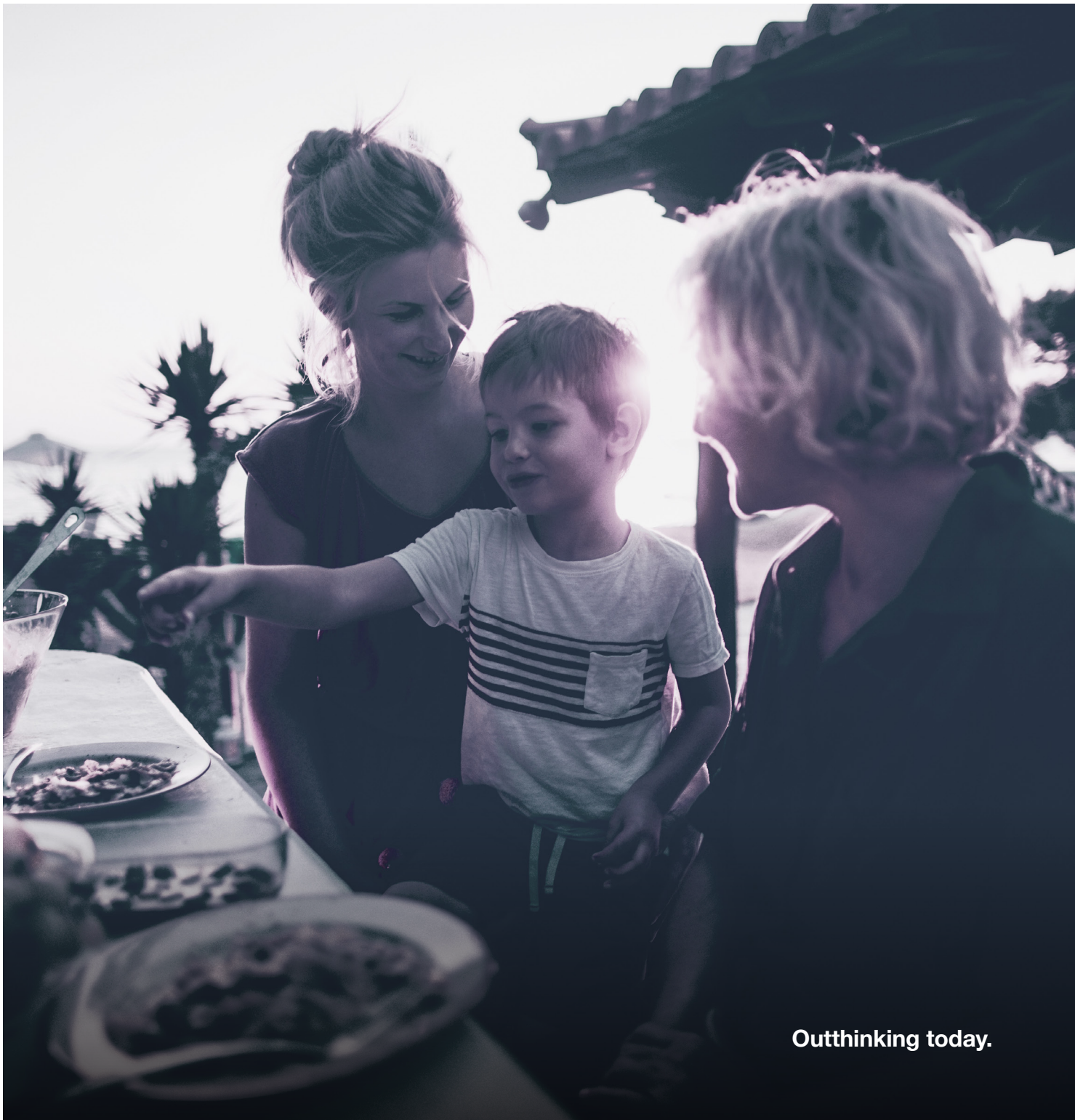
generation life

Estate Planning

A guide to planning your estate



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Contents

Planning your estate

Planning how to transfer your assets to your loved ones can remove unnecessary stress and financial hardship.

It's important to ensure that the assets you have accumulated over your lifetime are left for those most important to you. Getting the planning right can help avoid adverse and unintended consequences such as:

- the wrong people receiving benefits or assets
- high fees and costs eroding the value of your gift
- delays in distributing your assets
- potential challenges by disgruntled beneficiaries and others
- additional tax being incurred.

What is estate planning?

Estate planning is the process of structuring your financial and personal affairs so that your assets and personal possessions are distributed according to your wishes when you pass away.

Estate planning involves more than just creating a will, although a will is an important part of estate planning. Having a will alone may not necessarily deal with the effective distribution of your assets, which is why it's important to consider your estate planning carefully to ensure it reflects your circumstances, wishes and needs.

Most estate plans also include other matters relating to the end of life, including enduring powers of attorney, powers of enduring guardianship, medical treatment decision maker appointments and advanced care directives. Having these in place ensures that someone can make decisions for you, and according to your wishes if you are unable to make decisions for yourself.

When considering your estate planning needs, it's also important to consider other tools and strategies including superannuation nominations, insurance, and other investment or wealth transfer vehicles. Having a structured plan in place, together with the appropriate estate planning tools, can help deliver an effective and efficient outcome.

Benefits of estate planning

Estate planning provides you with certainty and peace of mind, knowing that your affairs will be managed in accordance with your wishes when you pass away. The benefits of having an effective plan include:

- providing for loved ones with special needs
- ensuring your children's or grandchildren's inheritance has greater protection from creditors or any future relationship breakdown
- managing complex family or personal relationships (for example multiple marriages, children from different marriages or vulnerable family members).

No matter what your estate planning needs are, it is important when deciding how to provide for your loved ones, to seek professional estate planning advice.

Effective estate planning results in the right assets going to the right people, at the right time, with minimal fuss, expense, and inconvenience.

