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WILLS & ESTATES

Estate Planning

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Estate planning is about planning, protecting and preserving your wishes

Many people think estate planning is simply writing a Will, but there is so much more involved. Estate planning is about putting in place documentation that directs how you want your affairs looked after if you cannot make decisions for yourself during your lifetime and how you want your assets to be distributed after you die.

There are a suite of documents involved in this process which often includes:

- Your Will
- Enduring Power of Attorney
- Advanced Health Directive
- Superannuation beneficiary nominations
- Family Trusts.

Estate planning applies to everyone. Making proper arrangements for your estate is one of the most important things you can do for your family.

It is important to get the right professional advice to plan and structure your estate effectively.



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Things to consider

Simple Wills for Singles

Most of our clients would like to have a 'simple Will' where they leave everything to their children/family members. Normally they appoint the children/family members as executors. There are some issues which you need to consider if this is what you want to do:

If children or family members have a disability or there are other protective issues

Simple Wills do not give the executors any discretion when it comes to distributing assets. For instance, if one of your children suffers from a disability, if there was no one to look after their affairs created by a trust, administration of their financial matters will pass to the Public Trust Office.

Divorce and Bankruptcy

If you die and you have left everything to your children/family members, if one of them is going through a messy divorce or has gone bankrupt because of a failed business, their inheritance may end up being paid to creditors or to an ex-spouse in a property dispute in the Family Law Court. In some cases, children may also need guidance for their inheritance if they cannot manage large sums of money.

De Facto Relationships

If you enter into a new relationship after you have drafted your Will, it is essential that you implement a Binding Financial Agreement. Without a Binding Financial Agreement, it is possible that on your death your new partner will be in a position to bring a claim against your assets that you intended to pass to your children or other family. It is also essential to ensure that if you purchase any assets with your new partner, you ensure the ownership can be passed in accordance with your wishes in your Will.

For example, understanding the difference between purchasing a property with your new partner as 'joint tenants' or 'tenants in common'. Many people do not realise that under a joint tenancy, upon the death of one of the tenants, the half share held by the deceased person transfers automatically to the surviving joint tenant without reference to the Will. As a result, if you were to pass away holding a property as joint tenants with a new partner, the home transfers automatically to that partner, depriving your children of their inheritance.

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Simple Reciprocal Wills for husbands and wives, or de facto couples

Most of our clients who are couples would like to have 'simple Wills' where they leave everything to each other and if something happens to both of them, to their children. Normally you appoint each other as executors. There are some issues which you need to consider if this is what you want to do:

Children from previous marriages or relationships

If you and your partner have children from previous relationships, you need to be aware of the legal issues surrounding your Will and understand how to protect your children's rights to inherit your estate.

The day after either you or your partner dies, the surviving spouse can change their Will, cutting out the deceased's children and stopping them from inheriting their share of the estate. Most properties are held by couples as joint tenants. Many people do not realise that under a joint tenancy, upon the death of one of the joint tenants, the half share held by the deceased person will transfer automatically to the surviving joint tenant without reference to the Will.

Assets that are jointly owned, such as real estate,

bank accounts, or jointly owned shares, fall outside of your estate.

If children or family members have a disability or there are other protective issues

Simple Wills do not give the executors any discretion when it comes to distributing the assets to the beneficiaries. For instance, if your partner or one of your children suffers from a disability, if there was no one to look after their affairs created by a trust, administration of their financial matters will pass to the Public Trust Office.

Divorce and Bankruptcy

If you and your partner both die and you have left everything to your children, if one of them is going through a messy divorce or has gone bankrupt because of a business failing, they will receive their inheritance no matter what situation they find themselves in. You could find that your hard-earned assets are paid to creditors or to an ex spouse in a property dispute in the Family Law Court. Separate to these issues, some children simply need guidance for their inheritance and cannot be trusted with a large amount of money.



Appointing an Executor

An executor is someone you appoint to administer your estate after your death. The person/s you select should be:

- be someone you trust;
- have time to undertake the task;
- be your own age or younger; and
- have some business acumen or financial experience.

We usually suggest that you appoint two executors, in case one predeceases you or is unwilling or unable to act. They may either be appointed to act jointly or you may appoint one to act on their own

and in the event that first person is unwilling or unable to act or predeceases you then the second executor will administer your estate.

Many of our clients appoint the Partners of this firm and/or their accountants to be independent executors. This ensures there is no fighting amongst the executors and that the provisions of your Will are upheld. The other benefit is that Lawyers and Accountants have professional indemnity insurance and their trust accounts are covered by a fidelity fund in the event of fraud.



Beneficiaries

You will need to decide whom you wish to benefit under your Will and obtain their full names and addresses.

In the event that you wish to specifically exclude certain relatives you must bear in mind they may challenge your Will. We will need to make specific provision for why you may have excluded certain beneficiaries. This will not stop people challenging the Will but it will certainly set out your reasons for not including them in your testamentary wishes.

