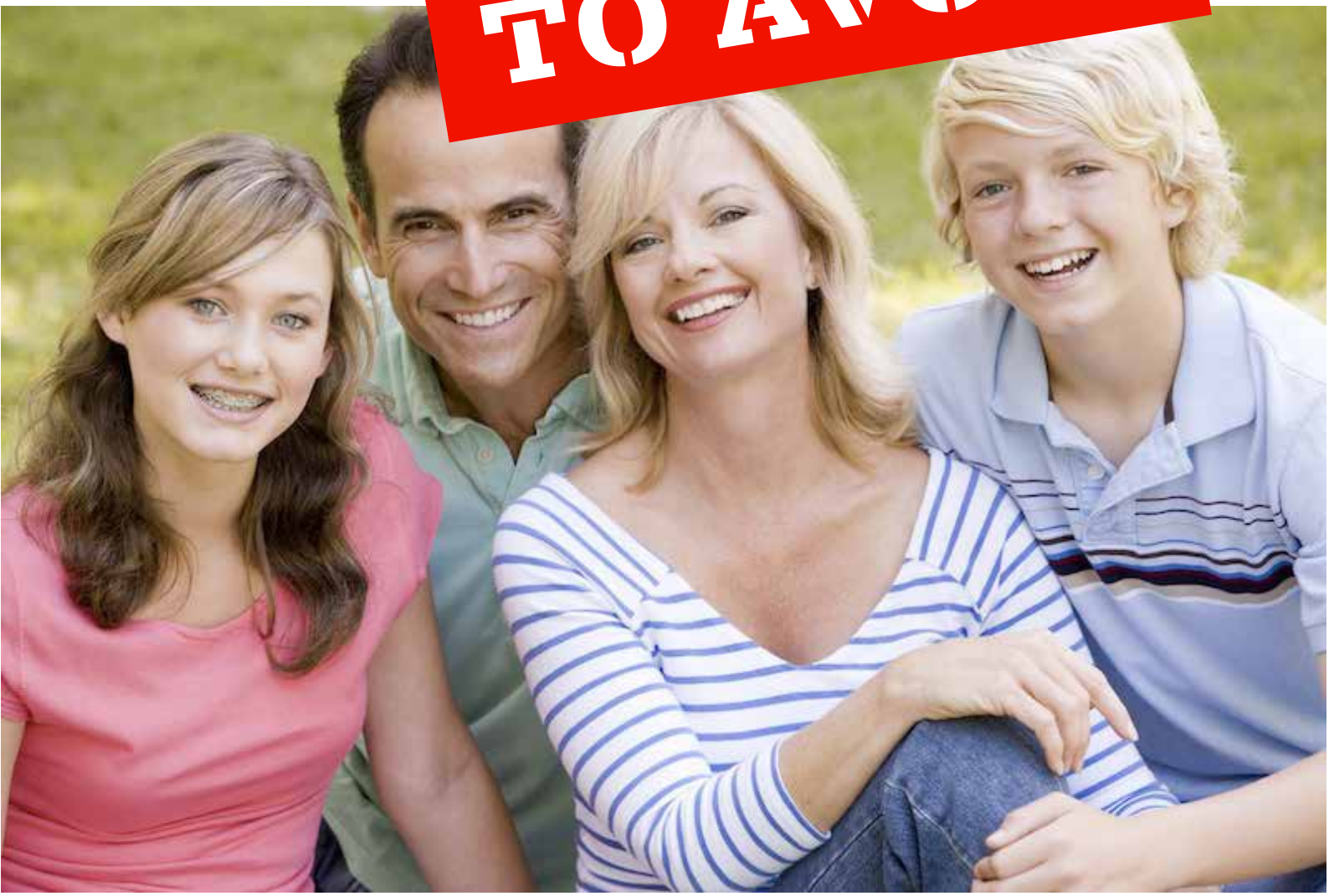
TOP 10 ESTATE PLANNING MISTAKES TO AVOID



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Letter from Wealth Today

Dear Reader

WELCOME TO WEALTH TODAY

Wealth Today was built specifically to facilitate the integration of financial planning into existing appropriate businesses and to provide sound individual financial advice to everyday Australians.

Our mission is to build an accessible, comprehensively supported team of Members who share our vision and commitment to providing tailored financial advice and building a new foundation of financial understanding and security for everyone.

With a national network of like-minded experts, we have the potential to provide the financial building blocks for future generations.

KNOWLEDGE GIVES YOU A HUGE ADVANTAGE

We believe that knowledge gives you a huge advantage in creating and effectively managing wealth; in planning to reach your goals; and in being prepared for whatever unexpected twists and turns life may present.