Tip

It's important to consider what you want to achieve by passing on your wealth. Your financial adviser can help you develop your estate planning strategies and work with the appropriate legal and tax professionals to implement those strategies.

When developing your estate planning strategies, careful consideration should also be given to:

- who you want to provide for and their personal or special needs
- any complexities in your family arrangements
- the potential for legal claims or disputes
- the tax impact to your estate and the intended recipients
- who will act as your executor or estate representative.

The goals of estate planning

Estate planning is a vital part of a holistic financial plan that ensures the shared goals of parents and children are met. Effective estate planning can assist with:

- managing the interests of vulnerable beneficiaries
- ensuring support for your surviving partner and family
- protecting the inheritances of beneficiaries
- protecting your assets from third party claims
- establishing a means to manage capital for the benefit of current and future generations
- tax minimisation for the estate and beneficiaries.

Planning ahead

When considering how to provide for your family, you may also want to consider providing an early inheritance. For example gifting cash or assets to your family when you're nearing retirement or after you've retired.

Planning for early inheritances can help improve social security entitlements or reduce the costs of future aged care services. You can gift assets up to certain limits without impacting the social security assets test and deemed income rules. After five years, gifted assets (of any value) are not assessed for social security and aged care purposes.

You should discuss with your financial adviser if you plan on gifting assets to help you understand how this may impact any government entitlements and benefits you may be receiving currently or wish to receive in the future.

Your estate planning team

In making sure that you have the right plan in place, it's important to have the right team to help you achieve your estate planning objectives.

Your financial adviser

The first step in creating an effective plan is understanding your current situation, identifying your estate planning objectives and formulating an estate planning strategy to meet your unique circumstances. Your financial adviser will help in identifying your assets, work with you to understand what you want to achieve and then develop the plan or strategies to meet your desired estate planning objectives.

Solicitor

Unfortunately, disputes can happen when assets need to be distributed among people when no clear guidelines have been set. A solicitor can help you draw up any legal documentation required to ensure it is legally binding and covers what you would like to happen with your assets as part of the estate plan you have put together.

Tax adviser

The distribution of your assets (including the timing of the distribution and any income the assets derive) can come with different tax obligations for your estate as well as your beneficiaries. Depending on the complexity of your estate plan, you may want to engage a tax adviser to assist you with tax planning.

How your assets are owned

Understanding the assets you own, their legal structure, and how they will be dealt with and distributed on your passing is important. You will need to consider whether your assets are:

- owned by you as an individual
- owned jointly with another party (as joint tenants or tenants in common),
- held within a legal structure (such as a company or trust) where there is more than one person with an interest.

When owning assets jointly with another party, they will generally be held under a:

- joint tenancy arrangement, or
- tenants in common arrangement.

Under a joint tenancy arrangement, ownership automatically passes to the surviving owner (irrespective of what may be directed under your will).

Under a tenants in common arrangement, each owner has a distinct legal and divisible interest in the asset. For example, an interest in a company where there is a 75:25 ownership split. Your interest in the asset can be directed under your will.

For estate planning purposes, there are two broad categories under which your assets will fall:

- estate assets, or
- non-estate assets.

Understanding what assets fall within each category will help formulate your estate plan.

Tip

Setting up how you want your assets to be dealt with and through what mechanism should be considered as part of any estate planning strategy.

How you chose to set up your asset ownership will depend on the type of asset and the level of complexity in your estate plan.

You may want to consider how your assets are owned, particularly if you have complex family arrangements or if you have specific tax management requirements.

You should consider consulting with your financial adviser when considering making an investment or changing the ownership arrangement of your assets to ensure that it is consistent with your estate planning needs.

Estate assets

Assets that have your name only on the title or assets owned with another party as tenants in common are considered estate assets.

Estate assets generally include:

- personal property where you are the sole owner (for example a car or jewellery)
- financial assets (for example bank accounts, managed funds or shares)
- life insurance policies where the estate is the nominated beneficiary
- real estate owned either individually or as a tenant in common with someone else
- other interests such as a partnership or interest in a trust.

These assets will form part of your estate on your passing and be distributed in accordance with your will.

Non-estate assets

These are assets that do not form part of your estate and pass under a variety of other agreements and arrangements.

Non-estate assets generally include:

- assets owned as joint tenants
- assets held in a discretionary family trust where you are the trustee and/or beneficiary
- assets held in a private company in which you have an interest
- superannuation in either accumulation or pension phases, where payment is made to eligible dependants
- reversionary pensions or annuities
- insurance policies (including investment bonds) where any proceeds payable under the policy are not paid to your executor/estate, but for example, may be payable to a nominated beneficiary.

It is possible to structure superannuation payments and proceeds of insurance policies to your estate if required, depending on how you want the proceeds to be dealt with in the future. If you have concerns that your wishes under your will may be challenged or you have complex family arrangements to consider, then making arrangements for these proceeds to be paid or distributed directly to beneficiaries may be appropriate.

When considering the right estate planning approach for each type of asset, we recommended consulting your financial adviser to make sure your current and future investments are structured to meet your estate planning objectives.

Tip

Leaving your wealth can be tricky and complicated, especially if you have complex family arrangements such as a blended family, are looking to provide in unequal proportions or if you want to provide for non-family members.

Beneficiaries or third parties may feel that they have not been adequately provided for and may, as a result, seek to make a claim against your estate and challenge how your estate is to be distributed through your will. Studies have shown that up to 74% of claims made against estates have been successful in Australia.[1]

The contesting of an estate can add considerable stress, time and cost to the process. It is therefore important when considering estate planning, to look to minimise the potential for a successful claim being made. You should:

- ensure that your wishes are well documented in your will
- keep your will up to date, and
- consider how you structure your assets – non-estate assets will not form part of your estate and therefore will not be contestable under a Family Provision Claim. Refer to pages 12, 15 & 22 on potential non-estate assets, such as investment bonds, superannuation and life insurance.

