

ESTATE PLANNING WORKSHOP

MAY– 2016

WARNING – GENERAL INFORMATION ONLY

WWW.CIFP.COM.AU

ESTATE PLANNING?

- **Estate Planning is all about putting the right structures in place to make sure your assets are distributed the way you want & in the most tax effective way.**
- **Peace of mind**
- **Maintain control**
- **Protect assets for yourself & loved ones**
- **Avoid taxes**

THE 3 MOST COMMON MISTAKES

1. NOT HAVING A WILL:

- No one can predict the future & if you are over 18 you are not too young to have a will.

2. NOT UPDATING YOUR WILL:

- Keep it fresh, making sure you are leaving your assets to the people you really want to help.

3. HIDING YOUR WILL:

- Make sure that your executor knows where your will is & where all the information is held regarding your debts, your assets & your beneficiaries

WHAT HAPPENS IF YOU DO NOT HAVE A WILL?

- If you die without a valid Will the law decides who gets your assets.
- This is called '*dying intestate*'.
- These rules apply to everyone & do not take into account an individual's wishes or situation.
- ***So who gets the estate?***
 - If you die without a Will or your Will is not valid, then an application for a Grant of Letters of Administration will need to be made to the Supreme Court. In *most instances* the grant is made to the next of kin of the deceased – for example, the spouse, domestic partner or a child of the deceased.
 - The estate does not pass to the government unless there are no living relatives.

THE STAGES OF AN ESTATE SERVICE

1. **The Planning** – Prior to death or incapacity
2. **Terminal illness / Palliative State**– Management of affairs whilst incapable & prior to imminent death
3. **Estate Administration** – Post death

TOPICS COVERED

- 1. LEGAL CONSIDERATIONS:** WILLS, POWER OF ATTORNEY'S, SUPER BENEFICIARY NOMINATIONS
- 2. TAX CONSIDERATIONS:** SUPERANNUATION DEATH TAXES, CAPITAL GAINS TAXES
- 3. ESTATE PLANNING CHECKLISTS**
- 4. FINANCIAL PLANNING ADVICE**
- 5. INVESTMENT STRATEGIES**
- 6. SUMMARY**

TOPIC 1: LEGAL CONSIDERATIONS

1. ESTATE ASSETS vs NON-ESTATE ASSETS
2. WILLS
3. SUPERANNUATION DEATH BENEFIT NOMINATIONS
4. TESTAMENTARY TRUSTS
5. POWERS OF ATTORNEY & OTHER TYPES OF POWERS

1.1 Estate Assets

- **INDIVIDUALLY OWNED ASSETS – SUCH AS:**

- Direct shares;
- Bank accounts;
- Property owned as tenants-in-common;

(Seen as individually owned and by percentages – 50/50 or 75/25 etc.)

- Any interests in a company or trust (A share holding)

1.1 Non-Estate Assets

- **SUPERANNUATION:**
 - May or may not be paid into the estate. (Paid to a beneficiary/dependent)
- **LIFE INSURANCE POLICIES:**
 - Paid to a policy owner or beneficiary
- **ASSETS HELD IN FAMILY TRUSTS:**
 - A trustee determination
- **ASSETS HELD IN PRIVATE COMPANIES:**
 - Owned by the company not an individual
- **CO-OWNED ASSETS:**
 - Owned on a joint basis with a partner

1.2 Your 'Will'

- Your Will is probably the most important document you will ever sign, so it is advisable that you have it prepared by a legal expert.
- ***So why do Studies show that on average 45% of Australians do not have a Will?***
- Should you die without a will your Estate may be divided according to a government formula – **Don't let this happen to you or your children's family!**
- In conjunction with your legal expert, continue to work with your Financial Adviser & Accountant to gain the best outcome & understanding.

1.3 Superannuation Death Benefit Nominations

1. PAYABLE TO YOUR BENEFICIARIES:

- Your Spouse; *
- Your children; *
- To an interdependent person; *
- To someone who is financially dependent on you & is approved by the Super Fund trustee; *
- Payable to your Estate.

2. BENEFICIARY NOMINATIONS:

- A binding nomination – renewable every 3 years
- **A non-lapsing binding nomination – never expires unless you change it – CIFP recommended**
- A non-binding nomination – is used as a guide by the trustee

*** These instructions payable to your beneficiaries by-pass your Will's directions
The Super Fund Trustee is bound to pay as per your directions in your Super Fund.
(The Super Fund Trustee does not take into account any ramifications of personal
taxation issues)**

1.4 Testamentary Trusts

- **Testamentary Trusts are usually set up to protect assets.**
- **It comes into effect when the person who has created the Will dies.**
- **Here are some reasons why you would create a Testamentary Trust:**
 - The beneficiaries are minors – (under age 18-21);
 - The beneficiaries have diminished capacity;
 - You do not trust the beneficiary to use their inheritance wisely;
 - You do not want family assets split as part of a divorce settlement;
 - You do not want family assets to become a part of bankruptcy proceedings.
- **Seek out professional legal advice**

