

ESTATE PLANNING

Summary Notes for Clients

Wills

A Will is a legal direction as to how your assets are to be distributed upon your death.

Generally for a couple Wills are prepared as "mutual Wills" where each leaves their estate to the other and when the last partner dies then the remaining estate goes to the children or such other persons as may be directed. These Wills generally have the same beneficiaries and gifts.

Most Wills are straight forward and relatively simple legal documents but Wills can be complicated and complex, depending on the assets held and the manner in which they are to be dealt with to accord with your wishes.

Should you not leave a valid Will prior to death then your assets are dealt with under legislative provisions. This process can cause unnecessary costs, delay and financial distress to any dependant survivors.

Executors nominated to administer an estate are usually beneficiaries or other responsible persons. We generally recommend husband and wife appoint each other and then they each appoint (the same) two executors to act when both are dead.

We do not advise appointing trustee companies as executors unless there is a complicated trust to be set up or perhaps where there are no responsible relatives, friends or professionals available.

Trustee companies charge a commission (on top of all costs being legal fees for probate, sale costs and the like) so there can be a significant cost to the estate if an executor trustee company is appointed.

Marriage and Wills

Marriage or remarriage automatically voids any then existing Will. If you do not have a Will after your marriage then you die "intestate" (that is without a Will - even if you had a valid Will previous to your marriage) and your estate would then be distributed according to certain legislation.

If you are married and then divorce then any gifts in a Will made prior to the divorce (in SA) to a named husband or wife (ex) is not effective and the estate can be partly left without an heir or left partly "intestate".

If the executor was also a spouse and divorced then such appointment is not effective nor is the gift if any to that person.

Enduring Powers of Attorney

We now recommend that all clients have an *Enduring Power of Attorney* prepared in conjunction with their Wills.

An *Enduring Power of Attorney* is different from a general or limited appointment as an enduring appointment will continue even if you become incapacitated.

The appointments are specifically designed so that your husband/wife, partner or family can manage your financial affairs if something happened to you. You can nominate who is to be your attorney and they can take over and assist in running your affairs if you become ill, incapacitated or otherwise are away and wish them to act.

The appointment can be withdrawn if you have the capacity to do so.

The usual arrangements for a married couple is from husband to wife and from wife to husband with an additional clause that if you both become impaired or incapacitated then another person acts as Attorney. It may be appropriate to appoint for instance the same person/s as you appoint as executors under your Will.

If you do not have an *Enduring Power of Attorney* and you became ill or incapacitated then normally you would become a protected person and the Public Trustee (or some other government body) would be appointed to administer and conduct your affairs. This is necessarily time consuming, costly, inconvenient and impersonal.

Enduring Powers of Attorney are simple and inexpensive and we recommend you consider them as part of your estate planning and personal arrangements.

Enduring Power of Guardianship

Whereas an Enduring Power of Attorney refers to the management of a person's financial and legal affairs an *Enduring Power of Guardianship* gives the power to the person/s you may appoint to make decisions about the personal aspects of your life if you were unable to manage your affairs. Generally however both forms of attorney (Guardianship and/or Enduring) are activated if and when the person who made them becomes *mentally or physically incapacitated*.

An *Enduring Power of Guardianship* can cover both, the power to consent or refuse medical treatment as well as the broader decisions about the personal aspects of life

such as where you are to live, who you wish to associate with and how your life is to be conducted if you are unable to make your own decisions.

As previously discussed if you lose your mental capacity and cannot make decisions for yourself then in many cases those near to you will look after you and make those necessary decisions. However, situations can arise which require a guardian particularly perhaps where family members are unable to agree about your care or you or some other person disagrees with the decisions being made on your behalf. If you have not appointed your own *Enduring Guardian* and someone needs to have legal authority to make decisions on your behalf the Guardianship Board can then appoint someone for you.

Medical Powers of Attorney & Medical Directions

In contrast, a Medical Power of Attorney is a document that appoints a medical agent to deal with the consent or refusal of medical treatments for you.

You can appoint an agent or an attorney and leave directions to them as to medical treatments you may or may not wish to have in case you may not be able to do so at some time in the future.

You do not need to appoint a medical attorney. You can leave directions to treating medical staff as to the nature and manner of any treatments in the separate form of a medical direction under the Act *Consent to Medical Treatment and Palliative Care Act*, 1995 (SA).

Further help and Explanation

This summary is designed to help you consider the key issues in estate planning but does not deal with how to leave your assets and tax or trust issues. We would need to explain those issues to you when taking any instructions.

Should you need any further explanations as to these estate planning notes, please call us to discuss them without any obligation.

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