That's why our team of experts has created this series of eBooks that seek to inform you of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

We trust you enjoy this eBook and find it informative and professionally presented. Of course, your feedback is always welcome as we strive to continually offer content in a format that is relevant to you.

TAKE THE NEXT STEP

We invite you to meet with one of our authorised representative to discuss what it was you were hoping to achieve when you downloaded this eBook and to establish if they can help you achieve your goals and objectives.

At the rear of this book you will find the details on how to book an appointment with one of our experts.

We look forward to meeting you soon.

Wealth Today

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Introduction

There is an old saying that there are only two things that are certain namely death and taxes. In the case of taxes we are forced to think about them on a regular basis, at least once a year. In the case of death many people prefer not to think about it at all. This reluctance, although understandable, can have significant negative consequences when it comes to the division of your estate after you've passed away. It is therefore recommended that you spend at least some time (preferably in the company of a skilled financial adviser) to set your affairs in order as far as your estate is concerned. It goes without saying that this should not be put off until your later years since none of us can be sure when the bell will finally toll for us.

By engaging in a bit of responsible estate planning you can avoid some of the serious mistakes that will be profiled in this eBook.

Mistake #1 – Not Having a Will in Place

Unlike some of the other mistakes in this eBook most people are already fairly aware of the dangers of not having a will. Sadly, however, this does not translate into action for many. It is, therefore, worth spelling out some of the dangers of neglecting to draw up your will.

- If you do not have a will your assets will most likely not be distributed in accordance with your wishes. Unfortunately, this can also leave the door open for serious family conflict, the last thing most people would want their passing to be associated with.
- If you die without a will you will be declared 'intestate'. This means that your assets will be disposed of according to strict formulas drawn up by the government. There is even the possibility that a part of your estate may end up in government coffers under certain circumstances.
- Winding up an estate where the deceased died intestate will often take significantly longer than where a will was in place (especially in cases where applications of the intestacy formulas are challenged). This fact could potentially cause significant hardship to your loved ones.
- The formal process to apply for your estate to be divided according to the rules of intestacy calls for an application to the Supreme Court for 'Letters of Administration'. This is very likely to result in totally unnecessary legal and administrative bills.

It should be clear, in light of the above that drawing up a legally enforceable will should be moved up the priority list from 'Something I may one day get to' to 'Urgent Priority' status.

Mistake #2 – Not Keeping your Will Up to Date

The second most serious mistake associated with estate planning is not ensuring that your will is regularly updated to reflect your preferences and life-stage. The fact is, that our priorities and circumstances change over time and our wills will therefore need to evolve with us. Here are some of the serious consequences that could flow from not having an up-to-date will in place:

- The assets in your estate could be distributed to people whom you do not wish to derive a benefit from the estate at the time of your death. It could even be that people named in your out-of-date will have predeceased you. This will significantly complicate the winding up of your estate.
- It could be that you named specific assets (e.g. a specific apartment at a specific address) that you have subsequently exchanged for other assets (e.g. another apartment). If the original apartment, in the above scenario, is named in your will to go to a specific person it will once again create confusion as it is not part of your assets anymore. The second apartment will simply become part of the balance of your estate and not go to the person that you have intended it for.
- It is especially important to update your will in cases where you have separated from your wife/husband but where a formal divorce order is not yet in place. If your will is not current your (former) spouse will still receive a benefit from
- the estate (even if your assets have already been divided up).
- People sometimes feel the need to specifically exclude someone from their wills. If such a person is closely related to the deceased a specific exclusion will have to be included in the will, otherwise the estate will be open to a challenge.
- When you marry your will is automatically revoked. This is, therefore, an excellent time to update your will either before the wedding takes place as part of the preparations or

afterwards to ensure that your wishes are accurately reflected.

- In case of a divorce your will may be revoked (differences apply from state to state) as far as it applies to your former spouse. This is another time when your will and arrangements need to be updated or rewritten to ensure they reflect your wishes.
- Many people do not even consider the fact that their relationship with the executors of their will may have changed over time. The primary responsibility of an executor is obviously to ensure that your wishes are carried out to the letter. If, however, the executor is incapacitated (e.g. by illness) or your relationship with this person changed substantially then your will should be updated with the names of new executors whom you trust to fulfil this role.

Mistake #3 – Not Understanding the Place of Superannuation in Your Estate

Many people believe that once they have a will in place their estate planning is more or less done and dusted. What they fail to realise, however, is that a significant part of their assets (e.g. superannuation) are not covered by their will. Superannuation funds do not formally form parts of your estate. Instead funds tied up in super are held in trust for the benefit of beneficiaries. One benefit of this arrangement is to ensure that super funds are protected from legal action or bankruptcy. In such cases the funds will remain 'safe' and no one can make a claim against your super, except for a former spouse.

