BlueRock

# Guide to Estate Planning

Key Strategies for a Comprehensive Estate Plan

bluerock.com.au

# Table of Contents

# What is Estate Planning?

## An estate plan is not just about your will.

An effective estate plan involves reviewing and considering your assets and liabilities as well as your family situation to put in place a plan that meets your wishes and the needs of your family

## Elements of estate planning will vary depending on your needs and circumstances, but typically include:

- Understanding your wishes, including the distribution of your estate and specific gifts
- Understanding who the important people are in your life. These include beneficiaries, but also persons who may be appointed to certain roles in your estate plan (executor, powers of attorney and guardians of children)
- Superannuation planning, including nominations of beneficiaries and other possible options
- Life insurance advice to ensure appropriate levels and types of insurance are in place so that the required asset base is transferred to loved ones on death
- Understanding any family issues that may affect the strategy of your estate plan
- Structuring and understanding how assets and liabilities should be dealt with on your death and the establishment of Testamentary Trusts in a manner which is tailored to your specific circumstances and objectives. Broadly speaking, assets can be divided into one of two categories: Estate Assets or Non-Estate Assets
- Tax structuring to ensure minimisation of tax payable on death but also in the future, given that an effective estate plan can put in place trusts and strategies that can exist long after death for multiple generations
- Other matters (where appropriate) such as the protection and succession of business, trust and company assets and the intricacies involved in appropriately planning for the transition of ownership and control

**Estate planning is an essential part of anybody's overall wealth management and strategic financial plan.**

It's not just for the wealthy! Australia's growing ageing population, the increase in marriage breakdown and blended families, as well as the rise of non-real estate assets all highlight the importance of comprehensive and holistic estate planning advice for everyone, including a need for life insurance and appropriate ownership structures.

---

Comprehensive estate planning is about making sure the **Right Assets go to the Right People at the Right Time.**

# Why is Estate Planning Important?

## Putting in place a valid will as part of a comprehensive estate plan means you control how your assets pass on your death.

If you do not have a valid will when you die, you will be intestate. This doesn't mean you have travelled over the border! It means that instead of you deciding who will receive your estate, it will be divided up with a formula set out in legislation. As you can imagine, this can lead to unexpected and unintended results.

