

Estate Planning – “More Than Just a Will”

Many people mistakenly believe that estate planning is simply having a “Will” and that estate planning is only relevant when a person dies. A broad estate plan involves much more.

Anyone who owns any property in this day and age, particularly people who have assets of substance, investments and people with children, should have their estate planning issues and needs *assessed* and where necessary carried out by the *preparation* of the appropriate documentation.

Many people find this topic challenging and it is often met with resistance.....and for good reason..... we don’t like to think of the worst or that something will go wrong!!! There is one thing certain about life and that is death. It is also highly possible that a person will suffer some unforeseen illness or injury that results in a temporary or permanent incapacity during that person’s lifetime. Most people most of the time do not think so far ahead as planning how their assets and debts will be dealt with in the event of death and in particular if there is a premature death, or incapacity during their lifetime.

Incapacity can either be largely physical which will prevent a person from continuing gainful employment or maintaining their business or their career, or supporting their family. Incapacity may be partially physical and involve mental incapacity as well, which prevents a person from being able to make financial, lifestyle, medical treatment and other types of decisions in the long term.

A comprehensive approach to estate planning takes into account various issues and considerations which are implemented both **during a person’s lifetime and after death.**

These issues and considerations involve:

- The need for a persons testamentary wishes to be documented in a Will or a Testamentary Trust
- The need for an Attorney to be appointed under a General or Enduring Power of Attorney
- The need for the appointment of an Enduring Guardian

- Whether a person’s Superannuation structure and other investment or business structures are consistent with that person’s testamentary wishes
- An overview of a persons personal history to identify potential claimants after death, including persons from prior relationships, marriages, dependant persons, family members and preparing the appropriate documentation to restrict a claim from being made after death
- Whether a person has a need for personal insurance to protect their estate during their lifetime and after death
- The need to establish a Family Trust to protect assets from passing through your estate and for tax purposes.

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Wills and Testamentary Trusts

Do you have a valid Will that determines how your assets and liabilities are to be dealt with upon your death? Did you know that your Superannuation is not automatically covered in your Will?

A Will can range from a simple document to quite complex involving Testamentary Trusts and structures and life estates. A poorly prepared Will or a Will prepared either at home or obtained through a newsagency is fraught with danger and can result in delays in the administration of your estate or expensive litigation where claims are made or where the assistance of the court is required.

The following problems can arise if a Will is not carefully considered and prepared and can cause a Will to be invalid either partially and/or totally, or can result in expensive litigation or unintended outcomes.

These include:

- Where an executor has not been properly appointed, or the executor dies before the Willmaker
- where assets that are owned jointly by a Willmaker with another are left to a beneficiary in the Will

- where a Willmaker includes assets which do not actually form part of their estate
- where a person's superannuation and other business or investment structures succession structures, are inconsistent with that person's testamentary wishes
- where a person marries after they made their Will
- where a person divorces after they made their Will
- where beneficiaries die before the Willmaker
- where a person is in a defacto relationship with another after the Will was made
- where a Willmaker has children to prior relationships
- where there are potential claimants who have been dependant on the Willmaker or have lived with the

Willmaker at any time during the Willmaker's lifetime

- where you have children and a guardian has not been appointed to look after them
- where your estate goes to strangers or people you did not contemplate.

Any of these problems can result in your estate going to persons you did not contemplate, and expensive litigation in having a court determine any invalidity or claim and delays in your estate being distributed to your family. It is simply not worth the consequences by avoiding the initial cost of having a professional prepare your Will!

"Looks like we won't be right for the school fees Alison, dad's superannuation is not in his Will. The full \$600 grand is going to his de-facto!"



Powers of Attorney

Do you have a Power of Attorney to manage the risk of disability?

Powers of Attorney enable someone that you trust to step into your shoes to assist you or make decisions about your financial affairs or to execute documentation required to maintain or protect your assets in the event of temporary or permanent incapacity during your lifetime. A Power of Attorney can also be made where a person is absent, living or taking an extended holiday overseas and where they cannot logistically sign documents, pay bills etc.

