial planner, it is important to understand the issues that affect clients we work with and their beneficiaries. It is very important to have at least a basic understanding of the types of documents that can be used, ownership structures, legal requirements, tax outcomes and nomination of beneficiaries just to name a few.

Wills

Most people know what a will is. Many people we see do not have one in place. Many that do have a will have not executed it correctly, or have had a change in circumstances, which means the will is invalid or not going to achieve what they currently would like it to.

A will spells out how you would like your assets and belongings to be disposed of after death.

A will takes effect upon death as though you signed it immediately prior to passing away.

You must be 18 or married to make a will.

You must have legal capacity to make a will.

It must be in writing and ideally signed by the will maker and witnessed by two witnesses who must be present when you sign your will. The witnesses should not be your beneficiaries or spouses.

In some circumstances the courts can make wills for minors and people without capacity.

Beneficiaries of a will must usually survive for 30 days past the date of death of the testator.

Assets not covered by a will

It is very important that you know what you actually do own and how it is owned so that we know whether that property forms part of the will. Many people forget these very important points when making wills.

Joint tenancy – assets owned jointly (not tenants in common) such as real estate, shares or bank accounts pass directly to the survivor and do not form part of the estate.

Assets in trusts or companies and in some cases superannuation are not estate assets. Super depends on beneficiary nominations.

No Will - Intestacy

For those that do not make a will one is made for them. There are different rules in different states but I am going to focus on Queensland. If you die without a will in Queensland your estate assets are divided according to predetermined rules.

Single

If you are single assets pass to:

Parents

Brothers and Sisters (nephews and nieces)

Grandparents

Uncles and Aunts (cousins)

If you are not survived by any of these assets pass to the crown.

Married no children

If you are married; or in a defacto relationship, with no children, assets pass to your spouse or partner.

Married with children

Let's say you are married with three children. The first \$150,000 of your estate assets goes to your spouse. **One third** of the remaining assets go to your spouse but **two thirds** get split between your children.

So if we consider a situation we saw recently, where clients of ours unfortunately had not taken our advice to implement a valid will and the husband died suddenly.

Bill and Mary were the clients and they did have three children. They also have a home which is jointly owned but has quite a large mortgage of \$700,000 as well as other investment debt. All in all they owe \$1.6M. The investments had been knocked around a bit recently due to the current turmoil so they were not worth much more than the debt at this stage.

They did have comprehensive personal insurance cover though including a \$2M life insurance policy on Bill's life. They had intended this to provide Mary with sufficient funds to clear the debts and help her to support the children until they were old enough to support themselves.

Upon Bill's death the estate which included the proceeds of the insurance policy was divided in the following way:

Mary receives \$150,000 + 1/3 of the remaining estate.

The children received the remaining 2/3's and it is held in trust until they reach legal age.

This had devastating effects on Mary's ability to support the children and pay their debts.

Marriage, Separation & Divorce

It is important to note the effects of marriage; separation and divorce have on a will.

Marriage revokes a will.

Separation has no impact on a will. This is where some people can get caught out if they were going through a break up. Many people in this situation would not want the ex spouse to get all their assets so they would need to do a new will.

Divorce revokes a gift to the previous spouse and the appointment of a spouse as an executor. Again in this situation you would need to revise your will.

Challenges

You must make adequate provision for proper maintenance and support of dependants.

Wills can be challenged by:

Spouse

Child

Stepchild

Other dependant (e.g. elderly parent or someone else under 18)

Testamentary Trusts

A testamentary trust is a trust that is established upon death and is created in the will. It is an alternative to leaving assets to someone directly. These are similar to a family trust except they do not exist until the death of the testator.

They offer many fantastic benefits from an estate planning point of view. Some include:

Asset protection – Creditors cannot attack assets in a testamentary trust.

Income and Capital Gain Splitting

Flexibility

They are great for:

High risk spouses or children - People who are in high risk occupations or, could be exposed to potential litigation.

Young children – Children will be taxed as adults when they receive income from a testamentary trust.

Adult children

Grandchildren

Common situations where testamentary trusts are used

Adult children – use separate trusts (grandchildren or high risk people)

Second marriages – Protect asset for children

Surviving spouse – high risk, infant children and if there is concern about future spouses.

Powers of attorney

It is vital that everyone has an enduring power of attorney. Some people have used a power of attorney before but these are of no use once you lose capacity. In this case you need an enduring power of attorney. This is a separate document to a will.

Other tools available

Life interests – these have issues and may not be the best to use.

Protective Trusts – This is where the children have no control. They are controlled by someone trustworthy

Our estate planning service

We offer a comprehensive estate planning service, whereby we work closely with lawyers, to facilitate helping our clients to ensure they have the correct arrangements in place. Your estate plan and your financial plan must work well together.

The main message is you only get one chance to get this right and the people who depend on you really need the certainty of knowing your wishes are fulfilled. You must do it and do it properly. A good financial planner and a lawyer should be consulted to ensure you get it right.

Insurance offer

I would like to remind everyone about our insurance offer last week. If anyone is interested in a free review of their current insurance arrangements as well as a no obligation second opinion, give us a call on 3252 9990 or go to www.rodneygibson.com.au

You have nothing to lose and might even save some money!

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