[1] Estate Contestation in Australia UNSW Law Journal (2015)

Using a will

Why having a will is important

Dying without a valid will means that the intestacy laws decide who receives your assets. This is called 'dying intestate'.

The intestacy laws vary between States and Territories, but generally there are set rules regarding who receives your assets and in what proportion they are distributed. The rules are also designed to only cater for certain family members and do not take into account your wishes or personal situation.

Where under the rules it is not possible to distribute your assets to family members, for example, if you do not have any living family members, then your assets will at the first instance pass to the government.

Depending on your circumstances, more than one set of State or Territory rules may apply, depending on where your assets are located. This may complicate things further. For example, company share investments will generally reside where a company's share registry is held.

Sometimes a will is not enough

Estate planning involves making sure the right strategies are implemented to meet your personal circumstances and wishes. While a will can help with this, it may not always be the most effective way of transferring a large part of your wealth consistent with your wishes.

There are many factors to consider including who the beneficiary of your gift will be, any complex family situations, the potential for a family member or others to challenge, how quickly you want your assets dealt with and the tax effectiveness of any gifts.

It is important that you consider what is important to you and discuss this with your financial adviser and your solicitor to work out the most appropriate strategy and approach to making sure the right assets go to the right people at the right time.

Preparing a will

Put simply, a will is the legal document that sets out how and to whom you would like your assets to be distributed to. It can also cover some other requests, such as nominating guardians for children who are minors at the time you die, as well as funeral and burial wishes.

A will can be used to make specific gifts to charities, and can also be used to establish one or more trusts to manage the transfer of your wealth to beneficiaries (commonly referred to as testamentary trusts (see page 9)).

It's important to correctly document your will to help mitigate potential legal challenges from disgruntled estate beneficiaries and other interested parties left out of the will, or someone just being unhappy and wanting to overturn elements of the will. This can cause costly, lengthy (and stressful) legal disputes.

Appointing an executor

It is generally required that at least one executor is appointed who is responsible for ensuring that your wishes are carried out. You can have more than one executor if you feel you need to, for example, if you have two adult children that you want to share the responsibility.

When deciding on the nomination of an executor, some considerations could include their age, their relationship with your family and the complexity of your situation.

In some cases, an alternative to appointing an individual, or a number of individuals as an executor, is to appoint a trustee company. A trustee company may be appropriate, depending on the complexity of your estate, the length of time it may take to finalise and whether you can find a suitable person to act as your executor.

A trustee company will charge a fee for their services which will normally be paid from your estate's assets. It is important to consider these costs when deciding how you would like your estate administered.

The executor is responsible for the administration of your estate, from organising the funeral, identifying your assets, arranging probate, paying your debts, to the ongoing management of your assets until the estate administration is completed.

Administering an estate can take many months (sometimes years), so you need to be sure that the nominated person is both willing and capable of undertaking the task of executor. Also, often the person(s) nominated as executor becomes the trustee of any ongoing trusts contained in your will.

You should let your executors know you have nominated them in that role, so you can be sure they are willing to perform the necessary tasks on your behalf.

Tip

Appointing the right executor to manage your estate is one of the most important decisions you will make when it comes to estate planning. When you pass away and your will is accepted for probate, your executor 'steps into your shoes', meaning they can perform all the legal tasks you used to do.

When choosing your executor(s) you should ask yourself the following questions:

- How many executors do I need and will any joint executors I appoint get along?
- Do I need to appoint a back-up executor?
- Will they be living interstate, overseas or are they planning on moving overseas?
- Is the person a responsible and trustworthy person?
- Do they require payment for their services?
- Do they have a good financial standing or knowledge?
- Will they outlive me?
- Will there be any drama between family members if I choose a particular person(s)?
- Are they an undischarged bankrupt or do they have a criminal conviction?
- Are they patient and level-headed?
- Are they willing to act as my estate's executor?

Nominating beneficiaries

You are free to leave your estate to anyone you like, although you should consider potential legal challenges if a family member or other person feels they have not been adequately provided for.

If you want to omit a family member or certain other persons from your will or provide for beneficiaries disproportionately, you should seek professional advice to help you understand the possible legal implications in the event that your estate is contested. It is very important to document the reasons for leaving someone out of your will or where you have provided for them disproportionately. This documentation can be used as evidence of your wishes if a claim on your estate is made. This could avoid significant delays in the administration of your estate, as well as costs related to the defence of the claim.

In nominating beneficiaries, you may also want to consider the impact that your inheritance may have on a beneficiary. For example, if you choose a beneficiary that receives a government benefit, you may want to consider the impact of the inheritance on those benefits when creating your estate plan. You may need to consider alternatives if this may be an issue.

Assets to distribute through your will

Depending on the assets you own, it may be appropriate to apportion your estate's assets amongst your beneficiaries, rather than individually nominating specific assets to be gifted to certain beneficiaries. It is important to remember however, that only estate assets (refer to page 6) can be distributed through your will.

If you are considering specific gifting, then you may want to consider, in consultation with your financial adviser, alternative non-estate asset arrangements, such as superannuation or life insurance policies/investment bonds, to distribute your wealth outside of a will arrangement.

Appointing a guardian

If you have children under the age of 18, you may want under your will to appoint a guardian(s) for them. Without a guardian appointed, and in the event of the death of you and your partner, the courts may determine who will care for your children. Your appointed guardian will be able to make legal decisions and will be fully responsible for their care until they reach 18 years of age.

Testamentary trusts

Testamentary trusts are trusts established under a will to manage and distribute assets to beneficiaries over an extended period of time after you pass away. Testamentary trusts operate similarly to a discretionary trust (however with different tax rules). It's important to consider that there are also legislated anti-avoidance measures to ensure that certain income received by minors from non-estate assets held in a testamentary trust are taxed at higher rates.

Your will must appoint a trustee for the testamentary trust, who will be responsible for administering the trust assets in the way your will specifies. Testamentary trusts can last for many decades after your death and therefore it's important to appoint a trustee willing to accept this responsibility.

