

## *The importance of Team Us in estate planning*

**The advisors you need to protect your estate assets.**

**Summary:** In planning for the distribution of an estate, there are endless variables.

**Key take-out:** An SMSF can effectively transfer wealth inter-generationally while a family company may have estate planning benefits via the effective and timely distribution of dividends.

**Key beneficiaries:** Retirees, superannuants. **Category:** Strategy.

Take a seat, relax. Unfortunately, I have some bad news for you. Your condition is terminal – you will die at some stage in the next 100 years! Now that you have that prognosis, it is time to do three things about it: get your emotional, spiritual and financial affairs in order.

It is disturbing to consider how many Australians do not have a will. One explanation might be that by ignoring making a will, the need to have one might not happen – or conversely, dealing with it might make it happen! Both are what psychologists call 'cognitive distortions'. In other words, these reactions are just not logical.

Not having a will speaks to denial – and makes your family and your estate vulnerable. If you are in this situation, you need to act. Hold a formal 'meeting' with your partner – preferably this week – to discuss your estate planning. Put down on paper the assets and liabilities you have and what you both want to happen with them. Book a get-together within a one-month time frame with your (or any) solicitor, accountant and financial planner. If you don't already have access to these professionals, ask someone you trust (or the professional you do have) for some referrals, and meet with each of them to decide who you can work with.

The conversation should not be seen as morbid. Rather it should be viewed from the perspective as doing your best to help your estate, and making sure the people you want to receive the benefit of your lifetime of hard work will do so.

## Getting it right from the start

In planning for the distribution of an estate, there are endless variables, ranging from multiple relationships to disabled children, to potential inheritances from aged relatives.

If you have assets beyond the most basic, I would recommend you build 'Team Us'. Get your financial advisor, accountant and solicitor in the same room and working together for you. Far from sitting on the sidelines, you need to be the 'coach'. This way all professionals from each discipline can better understand your situation and what your outcomes are likely to be. While you may think the initial cost of such a meeting is high, it will save you a fortune in the medium to long term – and you will need only to tell your story once.

I recommend the meeting is convened by your financial planner, who will be well placed to bring together the legal, tax and financial planning considerations needed to structure your assets to achieve your estate planning goals. For example, if you have a company or trust structure, there are a number of tax-effective strategies which can be implemented to ensure your assets are distributed as you wish (or control of the entity – i.e. the trust or company – the assets are held in passes to those you intend should have such control). Similarly, if you have a family self-managed super fund, you can effectively use this structure to transfer wealth inter-generationally.

It is vital to ensure control of all such entities is passed to the right people after your passing. If you have a family company, there may be estate planning benefits in the effective and timely distribution of dividends. As described in my recent article *How to avoid a deadly super trap*, there are also strategies available to remove the 'Death Benefits Tax' liability, a tax which is levied at almost 20 per cent of your remaining super balance when it is paid to non-dependent beneficiaries.

## Emergency or life expectancy crisis

In an ideal world, estate planning will occur when all involved are healthy – and there is a long time before the plans established are activated. But this is not always the case. In the event of an emergency or a life expectancy crisis, estate planning becomes even more urgent. For prompt action, I would recommend working with your financial planner as your guide for the arrangement of:

1. financial and medical powers of attorney (the latter now known as an Advanced Care Directive or Advance Care Planning)
2. a valid will; and

3. the examination (and if required) adjustment of business, insurances and superannuation structures.

This will enable a clear picture of your estate to emerge to enable it to be managed effectively.

## Allowing for litigation

Not all potential recipients of your estate are likely to have the same financial maturity and expertise that you may have, and increasingly, courts are finding wills are not the 'black and white' instruments we all thought they were. This is where the experts can help enormously in your estate planning.

Given that the cost of legal challenges to a will are borne by the estate, it is wise to think about, firstly, maximising the financial pool available and then dealing specifically (and fairly) with each potential claimant. This may include, for example, a person who has been a long-term relationship partner, your first wife's disabled child from her failed second marriage or, perhaps, your irresponsible brother-in-law who lives rent free in one of your investment properties. Solutions can be complex, but are not insurmountable. The financial, and dare I say, emotional benefits of having a clear plan for transferring your wealth to the next generation are substantial.

## Anomalies

Bear in mind, however, not all assets are the same. A share portfolio of \$1 million is likely to carry with it a capital gains tax (CGT) liability, which may reduce its worth to a beneficiary by hundreds of thousands of dollars, while a \$1m home is likely to be CGT free. Most of us need advice on these sorts of anomalies.

Estate planning tends to be shrouded in fear and mystery – nobody likes to think about their demise. However, it is a fantastic way to ensure that the legacy of your hard work continues to benefit your loved ones in the way you had hoped.

Having a sensible and robust estate plan in place can be like having a huge weight removed from your shoulders. Have that meeting with your partner, book in a team meeting with your financial advisor, lawyer and accountant – and get a sensible plan in place.

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