1.5 Powers of Attorney

- 1. GENERAL POWER OF ATTORNEY**
- 2. ENDURING POWER OF ATTORNEY**
- 3. ENDURING GUARDIANSHIP**
- 4. MEDICAL POWER OF ATTORNEY**
- 5. ADVANCE CARE DIRECTIVES**

1.5 Powers of Attorney

- ***WHAT IS A 'POWER OF ATTORNEY' ?:***

- An authority granted by one person to another to allow the other person to act for them & manage their financial and or personal affairs.

- **1. GENERAL POWER OF ATTORNEY:**

- Valid for a particular period of time or for a particular purpose.
- Lapses on loss of capacity

- **2. ENDURING POWER OF ATTORNEY:**

- Similar to general P.O.A but does not lapse on loss of capacity
- Allows attorney to continue to manage a person's financial affairs once lost capacity

1.5 Other Types of Powers

3. ENDURING GUARDIANSHIP:

- Allows a person to make personal, lifestyle & health care decisions for someone else.
- May consent for medical treatment with-exceptions
- Generally can't refuse treatment

4. MEDICAL POWER OF ATTORNEY:

- Allows a person to make medical treatment decisions for another.
- Consent for major medical procedures & medicines
- Power to refuse certain medical treatment

5. ADVANCE CARE DIRECTIVES:

- Expression of wishes where terminally ill or suffering severe illness & can't make own decisions.
- Provide or withhold consent for certain life sustaining medical treatments

1.5 Powers of Attorney

- ***WHAT CAN AN ATTORNEY DO?***

GENERAL POWERS:

- Buy & sell shares & other investments;
- Prepare & lodge tax returns;
- Buy, sell, lease or mortgage property;
- Act as Medicare representative;
- Pay debts & expenses;
- Deal with DHS in relation to age care issues;
- Operate bank accounts;
- Commence & defend legal proceedings

POWERS CAN BE LIMITED:

- A P.O.A can be worded to only do specific things;
- Act only in relation to specific assets or issues

1.5 Powers of Attorney

- **ABILITY TO DEAL WITH SUPERANNUATION/ALLOCATED PENSION:**
 - Make contributions;
 - Take out lump sums;
 - Commence pensions;
 - Rollover to different funds
- **YOUR PERSONAL SUPER & PENSION FUND IS IN YOUR NAME ONLY:**
 - If you have a valid P.O.A in place then your attorney can retain control & administration on your behalf.
 - If you don't then someone on your behalf must make an application to VCAT & they decide who can administer your funds and in what context.
 - **Don't let this ever happen. It's a nightmare.**

TOPIC 2: TAXATION CONSIDERATIONS

1. SUPERANNUATION TAXATION COMPONENTS
2. SUPERANNUATION/PENSION DEATH TAXES
3. CAPITAL GAINS TAXES

2.1 Superannuation Taxable Components

- **EVERY MEMBER OF A SUPER FUND / ALLOCATED PENSION HAS:**

- Either a taxable super component, a tax-free super component or both:

For example:

Malcom has a Super/Pension account with: \$470,000

The tax-free component is: \$ 90,000

The tax-payable component is: \$380,000

- **CRUCIAL CONSIDERATIONS WE NEED TO CONSIDER:**

- *Are you single?*
- *Are you married?*
- *Do you have dependents?*

2.2 Superannuation/ Pension Death Taxes

- **Tax payable on Super/Pensions paid to a non-dependent when you die attracts a benefits tax of 17% on your taxable component.**
- **If you are married, in a de facto relationship, or have true dependents as defined by legislation, you don't have a problem today.**
- **If you are single & have no dependents lets look at our example:**

Malcom has a Super/Pension account with:	\$470,000
The tax-free component is:	\$ 90,000
The tax-payable component is:	\$380,000
@17%, your estate is liable for:	\$64,600.

- **We here at CIFP can offer strategies to eliminate this tax. It involves the initial establishment of a strategy followed up by a collaborative approach from your family members to keep us in the loop with what's happening with your health.**

2.3 Capital Gains Tax

- **Capital Gains tax liability on shares & investment property transferred to beneficiaries.**
- **MINIMISE TAX TRANSFERRED TO BENEFICIARIES AS FOLLOWS:**
 - Gradually offset capital gains against capital losses during retirement
 - 3 year option to wind up estate & utilise 3 financial years of tax free thresholds
- **CIFP STRATEGIES TO MINIMISE TAX INCLUDES:**
 - Transferring shares into an Investment Fund like the First Wrap to manage capital gains & annual income tax.
 - Offset fees against taxable income to reduce tax & increase Centrelink income.
 - Antidetriment payments to beneficiaries. – No longer available after recent federal budget
 - Transfer of Super/Pension account assets (In-specie) to existing investment fund.