As a trust entity, a testamentary trust also requires ongoing administration and tax reporting to be undertaken by the trustee, with these costs to be deducted from the trust's assets. The trustee may also need upfront and ongoing legal and tax advice. You should consider the practicalities and costs of setting up a testamentary trust against the benefits of the structure, particularly if you have a smaller value estate with a limited outlook period.

Keeping your will up to date

A will may become invalid due to changes in circumstances (such as marriage) or errors in executing or processing the will.

It is recommended that you frequently review and update your will where necessary. The last valid will you make will determine the distribution of your estate when you pass away. It is therefore important to update your will if your circumstances change or the instructions you have in your current will no longer meet your wishes.

There can be many reasons or events that might require you to update your will including:

- you start a new business or wind up a business
- you separate or divorce
- you form a new relationship
- you enter or dispose of a trust
- changes in value, or the purchase or disposal of a major asset
- changes in legislation that can impact the arrangements you have put in place
- the birth of a new beneficiary or the death of an existing beneficiary or executor.

When updating your will, it is recommended you seek the advice of a qualified legal practitioner.

You should also make sure you consult with your financial adviser to ensure that your estate planning strategies are still appropriate for your changed circumstances.

Appointing a Power of Attorney

Effective estate planning ensures that your wealth is distributed according to your wishes after you pass away. Have you considered what happens if you lose capacity and cannot make decisions before you die because of an accident or ill health?

A Power of Attorney is a legal document that enables you to authorise someone you trust to make decisions and sign documents on your behalf if you are not able to do so yourself. There are different types of Powers of Attorney which can cover different circumstances. When establishing a Power of Attorney arrangement, you have the flexibility to determine when, for how long, or under what circumstances it comes into effect.

Each State and Territory has different types of Powers of Attorney, however, there are generally two types of Power of Attorney:

- General Power of Attorney – this applies while you have the mental capacity to make your own decisions and terminates once you lose mental capacity. This is generally used for short-term and specific purposes, for example the purchase of a house while you are overseas.
- Enduring Power of Attorney – this continues to operate even after you have lost mental capacity. This is normally used for longer-term needs and especially for estate planning.

You can appoint your partner, another trusted family member, friend or trustee company, to act as your appointed attorney. The appointed attorney must:

- be over the age of 18
- not benefit personally unless the Power of Attorney provides for this, and
- not do anything illegal while operating under the Power of Attorney.

Your appointed attorney is not able to prepare a will on your behalf or transfer the Power of Attorney to someone else unless specified.

Tip

The role of an appointed attorney is powerful and carries significant responsibilities. Your appointed attorney is effectively stepping into your shoes and making decisions that you would normally make. You should choose an appointed attorney you can trust that will:

- act honestly, diligently and in good faith
- act with reasonable skill and care
- keep accurate records and accounts.

When selecting an attorney you should consider:

- their age
- their ability to make good decisions for you (particularly during stressful periods)
- when the powers will start
- whether to appoint one or more alternative attorneys and if more than one attorney is appointed, whether decisions need to be made jointly or not.

You should also decide what powers to give your attorney and what decisions they can make including:

- financial authority; and/or
- medical authority.

You should also think about any limits you might want to place on your attorney's ability to make decisions about specific financial and personal matters.

Make sure important people in your life know that you have appointed an attorney.

Keep the original document in a very safe place, and give your attorneys a certified copy.

Make sure you review your power of attorney regularly (as long as you are able) to make sure it is still suitable for your current circumstances.

You can revoke, or cancel, your Power of Attorney at any time, so long as you have the decision-making capacity to do so.

Power of Guardianship

Depending on the State or Territory you live in, a separate document called a Power of Guardianship may be required to appoint someone to make decisions on your future healthcare and lifestyle decisions, when you can no longer make decisions yourself.

Advance Care Directive

An Advance Care Directive, sometimes referred to as a living will, is a written record that details your preferences for your future care along with your beliefs, values and goals. Unlike an Enduring Power of Attorney or Power of Guardianship, it does not appoint anyone to make decisions on your medical treatment.

Medical Treatment Decision Maker

You can choose someone to make medical treatment decisions for you if you are ever unable to make these types of decisions due to injury or illness. Your appointed person should be someone you trust to respect your values and preferences for your medical treatment. You can only have one medical treatment decision maker at a time.

Obtain advice

We recommend that when contemplating Powers of Attorney and Powers of Guardianship that you speak to a qualified legal practitioner to ensure your documentation is legally binding. You should also speak to your financial adviser to ensure your estate planning needs continue to be met.

Superannuation and estate planning

Superannuation is a major investment for many Australians. It is important to consider your superannuation assets when formulating your estate planning strategy.

Superannuation does not automatically form part of an estate, i.e. it is not an estate asset, and therefore will not automatically be dealt with under your will. A superannuation fund's rules sets out how and to whom a superannuation death benefit payment can be paid. Any life insurance component of your superannuation will also form part of any death benefit payment made.

When considering how your superannuation will be dealt with on your death, you should also consider the terms of the superannuation fund's trust deed, any trustee discretions that can be applied in determining the distribution of benefits, and any tax implications when paying out a benefit to a beneficiary.

Nominating Beneficiaries

Generally, you can nominate a beneficiary to receive death benefit payments on both your superannuation accumulation account and pension account. Any beneficiary you nominate must be eligible to receive a death benefit. If you do not nominate any eligible beneficiaries, then your death benefit will be paid to your estate.

It's important to ensure that you keep up-to-date your beneficiary nominations under your superannuation as your circumstances and your beneficiaries' circumstances change.

Superannuation funds will typically offer beneficiary nominations as either a 'binding nomination' or 'non-binding nomination'. It is important to consult with your superannuation fund, as not all superannuation funds will offer both nomination types.

