



Estate Planning, Wills & Asset Protection Summary



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ASSET PROTECTION

As you build up your wealth, you should avoid holding assets in the same name as the person or entity which operates a business. This is to protect assets from the higher level of risk which can be associated with running a business, and in certain types of occupations. Many couples will have one person owning their house, and the other owning the business (or having just one as director of a company which runs the business).

WILLS AND TESTAMENTARY TRUSTS

Wills should include the use of testamentary trusts being used rather than assets being left directly to each other, or directly to children. An example of how important testamentary trusts are, is in the normal situation where a husband and wife leave their assets to each other. If they have already put in place asset protection strategies such as one owning the house and the other the business, upon the house owner passing away, the house ends up in the business owner's name undoing the asset protection strategy which had been setup.

Assets can be left to testamentary trusts which the survivor controls, but doesn't own. This then brings us towards the desired situation where assets are not owned in your own name after someone passes away, due to the risks involved in running a business.

Testamentary trusts are also useful when children under say 25 are in line to inherit significant sums of money if both parents pass away. Rather than the children inheriting assets directly and having control over these when maybe they are not financially responsible, your assets can be left into testamentary trusts which someone else controls on behalf of your children (until some specified time, such as when they turn 25).

Testamentary trusts also allow for income from the deceased's assets to be split between beneficiaries (including children under 18 who are taxed as adults in this situation), rather than just all taxed to the surviving spouse. This can lead to significant tax savings.

ENDURING POWERS OF ATTORNEY

These allow you to appoint a trusted person to manage your financial affairs should you become physically or mentally unable to manage your own affairs. Some agreements also allow your attorney to act in other instances too. Without enduring powers of attorney in place, if one of you become unable to act for yourself, the public trustee will step into their shoes and control their assets.





INSURANCE AND DEATH, OR SIGNIFICANT HEALTH ISSUES

If you haven't reviewed your personal insurance in recent years, we recommend you liaise with Kennas Financial Services to review your insurance needs, especially life insurance, trauma insurance and income protection insurance.

You need to consider what would happen if one of you passed away, or one of you became ill and couldn't work for an extended period.

ASSETS NOT PART OF YOUR WILLS

Houses or property you own as joint tenants will automatically pass to the other person upon one of you passing away (they are not dealt with under your will). You will need to sever any joint tenancies if you wish to transfer part ownership of an asset under your will into a testamentary trust. This is not a costly exercise and your solicitor can advise on this. So for example for a jointly owned house, you would change from owning this as joint tenants to tenants in common, so if one of you passed away the share of the house ownership can pass into a testamentary trust via the estate.

Assets of trusts and companies are also not dealt with under your will. What is dealt with are the shares in trustee companies or trading companies, or units in a unit trust, and who owns these shares and units can end up controlling the trust or company. While this seems simple, issues can arise where you have a number of shares which cannot be divided equally between your will beneficiaries, and trusts often have additional people appointed who can override the trustee company.

CONCLUSION

The above is just a brief summary of issues around estate planning, wills and asset protection. If you have concerns around any of the above issues, you should contact us as soon as possible. We can then work with your lawyer to ensure your affairs are organised and under control, and you understand what would happen in the event of an untimely death or major health issue.

FOR MORE INFORMATION CONTACT



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