TOPIC 3: ESTATE PLANNING CHECKLISTS

1. ESTATE PLANNING
2. INSURANCE PLANNING
3. ORGANISING FINANCIAL RECORDS
4. PERSONAL PLANNING
5. MAKING A WILL – WHAT TO CONSIDER

3.1 Estate Planning

- **One of the greatest gifts you can leave your survivors is an organised estate. The time you spend now will help your loved ones to cope later:**
 1. Make or update your will;
 2. Create durable powers of attorney;
 3. Create a letter of instruction;
 4. Calculate your net worth, including life insurance proceeds;
 5. Establish a trust if appropriate;
 6. Consider funeral planning;
 7. Make arrangements for the orderly transfer of business assets.
- **It's a good idea to discuss your plans with your loved ones & the executor of your will. You'll also want to consult with your legal, financial & tax advisers.**

3.2 Insurance Planning

- 1. Buy or update your life insurance**
- 2. Consider buying health/medical insurance**
- 3. Review your pension plan's survivor benefits & nominations**
- 4. Review your retirement plans**

3.3 Organising Financial Records

- **If your store any of the following information on your computer, make a list of all passwords & where the information can be found:**
 - Create a list of all financial accounts;
 - List the location of valuable documents;
 - List your personal data;
 - Make arrangements for access to your safe-deposit box;
 - List loan payments;
 - List other income sources & government benefits;
 - List the location of your tax records;
 - Verify account ownership & beneficiary designations;
 - List all organisations in which you have membership

3.4 Personal Planning

- 1. Provide details of where you may have left confidential or valuable items.**
- 2. Provide details of your spare keys & security codes.**
- 3. Provide easy access to your 'Will' & your 'Powers of Attorney'.**
- 4. Provide the name of your Vet & care instructions for pets if appropriate.**
- 5. List your advisors, such as your financial adviser, banker, lawyer, accountant & insurance agent – include their company names & addresses.**

3.5 Making a Will – What to consider

1. Choose who will receive your belongings & assets after you die;
2. Avoid family squabbles about your estate;
3. Choose who will be responsible for managing your estate (i.e. your Executor);
4. Decide who will be appointed a guardian to look after your children until they can take care of themselves;
5. Provide for children from a previous relationship;
6. Provide for a de facto or same sex partner who may not automatically be entitled to your estate;
7. Exclude a beneficiary who would otherwise get part of your estate;
8. Leave charitable gifts;
9. Appoint a trustee for the money & assets you leave to minor children (or other loved ones who cannot control their funds);
10. Take care of the needs of disabled loved ones;
11. Avoid needless taxes;
12. Take control of your own decision-making & publicly declare your values & wishes;
13. Tell your Executor what you want for your funeral;
14. Make decisions about organ donation & medical research;
15. Deal with the vexed issues of former partners/spouses & blended families

TOPIC 4:

FINANCIAL PLANNING ADVICE

- **UPON FINDING OUT YOU HAVE A TERMINAL ILLNESS:**
 - Engage with us your financial Adviser – it could save your estate \$\$\$\$\$\$ thousands.
 - Get your Family members involved with us – do they know who we are? – if not, why not?

- **WHEN HEALTHY & IN CONTROL:**
 - Family discussions/Family wishes
 - Make an appointment with CFP & include your children

TOPIC 5:

INVESTMENT STRATEGIES

1. **HAVING ADEQUATE LIFE INSURANCE:**

- The proceeds of Life Insurance to clear all debts & to provide a future income stream.

2. **ESTATE DISTRIBUTIONS:**

- Distributing an asset to beneficiaries rather than paying out the proceeds can defer Capital Gains Taxes.

3. **SUPERANNUATION DEATH BENEFITS:**

- Eliminate any prospects of disputes or tax implications through the proper establishment of beneficiary nominations & our CIFP strategies

4. **INSURANCE BONDS:**

- Create tax effective investment structures outside of superannuation.

5. **CENTRELINK PLANNING & AGED CARE:**

- Funeral bonds / Funeral planning / Pre-paid Funerals;
- Gifting;
- Purchase better health care policies;
- Re-direct inheritances into children's name

TOPIC 6: SUMMARY

- **When it comes to your retirement assets we here at CIFP are your families project managers. Your lawyers & other professionals are support to us. This could save your estate many thousands of dollars.**
- **Ensure that you have everything that we have discussed today in place. Do not leave it to chance or for someone else to worry about.**
- **Ensure that all of your own adult children have all of these measures in place. We here at CIFP can review their plans & give guidance to the appropriate establishment of all there investment & estate planning needs.**
- **Rest assured your in good hands with CIFP.**