Your benefit will only be distributed in accordance with the provisions of your will if it is paid to your estate - either as a result of the trustee of the fund using their discretion, or in accordance with a valid binding nomination you may have implemented.

If you have a self-managed superannuation fund, the rules and processes that apply when making a death benefit nomination and at the time a benefit becomes payable, can be complex.

You should consult with your financial adviser to ensure your arrangements are appropriate.

Non-binding nominations

Non-binding beneficiary nominations are not formally binding on the trustee and only act as a guide for the trustee in deciding how to pay your death benefit. The superannuation fund trustee will have full discretion to pay your death benefit to another eligible person (who must be a dependant under the relevant laws) or your estate's representative.

Binding nominations

Many superannuation funds offer the ability to provide binding beneficiary nominations. Not all superannuation funds offer the opportunity to make a binding death benefit nomination. You should check with your superannuation fund.

Depending on the superannuation fund, they may provide for either 'lapsing' nominations where the nomination must be renewed every three years. Alternatively, they may provide for 'non-lapsing' nominations which will continue until you cancel or update your nomination. If you do not renew it before the end of the three-year period from last signing, it becomes a non-binding nomination.

Where a binding nomination has been made, the superannuation fund trustee is required to distribute to the person(s) you have nominated, as long as they are classified as a dependant and the nomination meets the legislative requirements.

If the nomination is valid, the trustee must follow it, even if your circumstances have changed. For example, if you nominate your legally married spouse and you separate but do not divorce, the nomination remains valid and binds the trustee unless the nomination has been amended, cancelled or has expired.

The person(s) you have nominated to receive your money must be a dependant at the date of your death, otherwise the trustee may exercise discretion to determine whom to pay the benefit to, which may include your estate's legal personal representative.

Who can you nominate as a beneficiary?

The beneficiary(ies) you nominate must be a 'dependant' or your estate's legal personal representative. A dependant includes:

- your current spouse or partner
- your children of any age
- a person who is financially dependent on you when you die
- person whom you have an interdependency relationship with
- your estate or legal personal representative.

An 'interdependency relationship' is generally when two persons (whether or not related by family) have a close personal relationship, live together and one or each of them provides the other with financial and domestic support and personal care.

If you nominate your estate or personal legal representative, you must specify in your will how and who you want to distribute your superannuation money to.

What happens if a nomination is not made or your binding nomination is not valid?

If you die without making a nomination or your binding nomination is invalid or not effective when you die, your superannuation fund trustee will decide who receives your money based on the relevant laws. This may be to either one or more of your dependants or to your legal personal representative. Where this happens, the trustee will consider your dependants' circumstances at the time of your death.

How will my beneficiaries be taxed?

The tax treatment of any benefit payment will depend on whether your superannuation is paid as a lump sum, income stream or mixture of both, and if your beneficiary or beneficiaries are classified as 'tax dependants' at the time of your death.

Benefits paid to beneficiaries who are dependants for tax purposes are generally taxed more favourably compared to benefits paid to non-dependants. In addition, tax laws provide that if you died in the line of duty as either a member of the defence force or as a police officer, beneficiaries of a superannuation death benefit who are not tax dependants will be treated as tax dependants.

The definition of a tax dependant is slightly different to a superannuation dependant, with a taxed dependant being:

- your spouse or de facto spouse (or former spouse or former de facto spouse), or
- any children you had under the age of 18, or
- any person that had an interdependency relationship with you just before death, or
- any other person that was substantially financially dependent on you just before death.

Tax rates of superannuation death benefits paid as a lump sum[2]

Tax component	Paid to tax dependant	Paid to tax non-dependant
Tax-free	Nil	Nil
Taxable (taxed element)	Nil	Up to 15% plus levies[3]
Taxable (untaxed element)	Nil	Up to 30% plus levies[4]

Tax rates of superannuation death benefits paid as a pension[4]

Tax component	Paid to tax dependant	Paid to tax non-dependant
Tax-free	Nil	Generally, a superannuation pension cannot be paid to a non-dependant.
Taxable (taxed element)	Nil[5]	
Taxable (untaxed element)	Marginal rate plus levies and less 10% offset[5 6]	

Tip

It's important to ensure you understand exactly how your superannuation beneficiary nominations will be treated by your superannuation fund and the potential impact on the benefit value after any tax that might apply.

Nominating a non-tax dependant to receive your superannuation benefits may result in a reduction in the benefit payment amount to the nominated beneficiary.

Understanding how your nominations will be treated and whether or not your superannuation benefits will form part of your estate (i.e. distributed according to your will) is important in ensuring your wishes are met.

You should speak to your financial adviser who will help you determine the right approach to structuring your superannuation to meet your individual estate planning objectives.

[2] The tax treatment on any lump sum payment made to the estate generally depends on whether it's ultimately received by a beneficiary that is eligible to receive the benefit as a tax-free lump sum, such as your spouse or your child if under 18 or financially dependent on you.

[3] Medicare and other levies may apply. If the lump sum is paid to a non-dependant beneficiary directly from the superannuation fund, the taxable amount will be included in the beneficiary's assessable income with a tax offset applied so that tax on the benefit does not exceed the rate indicated. This may however impact entitlements to certain benefits and concessions which are determined based on income levels.

[4] Different rates of tax may apply if a death benefit is received from a defined benefit fund. You should seek professional tax advice as the rules regarding death benefits from a defined benefit fund are complex.

[5] Except when the deceased is below age 60 and the pension recipient is also below age 60 – in which case the amount attracts the recipient's marginal tax rate, but also receives a 15% tax offset.

[6] Except when the deceased is below age 60 and the pension recipient is also below age 60 – in which case no tax offset is received.

Investment bonds and estate planning

Investment bonds can be a cost-effective, tax-effective and convenient way to pass on your wealth to your dependants and others, with minimal fuss.

Investment bonds have features that can be used in conjunction with, or as an alternative to, conventional estate planning tools – such as a will, a testamentary trust (for future gifting and for making intergenerational wealth transfers), and superannuation.