### Importance for Individuals

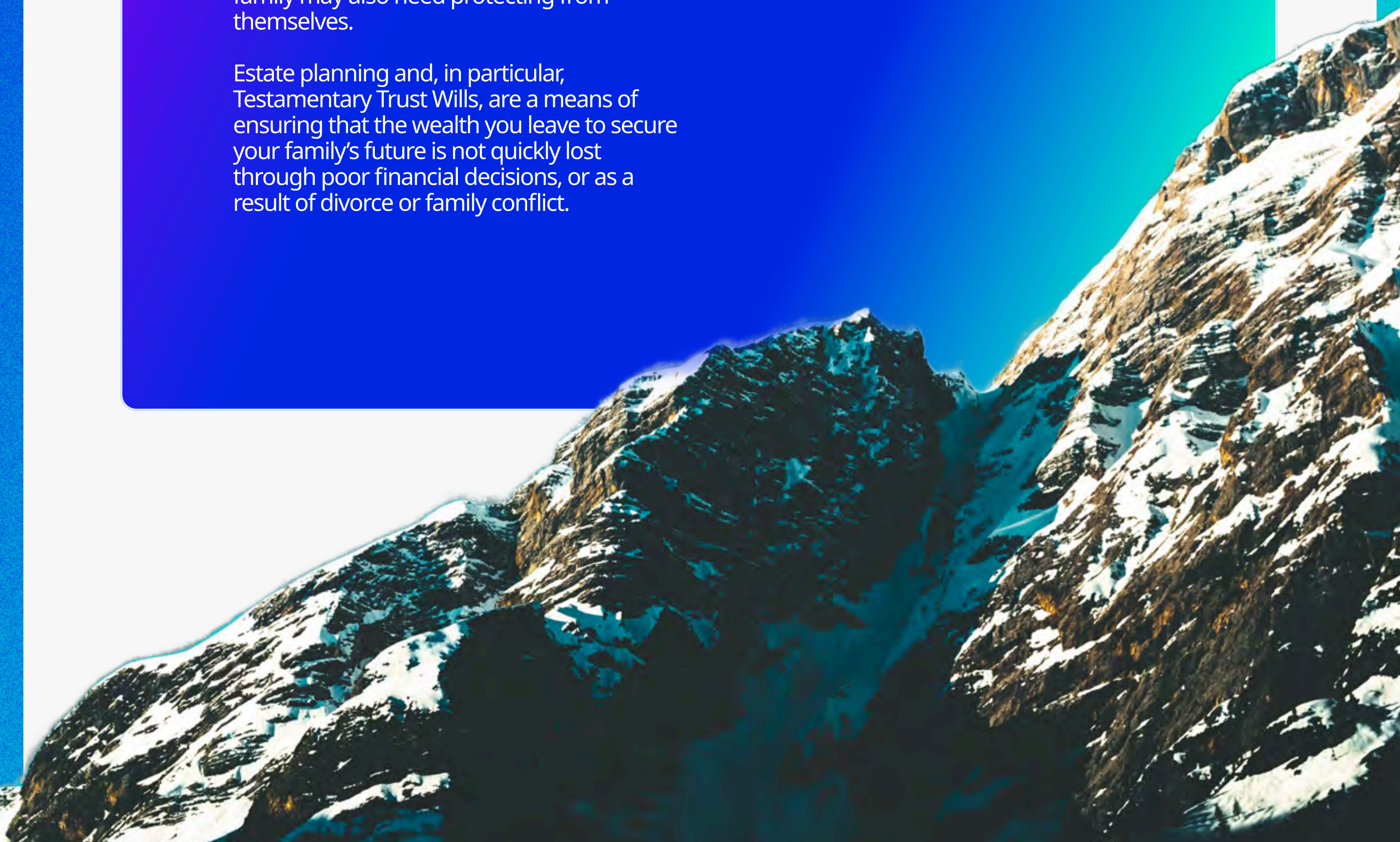
If you make a will, you can avoid your family being faced with complications and administrative issues at an emotional time. Making a will gives certainty to your family, and helps to avoid disputes among family members. No one wishes their legacy to be a family conflict.

An effective estate plan can also enable you to protect and support your family and secure the wealth you have built up. You can structure your will to ensure that your family's wealth is protected against adverse outside influences. In some cases, your family may also need protecting from themselves.

Estate planning and, in particular, Testamentary Trust Wills, are a means of ensuring that the wealth you leave to secure your family's future is not quickly lost through poor financial decisions, or as a result of divorce or family conflict.

### Importance for Business Owners

In most instances, the majority of a business owner's wealth is in the business itself. So it's important to ensure that, in the event that something happens to the business owner, the wind-down of the business is appropriately planned for. In such an event, it's critical to ensure the control of and interests in the business are transferred to the appropriate people.



# Key Strategies for a Comprehensive Estate Plan

**There are a number of fundamental considerations and strategies that support the creation of a robust estate plan.**

You will be able to action or execute some of these strategies yourself while others may call for additional advice or support. The main thing to remember is that every family and business has different needs, structures and assets, so there is no one-size-fits-all estate plan. The strategies below will get you thinking about the right approach for you and your family, and help you to understand what's possible.

## Gain an Understanding of Your Assets

Getting a solid understanding of the way your assets are classified will allow you to make more informed decisions on ownership and avoid unnecessary fees and levies. Your assets fall under one of two categories:
estate assets and non-estate assets.

**If an asset does not fit the criteria as an estate assets, it may not be able to pass in accordance with your wishes as outlined in your will. Let's dive into it a bit more detail.**

### Estate Assets

**Estate Assets are essentially anything that you own in your personal name either outright or as tenants in common with another person or entity.**

Some assets, such as property owned as joint tenants, are not estate assets because ownership passes to the surviving joint tenant. Only estate assets can be distributed via a valid will.

