



Succession Planning

Explanatory Notes

A Succession Plan (or Estate Plan) is a plan to ensure all of your assets, no matter how you hold them, go to the people you want them to go to in the event of your death or incapacity. The plan is implemented by preparing several documents that provide you with control over the decisions about your loved ones and financial affairs in the event of your death or incapacity. Such documents include wills, trust deeds, powers of attorney and advance health directives.

A Succession Plan will also review the succession of assets held by you in family (or other) trusts, companies, business structures, superannuation and life insurance.

A Succession Plan has three main goals:

- (1) to pass your property to the people you choose;
- (2) to reduce or eliminate expenses, taxes, court interference and wasted time during the transfer of the property; and
- (3) to limit the ability of others to interfere in your decisions.

Do I Need a Succession Plan?

Many people believe that only the very wealthy need a Succession Plan. However, anyone who owns any property - a home, a car, bank accounts, shares, jewellery, clothing, household goods, etc., has minor children or has a desire to ensure that their loved ones and their financial affairs are taken care of, needs a Succession Plan. Your age, marital status, or wealth doesn't matter when considering whether or not you need to plan your affairs.

In addition, you should designate the person who, in the event of your incapacity, will have the responsibility for the management of your assets and your care, including the authority to make health care decisions on your behalf. How that is accomplished is discussed below.

If your estate is small in value, you may focus simply upon who is to receive your assets after your death and who should be in charge of its management and distribution. If your estate is larger, we will discuss with you not only who is to receive your assets and when, but also various ways to preserve your assets for your beneficiaries and to reduce or postpone the amount of tax which otherwise might be payable on transfer of your assets after your death.

If you die without a Will then Queensland law provides for the court appointment of persons to take responsibility for your assets. Queensland law also provides for the distribution of assets in your name to your next of kin pursuant to a set of rules to be followed if you die without a Will; this is known as "intestate succession." Contrary to popular myth, if you die without a Will, everything does not automatically go to the State. Your estate will be divided amongst your spouse (including a de facto or same-sex spouse), children,

grandchildren, parents, brothers, sisters (or their children), grandparents, aunts and uncles (or their children) in a ranked priority in accordance with the *Succession Act*.

Nonetheless, these may not be the people you would want to inherit from you. Further, your beneficiaries will be unable to take advantage of any tax or asset protection benefits which might be included in a Will.

Most people are not aware that not all of “their” property will be disposed of in accordance with their Will.

If you own property jointly with another person as “joint tenants”, then your interest in that property will pass to the survivor upon your death. It will not pass according to the terms of your Will. If you own property jointly with another person without right of survivorship (such as, for example, as “tenants in common”), then your interest in that property will pass according to the provisions in your Will.

You are also likely to have superannuation and life insurance (which will not necessarily form part of your estate). In fact, it may be far better for your beneficiaries if the proceeds do not get paid into your estate. Our Succession Planning service ensures these assets go to the people you want them to go to with the best tax or asset protection result possible.

You might also have a family trust, a company, or be involved in a business or a partnership. Once again, the assets held in these structures do not form part of your estate. More importantly, you need to check that the control of these assets falls into the right hands so that the benefit of the assets held in these structures go to the right people. We make sure succession of these assets is covered in your Succession Plan.

Succession Planning is “insurance” have your assets go where you want them, when you want them, with maximum advantage to your beneficiaries.

Succession Planning covers both:

1. Estate planning to deal with the assets you hold personally; and
2. Succession of any other assets held in life and superannuation policies, trusts, companies and other business entities.

A Typical Estate Plan?

Where there are no companies or trusts involved (and where no special provision needs to be made for beneficiaries) we often see estate plans as follows, depending upon the marital and family status of the willmaker:

A married willmaker with children often will provide that the spouse will receive all the estate. If the spouse does not survive the willmaker, then the estate will be given equally to their children, with the share of any deceased child going to any grandchildren.

If there are no children, usually a Will will provide for distribution to other relatives typically parents and siblings or to friends or charities.

This type of plan is not likely to be suitable if you have a blended family or children of a prior relationship, and may not be appropriate for those in de-facto or same-sex relationships. You might also have concerns to protect your children's inheritance in the event of a divorce or re-marriage. We can advise you on appropriate strategies to implement in these circumstances.