Most investment bonds will provide the ability to transfer benefits on your passing to your nominated beneficiaries. In some cases, an investment bond may also provide an option to transfer ownership of the investment bond to another person(s) on your passing.

Nominating beneficiaries

As a form of life insurance policy but linked to investment returns, an investment bond has a life insured, which for estate purpose would typically be you. On your passing, the investment bond benefits would be paid to your estate or to your nominated beneficiary or beneficiaries.

The investment bond, nominated in favour of a beneficiary, is a non-estate asset and is therefore not subject to any directions under your will, challenges to your will or any delays in the distribution and finalisation of your estate. The payment of proceeds can be made confidentially and without the knowledge of other interested parties.

Depending on your investment bond provider, you may have the additional option of having your beneficiary allocations automatically re-weighted in the event a nominated beneficiary pre-deceases you.

You may also be able to direct the investment bond provider to pass on the benefit payment to the estate of the nominated person instead. These features provide a convenient way to ensure that your nominations remain valid, irrespective of any changes to the circumstances of your nominated beneficiaries.

Transferring ownership

Some investment bonds may provide the option of transferring ownership of your investment bond to another person or entity on your passing. In some cases, you may also be able to elect when the person or entity gets access to the investment as well as restrict how much they can withdraw in any given year. The transfer of ownership can happen without any personal tax consequences to your investment or the recipient of the investment bond.[7]

The investment bond will be treated as a non-estate asset and will therefore not be subject to any directions under your will, challenges to your will or any delays in the distribution and finalisation of your estate.

Benefits of using an investment bond for estate planning

Using an investment bond's beneficiary nomination can help supplement your estate planning strategy and may be useful for:

- providing for blended families to financially provide for children of previous relationships, for a new spouse's children or for estranged children – whilst using a conventional will to provide for a current spouse and/or children
- solving potential conflicts and inequities between children and grandchildren that might be complex and difficult to handle under a will
- making gifts to organisations such as charities, hospitals, schools and religious groups (beneficiaries can be a natural person or an entity, including a company or trust)
- privately meeting moral obligations to non-related parties and friends.

Using an investment bond's transfer on death facility as an alternate estate planning strategy may be useful if you:

- want to pass on your wealth outside of your will and estate
- pass on your wealth with no tax being incurred
- want to manage when your intended recipient's access the investment and also limit how much they can access each year.

[7] Where transfers are completed with nil consideration.

Alternative to a will

Depending on your personal circumstances and the types of assets you are wishing to distribute, an investment bond can be used to transfer wealth as a non-estate asset (i.e. outside of your will). Where an investment bond has a nominated beneficiary or where instructions are provided to transfer ownership on your passing, the investment bond is treated as a non-estate asset, and dealt with outside of your will.

In this case, the investment bond has a number of benefits over a typical will arrangement including:

- no additional costs involved in setting up (compared to the cost of setting up a will)
- no requirement to obtain probate or administration of the estate (including not requiring to be filed in the public domain)
- benefit proceeds or ownership passes directly (and privately) to the nominated beneficiaries – as a non-estate asset. It is generally not possible to make a claim on the estate, including for family provision or in testator's family maintenance challenges.[8]

[8] In NSW the general (and long-established) legal position of investment bond nomination proceeds constituting 'non-estate' assets may in certain circumstances be open to challenge under Part III of the Succession Act 2006 (NSW). This Act applies to financial products (such as investment bonds, annuities, and superannuation benefits) that are issued to persons whose estates are subject to that Act and where: (1) a beneficiary nomination is made within three years of the death of the life insured; and (2) where the beneficiary nomination was made with the intention of denying or limiting provisions of an eligible estate beneficiary. There are certain eligibility requirements and time restrictions for claimants. The Court must formally approve a claim, which may involve a 'claw back' as notional estate assets to meet claims that are not satisfied from the estate.

Case study – providing for unequal transfers of wealth

Scenario

Julia is 60 years of age and is looking to provide for her family after her passing. Julia has two children, Sam and Louise, who have one and three children respectively.

Objective

Julia wants to make sure that enough funds are distributed to each of her children to help with the cost of raising the grandchildren. She wants to make sure that there is no conflict (as could be the case under a traditional will arrangement). Julia is looking at providing $100,000 to Sam's family and $300,000 to Louise's family on her passing.

Solution

Julia sets up an investment bond with an investment of $400,000 and is the sole life insured. She nominates that on her death Sam receives 25% of the investment value and Louise receives 75% of the investment value.

Benefit

Using an investment bond and nominating beneficiaries allows Julia to by-pass the estate and will process, ensuring that her allocation wishes are met.

If at any point in the future Julia wants to change how her investment is divided up, she can do that easily without having to incur the cost of changing her will. In addition, if at any point her personal circumstances change (e.g. divorce, marriage) then there is no need for her to re-state or update her beneficiary details. Her nominations will continue until she decides to change her nominated beneficiaries.

Alternative to a testamentary trust

As an alternative to a testamentary trust, you can use an investment bond to plan ahead with peace of mind about how, when and to whom your estate's wealth (or part of it) will be distributed to the next generation. An investment bond has a number of benefits compared to testamentary trusts including:

- not requiring to be set up under a will
- no additional establishment costs unlike a testamentary trust
- not requiring the appointment of a willing and competent trustee
- can be structured to meet small and large value gifts, and
- no ongoing tax reporting of investment earnings and administrative tasks.

Case study – controlling access to inheritances

Scenario

Margo, aged 81, has a devoted grandson aged 16 years.

Objective

Margo would like to help her grandson financially for his future. Margo is concerned that her grandson may be too young to receive a lump sum inheritance.

Solution

Margo establishes an investment bond to the value of $100,000 to help her grandson. She sets up a future transfer where her investment bond ownership will transfer to her grandson on her passing. She instructs that any withdrawals by her grandson are restricted to 10% p.a. of the value of the investment until funds are depleted.