Powers of Attorney can be general, where you enable a person to do anything or they can be restricted, where you place limitations on what

things a person can or cannot do with your finances and assets.

A Power of Attorney ceases to be valid when the person making the Power of Attorney loses their mental capacity. However an Enduring Power of Attorney can be made where the Power of Attorney remains valid after they have lost mental capacity.

A Power of Attorney may not seem necessary to some during times of good health, however without one, you potentially put your financial security and assets at risk if they cannot be managed by someone

you trust, if you become incapable of doing so yourself.

In addition, if you do become mentally incapacitated and without a Power of Attorney in place, an undesirable family member can make application to the Guardianship Tribunal, to be appointed your financial guardian and sell or deal with your money and assets to your detriment.

Enduring Guardian

Have you appointed a Guardian to make health and lifestyle decisions for you in the event you become incapable of communicating those decisions because of incapacity?

A person can appoint an Enduring Guardian who can make medical and lifestyle decisions for you in the event of incapacity.

The appointment of a Guardian, ensures that your treatment and lifestyle decisions are carried out, as well as resolving any conflict or dispute that may occur between your family members who may try to impose their own contrary views on your medical treatment and lifestyle choices.

The functions that a Guardian can carry out under the Guardianship Act are:

- Deciding on a place for you to live

- deciding on the health care you receive
- giving consent to the medical treatment you receive from medical practitioners
- deciding on any other personal service you receive
- any other functions of a personal or medical nature that you specifically want, or specifically don't want.

"DIY Estate Plan Kit; what is it Latvian? I'd rather use a professional thanks Kel."



Asset Protection Insurance

Your most important asset is the ability to earn an income. What would your family do if you died or became permanently incapacitated? How would your mortgage be paid? How would the lifestyle you have created for your family continue if you are not around to pay for it?

Often times this type of insurance is completely overlooked and by taking out insurance of this nature, can relieve you and your family of future financial burden and hardship.

The feedback we have had from clients as to why they have taken out asset protection insurance are:

- To pay their mortgage in the event they cannot work
- to maintain their families standard of living if they cannot work
- to protect and maintain their assets if they cannot work
- if they could not earn an income, they could not live on \$569.80 a fortnight from Centrelink, nor could they live on what workers compensation pays
- where a person has had children to prior marriages, insurance can

be taken out for the benefit of those prior children, without disturbing asset arrangements with current spouses and so as to give all loved ones a reasonable inheritance.

If you do have an insurance policy, do you know who will benefit from it? a former spouse? a child? another member of your family? or your estate? Who will receive your life insurance upon your death and will the proceeds of that policy fall under the terms of your Will? Frequently people take out insurance and those policies continue in existence for years, without review and amendment to suit a person's current situation.

Good estate planning will give you the security of knowing that to the best of your ability, your wishes and financial affairs whilst you are alive and during a period of incapacity will be carried out and after death, that the benefit of your estate will go to those that you want it to.

Your family members will be grateful with not having to make difficult choices without your input or having to deal with difficult legal issues or claims against your estate when you die.

For many years, both *Neil Geikie* and *Rachel Clarke* have assisted thousands of clients in estate planning, from humble estates to estates worth many millions of dollars, including complex business and property investment arrangements. They have also conducted extensive litigation over the years involving deceased estates and mental capacity issues, invalid Wills and claims for provision against deceased estates.

At *HGP* we understand that clients are concerned about costs for legal fees. That's why we have fixed legal fees for all our clients in the specific area of estate planning. You will know exactly what you are getting and how much it will cost before we start.

With our vast experience we will guide you through the process step by step until you have a plan that matches your wishes.

We also understand that some clients feel their circumstances don't warrant a thorough plan. In our experience, no matter how much or how little money someone has, they always want it to go to the people that they love and care about. With a thorough estate plan this will be achieved.



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