To ensure that your super funds are distributed according to your wishes you will have to have a 'Binding Death Nomination' in place. This represents an instruction to the trustees of your super fund to distribute assets in your super according to your exact instructions. If a 'Binding Death Nomination' is not in place the situation can get quite messy as the discretion to distribute assets will fall to the trustee(s) of the fund. This is a risky position to be in as it could lead to distributions that will not be according to your wishes. It could also lead to legal action being taken against the fund with the attendant costs and potential for conflict between loved ones.

The drawing up of a 'Binding Death Nomination' is a good time to reconsider the overall position of your superannuation fund and you should ideally get a competent financial advisor involved at this stage. Two things that you may need to consider is whether the assets in the fund are optimally distributed and whether, for example, rolling over part of the assets to an SMSF would not be a good option to consider. Another important consideration is the possibility of your beneficiaries having to pay significant taxes depending on how your fund is organised. Getting specialised advice on minimising this as far as possible is highly recommended.

Mistake #4 – Not Optimising your Insurance Position

Much of what was said about superannuation earlier also applies to Life Insurance. Many people have such insurance policies in place but have not considered how payments from these policies will be distributed, believing that such payments (especially when in Superannuation) will simply be treated under the provisions of their wills. This may not the case as specific beneficiaries will have to be nominated with insurers.

Thinking about estate planning is a good opportunity to assess your insurance needs and to make sure that you are insured in the most cost-effective way possible. One possible way to do this is to include a significant portion of your 'Death and Disability Insurance' in your super fund. A competent financial advisor will be able to help you make sound decisions in this regard.

Mistake #5 – Not Making Use of the Benefits of Testamentary Trusts

A 'Testamentary Trust' may be included in a Will as a means of providing a greater level of control of the way in which assets are distributed to beneficiaries. Making use of such a trust may also attract significant tax benefits. The two types of testamentary trusts are the following:

a) Discretionary Testamentary Trust: This is where the executor gives the beneficiary of the will the option to take all or some of the inheritance as part of the testamentary trust. The primary beneficiary can remove and appoint the trustee. They can also nominate themselves as the trustee and thus manage their inheritance inside the trust.

b) Protective Testamentary Trust: In this case the beneficiary has no choice but to take his/her inheritance as part of the trust. The beneficiary will also not have the option to appoint or remove the trustee. This is obviously a more restrictive scenario and this type of trust is often used in cases where the beneficiary is not judged to be in a position to effectively manage the inheritance due to age, disability or spendthrift tendencies.

The main benefits of these types of trusts are the opportunities that they provide to protect assets and to reduce tax paid by beneficiaries on income arising from your estate. This is because a beneficiary will have to pay tax on such income at their marginal tax rate if they take it in their own name. If a testamentary trust is in place the impact of taxation could be significantly blunted. It is, therefore, highly recommended that setting up a trust should be investigated in cases where the beneficiary has:

- A high personal marginal tax rate
- A partner on a lower income
- Minor children and grandchildren

We strongly recommend that you speak to a competent and qualified financial advisor about setting up such a trust to that the inheritance of your beneficiaries can be preserved and protected to the fullest possible extent.

Mistake #6 – Not Appointing Legal Guardians for Your Children

It is, once again, perhaps not very pleasant to think about death and what will happen when we're gone but this is one of those unpleasant things that we will just have to face. Particularly for the sake of our loved ones. This is perhaps nowhere more necessary than when it comes to the future of underage children. Your top priority in this regard should be to ensure that legal guardians will be in place should you die prematurely. If you do not appoint someone yourself (and obtain their agreement) the decision on who will look after your children could fall to a judge, who may possibly appoint someone who you would regard as unsuitable. In a worst case scenario your children could even end up in foster care. This is, therefore, an issue that you should pay careful and immediate attention to if you still have children living at home. Here are some questions that you should ask when you consider whom to appoint as guardians:

- Will they be able to afford acting as guardians?
- Will they agree to take on this responsibility?
- Do they have good relationships with your children?
- Do they share the values that you imparted to your children?
- Are they physically (both in terms of their health and their living arrangements) able to take up this responsibility?

Mistake #7 – Not Granting 'Enduring Power of Attorney' to a Trusted Person

The granting of 'Enduring Power Attorney' can ensure that your financial affairs will still be kept on an even keel, even if you are rendered unable to manage them yourself (i.e. due to an accident or conditions like Alzheimer's or dementia). 'Enduring Power of Attorney' is called 'Enduring' as it still remains in place even after you lose mental capacity whereas an 'Ordinary Power of Attorney' will cease to be in place at this point.