Benefit

Margo meets her goal in helping her grandson and can control the flow of funds to him after her passing. The investment bond provides a simple and cost-effective alternative to setting up testamentary trust for the benefit of her grandson.

A similar strategy could be used by Margo to control access to inheritances for her adult children and grandchildren if she needed to.

Supplementing your superannuation estate planning strategy

Investment bond beneficiary nomination features are similar to superannuation beneficiary arrangements to directly distribute death benefits and bypass your will and legal estate, with a couple of notable additional benefits:

- No tax is payable under any circumstances by the nominated beneficiary as a result of the benefit payment. Proceeds are received tax-free in the hands of the nominated beneficiary.
- There are no restrictions on who can be nominated as a beneficiary. You can nominate any person (including a company, trust or charity) to receive benefit payments.
- There is no trustee or issuer discretion – benefits are paid to the person(s) you have nominated.
- Instructions once made do not have to be periodically refreshed or reconfirmed in future years, unlike many superannuation funds with binding nominations.

Case study – avoiding superannuation death benefits tax

Scenario

Jane, an 81 year old widow, has two adult children – John 56 and Steve 53. She has a total superannuation balance of $1.4m, which includes a taxable component of $650,000.

Objective

Jane is concerned that her adult children are non-tax dependants and that the taxable component of any lump-sum superannuation death benefit paid to her adult children will be subject to a tax rate of 15% plus the Medicare levy of 2%. She currently estimates this would reduce the benefit amount received by her sons by $110,500.

Strategy

Jane withdraws her superannuation balance of $1.4m tax-free (being over the age of 60). She establishes two investment bonds of $700,000 each.

She sets up a future transfer event for each of the investment bonds and nominates for ownership of the investments to transfer to each of her two sons on her passing. The transfer of ownership of the investment bonds to her sons on her passing will be tax-free in the hands of her sons.

Funding funeral expenses

Setting aside funds to pay for funeral expenses should be considered as part of any estate planning arrangement. Providing for your funeral costs ahead of time provides peace of mind that money is available to fund the cost, while also removing the burden from your family.

There are several ways of funding funeral expenses, including the use of a funeral bond, a pre-paid funeral or taking out funeral insurance.

Using a funeral bond

Funeral bonds are a type of investment bond that can only be withdrawn after your passing to pay for your funeral. A funeral bond ensures funds are set aside to pay for your funeral expenses.

You can invest as much as you need to meet the 'reasonable costs' of your future expected funeral expenses, however there are some limitations. Funeral bonds can also provide social security benefits with exemptions from the assets test and income deeming rules in some cases.

They are also simple to administer and while the value of your funeral bond may increase over time, you do not need to include any earnings from the funeral bond in your tax return during your lifetime.

Social security benefits

Funeral bonds can have social security advantages as an investment contribution up to certain limits, is exempt from the social security asset test and is not subject to deeming under the income test.

The allowable exempt limit is currently $14,000 in contributions per person (as at 1 July 2022) and is indexed annually each July. If you invest more than the allowable limit, the entire investment amount will be assessed under the social security assets and income tests. The exception to this is where you are investing for the purpose of immediately transferring ownership of the investment to a funeral director as part of a pre-paid funeral arrangement.

There are no limits on the amount that you can contribute into a funeral bond if you've entered into a pre-paid funeral arrangement with a funeral director and transfer the funeral bond to the funeral director as payment for the arrangement.

If you are considering entering into a pre-paid funeral arrangement with a funeral director, you can transfer ownership of the funeral bond to them as part of that arrangement. It's important to note that if you transfer ownership, the funeral director becomes the legal owner of the funeral bond and bears all future investment risk. The funeral director must then use the proceeds of the funeral bond to fund the funeral costs.

Tip

A funeral bond can assist with government benefit entitlements, such as the Age Pension or Veterans' Service Pension – and also the calculation of subsidised aged care fees. A funeral bond investment will be (up to certain allowable limits):

- exempt from the social security asset test, and
- not subject to deeming under the income test.

You should talk to your financial adviser if you qualify or would like to qualify for certain government entitlements and how a funeral bond may be able to assist.

How funeral bonds are taxed on withdrawal

If you choose not to transfer ownership of a funeral bond to a funeral director (as part of any pre-paid funeral arrangement), the final benefit value will be paid to your estate or if directed by the estate, to your selected funeral director. The funeral bond's earnings will then be assessable income in the hands of your estate at the estate's marginal tax rate, but only in the year of the payment.

If you instead decide to transfer ownership of your funeral bond to a funeral director (as part of a pre-paid funeral arrangement), the benefit will be paid directly to them with the payout being assessable in the hands of the funeral director in the year of payment. The funeral bond's earnings will not be assessable to your estate.

Ownership options

You can own a funeral bond in your own name or alternatively as a joint investment with your partner or spouse. Where joint ownership applies, the funeral bond proceeds will be payable on the death of one policy owner (normally the first to pass away).

It is important to consider ownership in the context of social security benefits, if you receive or expect to receive a means-tested government income support payment. For social security purposes, a funeral bond will only be considered as an exempt asset provided the total contribution value is not greater than the allowable limit.

An alternative ownership arrangement (to holding a joint funeral bond) to consider where you are considering funding for funeral costs for yourself and your partner or spouse, is to each own a separate funeral bond. This enables each partner or spouse to invest up to the maximum amount allowed under social security rules without affecting pension entitlements.

Case study – controlling access to inheritances

Scenario

Sam is 75 years old and is looking for a way to pay for his funeral expenses. He wants to set up a pre-paid funeral arrangement through a funeral director.

Objective

Sam wants to ease the financial stress of his funeral expenses on his family and ensure that he is in an optimal Social Security Age Pension position.

Solution

Sam establishes a funeral bond investment to the value of $14,000 (the current allowable limit as at 1 July 2022). He assigns the ownership of the funeral bond to his funeral director in exchange for his selected pre-paid funeral arrangement.