Gifts

Gifts to beneficiaries can take several forms such as:

- specific gift of assets, for e.g. jewellery, property, shares etc;
- specific gifts of cash;
- general gifts e.g. 'all my household chattels';
- gift of the residue; and
- to charities

You need to be careful with giving people specific gifts because the nature of these gifts can change, e.g. monies in bank accounts can be closed; properties can be sold. If you leave a specific gift to a beneficiary in your Will and the nature of this changes before you die, it is quite possible that the beneficiary will never see the benefit of the gift. Sometimes it is easier to leave a percentage of your entire estate or a specific monetary amount.



Family Trusts

If you have effective control over a family or unit trust, we will need to explain to you how best to effect your intentions in relation to those trust assets. Please bring a copy of the trust deed to your appointment for us to consider.

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Your Business or Profession

If you carry on business through a partnership or company we must consider how this affects your testamentary intentions. Please bring to your appointment a copy of any Partnership Agreement or Memorandum of Articles of Association.

Superannuation and Life Assurance Policies (Death Benefits)

Most people hold life assurance policies (death cover) and there is normally a death component attached to your superannuation policy as well as the amount of the contributions. When you took these policies out you may have nominated a specific beneficiary to receive the payout in the event that you died. We need to know if you have done this and who the beneficiary is so that we can advise you about what

to do with these policies. You should contact your insurance company or the institution that holds your super policy to see whether you have nominated any beneficiaries. Some people have had these policies for a long time and may have even nominated their mother or ex wife as beneficiaries! If you are not sure, just bring details of the policies and who they are with and we will chase this up for you.

Self-managed Super Funds

If you have a self-managed super fund we will need to see a copy of the super fund deed and get particulars of who the trustee is and the fund members. A super fund is a separate legal entity and is usually not affected by your death (i.e. it can continue provided members of the super fund are still alive). This can cause problems if you have children from previous marriages and want some or all of the assets that you hold in the super fund to go to them after you have both passed away.

Other issues

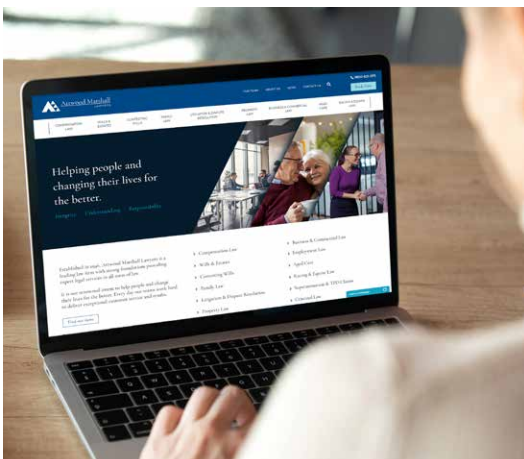
You will also need to consider the following areas which may or may not be applicable to your situation:

- guardians for minor children
- disposal of your remains
- foreign assets
- extended powers of executors and trustees (e.g. to continue to carry on your business or profession after death);
- release of debts;
- taxation and duties, in particular how capital gains tax will be implemented in relation to disposal of your assets.

Get started

We make the estate planning process simple. Contact our friendly estate planning team any time on **1800 621 071** for a 30-minute estate planning review so that we can help you identify what strategies to put in place.

Our team will then send you an easy to follow online questionnaire which will help us collect the information we need to begin your estate plan. Before your appointment with your lawyer, we will ask you to consider the issues contained in this brochure so that we can formulate an estate plan that truly reflects your testamentary intentions and personal circumstances. It is our goal to help you plan, protect and preserve your wishes. We look forward to helping you.



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HELPFUL ARTICLES

Our legal team consistently produces informative blogs covering topics related to Wills, estates and pertinent legal cases. To read any of our articles, please visit: <https://attwoodmarshall.com.au/news/>

Helping people and changing their lives for the better.

Integrity. Understanding. Responsibility.

Coolangatta

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Wed: 7.30am - 5.30pm
Thur: 7.30am - 5.30pm
Fri: 7.30am - 5.30pm
Sat: Closed
Sun: Closed

Robina Town Centre

Shop 4135, Robina
Town Centre,
Robina
PO BOX 4358 Robina
QLD 4230

Open:

Mon: 8.30am - 5.00pm
Tue: 8.30am - 5.00pm
Wed: 8.30am - 5.00pm
Thur: 8.30am - 9.00pm
Fri: 8.30am - 5.00pm
Sat: 9.00am - 12.00pm
Sun: Closed

Southport

Suite 10, Level 10,
36 Marine Parade
(Commercial Tower),
Southport QLD 4215

Open:

Mon: 8.30am - 5.00pm
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Sat: Closed
Sun: Closed

Kingscliff

Level 2, Suite 24,
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PO BOX 1413 Kingscliff
NSW 2487

Open:

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Sat: Closed
Sun: Closed

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Contact Attwood Marshall Lawyers on **1800 621 071** or email info@attwoodmarshall.com.au to speak to one of our experienced lawyers today.



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