Someone who is granted 'Enduring Power of Attorney' by you will be able to make legal and business decisions on your behalf should you cease to be of sound mind. It therefore goes without saying that you should select a person whom you trust implicitly. It is also possible to safeguard your interests by entrusting 'Enduring Power of Attorney' to more than one person. This means that consultation would have to be necessary before binding decisions can be made. You can also clearly specify certain guidelines that those granted 'Enduring Power of Attorney' will have to adhere to. This will make them easier to remove should this become necessary.

The main risk of not having a person with 'Enduring Power of Attorney' (with clear instructions) in place is that family strife and uncertainty may follow should you become mentally incapacitated. This should, therefore, be an essential part of your estate planning and one in which competent advice and help with setting up the 'Power of Attorney' will be vital.

Mistake #8 – Not Taking the Specific Makeup of Self-Managed Super Funds into Consideration

More and more people are placing their retirement assets in Self-Managed Super Funds (SMSF's). SMSF's are controlled by trustees who will, in most cases, also be responsible for distributing benefits to beneficiaries after the death of a member. In cases where SMSF's have several members (and therefore several trustees) this can hand a great deal of power to surviving trustees.

There have, in fact, been cases where remaining trustees ignored the wishes of deceased members and awarded benefits to themselves!

This can be avoided by making a 'Binding Death Benefit Nomination' (BDBN), sometimes known as an 'SMSF Will'. Having A BDBN in place will remove discretion from surviving trustees and will direct them to distribute your share of the assets of the SMSF according to your wishes. SMSF estate planning is another area where it is highly recommended that you get competent advice to ensure that your wishes are adhered to after your death.

Mistake #9 – Not Exercising Due Diligence in Selecting Executors

Making sure that you choose the right executor is a very important decision and not one to make on the fly. Your executor will have the responsibility to interpret your instructions in your will and to administer and distribute your estate. You, therefore, need to look for a person with enough time, administrative skills, stamina and the ability to make sense of complexity. Any person over 18 can acts as an executor (under 18's may be appointed but cannot act in the role until they turn 18). When thinking about who to appoint, remember that whoever you choose should be available to step into a role that could require a great deal of time and energy. It is, therefore, prudent not to appoint someone who is too elderly or who are geographically distant. Some other questions that you may need to ask before deciding on the ideal candidate include the following:

- Will the prospective candidates have the time to take up the responsibility of acting as executors?
- How complex are your financial affairs and/or family makeup?
- What skills do the different candidates bring to the table?
- What likelihood is there of disputes arising over the estate and how well will the different candidates be able to deal with this?
- Is there a possibility of a conflict of interest arising because the prospective executor is a beneficiary of the estate?

It is a good idea to appoint more than one executor and/or to have a 'backup' in place in case one of the executors dies or is unable to act. You can also appoint a firm of lawyers or a trustee company. In this case it is important that you do your homework as far as fees are concerned.

Mistake #10 – Not Fully Taking Tax Implications into account

The issue of taxation and estate planning is obviously a complex one but there are especially two areas in which mistakes are often made. They are:

Not factoring in the impact of benefits on beneficiary tax positions:

Coming into an inheritance can obviously have a significant positive impact on the financial health of beneficiaries. The scope of this impact could, however, be limited in cases where possible tax implications have not carefully been considered. It is, therefore, highly recommended that you 'crunch the numbers' as you draw up your will and also investigate strategies for limiting the tax burden that your beneficiaries may be landed with along with their inheritance.

Not factoring in the impact of Capital Gains Tax:

When a deceased estate is wound up some or all of the assets of the estate may have to be sold. When such assets are disposed of the normal rules relating to capital gains are applied and Capital Gains Tax (CGT) may be levied.

This can obviously have a negative impact on the benefits actually received by the beneficiaries of the estate. Several factors have to be taken into account e.g. when the asset was acquired, how much it cost and costs incurred in managing the asset.

Special rules will also apply when a dwelling is inherited (it would in many cases be possible to avoid CGT in such instances). Needless to say, the tax position of estates in which CGT is a factor can be very complex and it is highly recommended that competent advice is gained in cases where this is likely to be a factor.

Readers Notes

Take the next step

We trust you enjoyed this eBook and found it informative and professionally presented. Of course your feedback is always welcome as we strive to continually offer content in a format that is relevant to you.

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Wealth Today

Suite 2
33 Cedric Street
Sterling WA 6021
Tel: 1300 364 699

Level 11
95 Pitt Street
Sydney NSW 2000
Tel: 02 9248 0422

Ground Floor
99 King Street
Melbourne VIC 3000
Tel: 03 9248 6001