Benefit

Sam can establish a pre-paid funeral arrangement and use the funeral bond investment as part of the arrangement. The funeral director will then use the proceeds of the funeral bond on Sam's passing to fund the cost of the funeral service.

Sam's funeral bond investment and any growth in value will be exempt from the Centrelink and Department of Veterans' Affairs assets and income tests. He will also not have to pay any personal tax on the funeral bond's ongoing investment earnings.

Funeral insurance

Funeral insurance is a type of insurance that you can take out to cover the cost of your funeral after you pass away. Depending on the type of funeral you would like to have, you can choose different levels of cover to fund the cost of your funeral. After your passing, this money will be paid to the person you have nominated as the beneficiary.

Generally speaking, funeral insurance premiums increase based on age, and therefore grow over time.

As an insurance policy, you will need to ensure you continue to pay premiums in order to keep the insurance cover. Insurance policies will generally also have restrictions and conditions on eligibility, for example, funeral insurance policies are not generally available where a person has commenced cover after the age of 65 years.

Additionally, health evidence may be required to be presented, and there may be a 'waiting period' where only a death as a result of an accident will result in a benefit payment being made.

When considering funeral insurance, you may want to consider the level of cover being offered, and conditions or exclusions that may apply to the policy as well as the level of premiums and the affordability of the premiums over time.

Tip

You should check the details of any insurance policy you are considering carefully.

A funeral insurance policy may require health evidence to be provided.

There may also be a minimum waiting period before cover will commence as well as eligibility criteria.

Insurance policies will generally assume that you have provided full disclosure as part of your application and will assess any claim made based on the disclosure. You should ensure that you have provided full disclosure as part of any application for insurance you make.

Using life insurance to provide for your family

You may want to consider taking out life insurance as part of your estate planning to provide a financial safety net for your family to meet future expenses (such as mortgage repayments) or to protect your interests in a business partnership.

How to access life insurance

You may choose to hold this cover in your superannuation fund. Alternatively, it can be held outside of your superannuation fund in your own name. You should discuss your life insurance needs with your financial adviser who can help you tailor a solution that meets you and your family's future needs.

Life insurance through superannuation

When you have life insurance through your superannuation, the premiums for that insurance are deducted from your superannuation account balance. This may help, particularly if personal cashflow is an issue for you, however, you may need to consider the impact on your returns as you will be reducing your superannuation account balance to fund the premium costs.

You may be able to agree with your employer to make salary sacrifice contributions into your superannuation fund to purchase your superannuation insurance in pre-tax dollars.

If you select a default level of insurance cover offered by your superannuation fund, some funds may automatically accept you for cover without requiring a health check. If you want to take out extra cover above the standard level through your superannuation fund, a medical questionnaire and a medical exam might be required.

Unlike taking out life insurance directly, the ability to nominate where proceeds from the insurance will be distributed will be subject to the superannuation fund's options on the payment of death benefits (see page 12). There may also be tax consequences where a death benefit is distributed to a non-tax dependant through a superannuation fund (refer page 13).

Insurance cover through superannuation generally ends once you have attained age 70, so you will need to consider alternatives if you wish to maintain cover beyond this period.

Holding life insurance in your name

Similar to life insurance held through a superannuation fund, directly owned life insurance provides a lump sum payment on your passing to help your spouse, partner or dependants.

Some providers may provide flexibility on how premiums are paid, for example, stepped premiums may be offered where premium rates are cheaper initially but increase over time.

You can also nominate any person or entity to receive the death benefit proceeds (including a trust), and there is no requirement for the beneficiary to be a dependant. Death benefit proceeds are paid tax-free directly to your nominated beneficiaries, without any delay in the process that may occur where the trustee of a superannuation fund is involved.

Tip

How you hold your life insurance to provide for your family will be different based on your personal circumstances and needs. You will need to consider your needs and personal circumstances, including:

- the type of cover you need
- the level of cover required
- how tailored you require the insurance to be
- the tax impact of a life insurance payout, and
- how you would like to fund the insurance premiums.

Insurance policies will generally assume that you have provided full disclosure as part of your application including any pre-existing medical conditions. Any claim made will be assessed based on the disclosures you have made. You should ensure that you have provided full disclosure as part of any application for insurance you make.

Estate planning checklist

- [ ] Do you have an up-to-date will?
- [ ] Do you need to pass on part of your wealth outside of your will and estate?
- [ ] Are your assets and investments structured to meet your estate planning needs?
- [ ] Have you reviewed your superannuation beneficiary nominations and the tax impact of your nominations?
- [ ] Have you considered the tax consequences of passing on your wealth?
- [ ] Do you need to set up a Power of Attorney for financial or medical reasons?
- [ ] Do you need to review your life insurance to ensure your family is adequately provided for after your passing?
- [ ] Have you considered gifting or early inheritances to pass on your wealth before your passing?
- [ ] Do you need to consider any government pension or entitlements that you may want to manage while planning for the transfer of assets?

You should seek advice from your financial adviser who can help you address these questions and other estate planning issues as part of a complete estate plan that meets your individual circumstances and objectives.

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About Generation Life

We understand that finding the right investment partner is important to you. As the pioneer of Australia's first truly flexible investment bond, Generation Life have been at the forefront of providing innovative tax-effective investment solutions since 2004. As an innovation led business, we constantly strives to enhance investment solutions to optimise after-tax investment performance for our investors.

Generation Life is a leading specialist provider of tax optimised investment and estate planning solutions – managing over $2.5 billion on behalf of our investors.

Generation Life is a regulated life insurance company and our parent company is listed on the Australian Securities Exchange. Our focus is to continue to provide Australians with market leading tax-effective investment solutions that provide a flexible investment alternative to meet both their personal and financial goals.

Our investment solutions are designed to help you grow your wealth, meet your day-to-day investment needs and to help you plan for your future needs including the transfer of wealth to the next generation.

generation life

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