Testamentary trusts

If any of the potential beneficiaries are minors, have disabilities or special needs, are or could become bankrupt, are facing relationship breakdown, are in high risk occupations or have asset protection strategies in place, consideration should be given to the inclusion of a testamentary trust or other estate planning strategy to provide for these circumstances. Testamentary trusts are also one way of ensuring beneficiaries only take their inheritance at an age older than 18 years. Additionally, testamentary trusts provide an excellent tax saving tool if you leave a spouse and children behind.

Excluding beneficiaries

If there is a child or other close person whom you wish to disinherit or if you wish to limit their entitlement, it may be advisable in some circumstances to include a provision clearly stating that you are intentionally making limited or no provision for that person. We also usually recommend a statutory declaration be made attesting to your clear intentions and perhaps the reasons behind them. Alternatively, steps can be taken to structure your estate plan to minimise assets ultimately in the Estate so that making a claim against the Estate is futile.

Guardians

If there is a minor child, a willmaker may name a guardian for the child in the event the other parent does not survive. Guidelines for the potential guardians of your children may also be prepared.

Executors

Every Will should name Executors to be responsible for collecting the assets and carrying out the distributions set out in the Will. Competent and trustworthy people should be selected. When making that decision you should consider the personalities of the beneficiaries and other interested persons. You might direct your executors to get assistance from your solicitor or accountant or appoint them as co-executors. The benefit of this is that a professional person is "emotionally" removed from the estate administration process. Please note however that professionals usually charge fees for their services as executors (in addition to "commission" which all executors may apply for).

Specific bequests

A willmaker may give particular items to certain people; these are known as specific bequests. If the willmaker no longer owns an item at the time of death, a specific bequest of that item is ignored. These items should be clearly itemised in the Will and the Will should be reviewed regularly to ensure that the gifts given still exist.

Dealing with liabilities

If you leave real property, which is mortgaged, to a specifically named beneficiary then that property will generally pass under your Will to the beneficiary subject to the debt secured by the mortgage. If you wish to leave the property free and clear of the mortgage debt, you must include a provision in your Will directing the debt to be paid from the other assets of your estate or from an insurance policy held for that purpose.

Succession of Other Assets**Trusts, companies or businesses**

Where you have a family trust, or company, or if you are involved in a business or a partnership, we recommend review of the control of these structures to ensure that your interest in these entities passes to your intended beneficiaries. If you are involved in a business we recommend you prepare a

Business Succession Agreement (preferably funded by insurance) to ensure that your interest in the business goes where you want it to and to ensure your estate gets value for what you've worked hard to build up.

Superannuation

If you have superannuation it is important to review what will happen with it on death. Some funds will allow you to nominate your beneficiaries, others will direct the full sum to your estate. If funds are directed to the estate, consideration may need to be given to including a "superannuation proceeds trust" within your Will so that your beneficiaries don't miss out on what otherwise might be a highly tax effective way to distribute this asset. If you have nominations, you need to check that they are current. You also ought to consider whether or not you should nominate a Reversionary Pensioner (to automatically take your pension on your death) or make a Binding Death Benefit Nomination (which will be binding on the trustee of the superannuation fund) as general nominations are only used as a guideline by Trustees who have the discretion to pay your Super Fund to any beneficiary eligible under the Superannuation Legislation (whether they make a claim against the Fund or not).

Life Insurance

If you have life insurance you will need to review whether it is better to direct the proceeds to your estate or directly to a beneficiary (so that they can have access to funds without any delays that can occur in estate administration).

<p>Do I need an Enduring Power of Attorney or an Advance Health Directive?</p>

Enduring Power of Attorney

A Power of Attorney is a document giving legal power to an attorney to make decisions on someone else's behalf. Powers of Attorney can be:

General:

Used if you want attorney(s) to act for you in financial matters while you have capacity. A general power of attorney will not give power to your attorney to act for you in personal matters (such as health care) and will not be valid once you lose capacity; or

Enduring:

Used if you want attorney(s) to act for you in personal and/or financial matters both now and at a time after you lose capacity, or only after you lose capacity. You can appoint the same attorneys for both financial and personal matters or different attorneys for each. You can specify the decisions that you do not want your attorney to make, and you can also include specific instructions about what you would like your attorney to do.

Circumstances may arise where you may be unable to make decisions about matters that concern you, e.g. you may be overseas, or you may be very ill, or you may lose capacity. If you give someone a general power of attorney, for instance to sign documents for you in your absence, that power will come to an immediate end if for some reason you lose capacity to make decisions. This could become very awkward if your attorney is in the process of conducting business or financial affairs for you.

