

# Getting Your Affairs in Order While You Can

Theo Marinis looks at why it's never too early to plan for the inevitable or unexpected.



By **Theo Marinis**

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Having recently entered my seventh decade, I'd started thinking of 80 as not so old – until I received a professional (and personal) shock earlier this year when meeting a highly-respected, potential client for the third time.

Our meeting was arranged to present the strategy he had asked me to develop towards year-end; it involved the winding-up of his self-managed superannuation fund, which was becoming too onerous to manage.

But, at the meeting, the same person furiously and unreservedly denied ever holding an SMSF, despite the evidence of the paperwork he himself had provided. Sadly, the dementia which had not previously been evident in our earlier meetings had escalated dramatically since our last meeting.

My would-be client, an eminent former academic, had not taken the simple and logical step of appointing Powers of Attorney for himself and his wife as he felt he was completely in charge of his faculties. Unfortunately, the situation had now changed irreversibly – and all too quickly.

## No Way to Change

This was a confronting and sad situation to experience. Without the mental capacity to understand the benefits of the strategy we had developed, it was no longer possible to implement the changes which would have achieved savings of approximately \$12,000 pa (savings on administration fees and interest on a reverse mortgage plus a significant increase in their combined of Age Pension benefits) on an SMSF balance of \$320,000.

In a new post-SMSF environment, this saving would have equated to an additional (retail) pension income payment of \$1,000 per month and a release from the need to host investment meetings, tax accountant sessions and the administrative burden of running an SMSF.

In addition, a \$30,000 reverse mortgage (which, in reality, was not required) would have been re-paid in full. As it currently stands, this debt will just keep growing, and the equity hole will grow larger.

## **Complex Next Steps**

So, in the meantime, without the prior appointment of an attorney to make financial decisions on behalf of the donor, the next steps are complex and time consuming. Until these arrangements are able to be put in place, my potential client's estate will continue to lose more than \$10,000 per year and leave a significant mess for whoever must eventually tidy it up.

Different laws and procedures apply in each state and territory; in South Australia, an Enduring Power of Guardianship will allow the appointment of a guardian to make medical, healthcare, accommodation and lifestyle decisions. Unlike an Enduring Power of Attorney, however, this power does not extend to financial decisions, which requires the appointment of the Public Trustee.

Given that there is a lack of uniformity amongst states and territories around Powers of Attorney, it is important to get advice about each individual situation. The same applies to Wills (although there is a broad similarity on this topic across the jurisdictions).

In terms of Enduring Powers of Attorney, you should think carefully about who should hold that power. As with an estate executor, the appointment of a son or daughter who has cared for the parent or gone 'above and beyond' is often favoured, but they may not always be the best equipped, particularly if they have a vested financial interest in your estate.

## **Consider Substitutes**

And whilst many couples appoint their spouse/life partner as their attorney, you should consider a second, or substitute attorney as a precaution in the event that both parties, due to illness or premature death, are unable to act for each other.

An Advance Care Directive (as the name suggests) directs who can decide further treatment or life preserving interventions on your behalf – or legally withhold it. Write down your wishes, preferences and instructions for future health care, end of life, living arrangements and personal matters and/or appoint one or more substitute decision-makers to make these decisions on your behalf when you are unable to do so yourself.

In matters financial and medical, appointing attorneys and substitute decision makers can have the potential to be divisive within a family – with the pain of having to make decisions about ending or preserving a life being very difficult for some to bear.

## **Start at 60**

These realities have me urging, with renewed conviction, that all of my clients aged over 60 fully revisit and review their estate planning arrangements. Having myself turned 60 last December, I have certainly taken my own advice.

As I advocate in previous editions of the Eureka Report, build that team of experts around you (lawyer, accountant and financial planner) to provide support to you, your loved ones and your estate when your inevitable decline occurs.

In the meantime, your professional team will also help you recognise who is the best placed attorney for you, be that a lawyer, a sibling, a son, daughter or a friend.

Arrange to call that meeting now.

In the case of my potential client, his two sons are currently applying to the Guardianship Board for Powers of Attorney to be granted to them so that they may make financial decisions on behalf of their elderly parents. In time, hopefully, we will be able to implement the strategies we had proposed to simplify their financial situation.

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