Giving someone an enduring power of attorney means that he/she is able to make decisions about personal/health matters and financial matters if you lose capacity to act for yourself.

We have attached detailed Explanatory Notes which you must read before giving your instructions.

Advance Health Directives

With continuing advances in medical knowledge and technology, we can now be kept alive under circumstances which few would have survived even a few years ago. The *Powers of Attorney Act (Qld)* has provided a means for you to communicate your wishes in writing as to what you wish done, or not done, under various circumstances and to appoint an agent to speak for you when you cannot. Advance Health Directives can affect what measures are taken, or not taken, to prolong your life when you are unable to communicate your wishes. In an Advance Health Directive you can state your wishes regarding treatment when you are terminally ill and death is imminent, when you are in a persistent vegetative state, or when you are in an end-stage condition. You can address issues such as pain relief, artificial hydration, artificial nutrition, organ harvesting, and many other topics. We have attached more detailed Explanatory Notes which will assist you to decide whether or not you wish to instruct us to prepare and Advance Health Directive.

What are the Benefits of a Succession Plan?

- Prevent financial and practical difficulties for your family if you become seriously ill or incapacitated
- Prevent family disagreements concerning organ donation or funeral preferences
- Eliminate expensive applications for letters of administration (by appointing executors)
- Minimise or eliminate interference with your estate by certain family members or the court
- Provide an easy distribution of your assets in accordance with your wishes
- Reduce or eliminate taxes for your beneficiaries
- Provide asset protection or tax advantages for your beneficiaries (by use of a Testamentary Trusts - e.g. to protect a beneficiary against his or her improvidence or to keep property out of the hands of a future spouse of a survivor or to allow beneficiaries to split income to reduce tax)
- Designate guardians for your children
- Give permission to the personal representative (executor) to carry on business, sell assets and make tax effective decisions
- Give gifts to certain relatives, individuals, or charities, none of which are covered by intestacy laws
- Power to appoint replacement trustees of a trust, or directors of a company in event of death or incapacity
- Ensure that nominations you make concerning your Superannuation Funds are binding on your trustees and not open to attack by other family members.
- Ensure that your business can continue to function smoothly in the event of your death or incapacity, and that your estate receives value for your share.
- Ensure that proceeds of life policies go where you want them to go either directly to beneficiaries or to your estate.

The Basic Succession Plan

For many people, the basic Succession Plan we provide consists of the following:

- Will
- Testamentary Discretionary Trust(s)
- Enduring Power of Attorney
- Advance Health Directive
- Binding Death Benefit or Reversionary Pensioner Nomination(s) for Superannuation
- Reviewing Nominations for Life Policies
- Review of your company and trust structures (if any)
- Preparation of Business Succession Agreement for your business (if any)

Our Unique Succession Planning Service

The Goal:

- to help you past the obstacles of uncertainty and procrastination;
- to deliver documents that cover your intentions; and
- to get the documents signed quickly.

The Process, if you wish to proceed with your Succession Planning:

- We will provide a succession planning questionnaire for your completion.
- You will need to make an appointment to meet with us, and return your completed questionnaire to our office, preferably at least 2 weeks prior to your appointment date.
- Your initial appointment, for a discounted flat fee, will last for approximately an hour and a half. This will allow us to discuss with you any issues arising from your responses to the questionnaire, the types of estate planning services you require, and obtain your further instructions so that we can provide you with a tailored and specific Succession Planning Strategy advice. This will also give us the information we need to provide you with a more detailed estimate of the future fees likely to be incurred based upon your personal estate planning requirements.
- Following your appointment with us we will prepare client retainer documents which confirm your instructions and set out the scope of the work you have instructed us to perform.
- Once the retainer process is complete we will proceed to draft the requisite documents in accordance with your instructions. You will attend our office for a final appointment to execute the relevant documents.
- If you would prefer, you may attend the initial appointment without completing the questionnaire. We would then complete the questionnaire with you at that time. We would however ask you to come prepared with, or provide to us at a later date, most of the detailed information covered by the questionnaire, such as address and contact details, insurance policy and superannuation fund policy numbers, and details of assets and liabilities, etc.

The Benefit for You:

- Peace of mind.
- You usually leave after two appointments having signed all necessary documents for your Succession Plan.
- We then provide a Succession Kit containing copies of the documents for your records while we retain the original documents in our securities at no extra cost.