**The most common estate assets are as follows:**

- Personal items, such as a car or collectibles
- Property, such as your principal residence or investment properties
- Debts and loans owed to you
- Share of any partnership assets
- Shares in a proprietary company held by the deceased
- Investments such as shares in listed companies and monies held in a bank account or managed fund account solely in the deceased's name
- Right to recover monies owed to the deceased
- Rights held under a contract
- Life insurance and superannuation benefits paid to the deceased's estate

## Non-Estate Assets

**Non-Estate assets are those that cannot be gifted in a person's will,**

either because the person is not the legal owner, such as a family trust, the assets are owned as joint tenants, or where a facility exists, such as a binding nomination, whereby the asset can be passed to a beneficiary, essentially bypassing the deceased estate.

**The most common non-estate assets include:**

- Assets held by the deceased as a joint tenant
- Assets held in a discretionary or unit trust
- Assets owned by a company of which the deceased was a director
- Partnership assets
- Life insurance and superannuation benefits paid directly to beneficiaries

As we can see from the above, life insurance and superannuation benefits can either be estate or non-estate assets, which will depend on ownership and beneficiary structures and will be dictated by an individual's needs and objectives.

## Joint Tenancy and Tenants in Common: What's the Difference?

**Joint tenancy and tenancy in common are the two most common classifications of ownership of a property.**

When it comes to joint tenancy, full ownership of the asset will automatically pass to the surviving joint tenant or tenants upon the death of one, so it follows that a joint tenant cannot deal with this asset in his or her will. This arises under property law legislation.

Married and de facto couples usually hold ownership of their principal place of residence as joint tenants, so the asset will pass to the surviving partner. There is no presumption of joint tenancy for many personal assets such as chattels. Bank accounts held in both names are also an asset that will automatically pass to the surviving account owner.

Tenancy in common refers to ownership of an asset by parties who do not automatically have a right of survivorship. They are co-owners in the property but not have equal shares or interest. This means that if one of the parties dies, their interest in the asset forms part of their deceased estate and does not automatically pass on to another co-owner.

Real estate owned as joint tenancy can be easily converted to a tenancy in common, even if the other joint tenant disagrees. This may be desirable following marriage separation or divorce. Tenants in common own a property in fixed and sometimes unequal shares (such as 80% to one party, and 20% to another).

There are pros and cons to both structures, so it's best to talk this one through with your financial advisor and a lawyer.

# Protect Your Family Home with a Right to Occupy

**For business owners and directors of companies, it is common practice for the family home to be owned in the name of the spouse who has less exposure to outside liabilities (creditors, litigation etc) because they are not a director.**

In this instance, a comprehensive will should include clauses that protect the family home, while allowing the surviving spouse to maintain control of the property for them and their family. This is referred to as a 'Right to Occupy.'

A Right to Occupy essentially give someone the right to live in the property, without the property having to be taken in the personal name of the beneficiary. The beneficiary's entitlement is normally subject to certain conditions such as, maintaining the property and paying property expenses.

Unlike a life interest, the beneficiary can't lease the property, and they're not entitled to receive income. When the Right to Occupy or trust ends, the property is either transferred to trusts that have already been established under the will or sold and the net proceeds are paid to the remaining beneficiaries.

Another common inclusion in a Right to Occupy is the ability for the Trustee to sell the property to buy a property that is more suitable to their lifestyle or needs. This may extend to include a nursing home bond.

This type of occupation right can be used to provide someone, such as a spouse, with the use and benefit of the house during their lifetime while preserving the property for the benefit of another party, such as their children. It can be a handy strategy when the person creating the will has a spouse from a second marriage but also where this person is concerned that their spouse may remarry and their children may lose their entitlement to the property. Importantly, the full capital gains tax main residence can be extended and apply from the date of death through to when a property is sold (unlike the normal rule which requires a beneficiary who inherits the deceased's house to sell it within 2 years of date of death in order to obtain a full tax exemption).

# Take Advantage of Testamentary Trusts

**Most people are aware that trusts provide better asset protection than owning assets in your own name (e.g. in case you're sued for negligence as professional or you have personal director's liabilities). But not as many people are aware of entirely legitimate tax advantages you can utilise through a Testamentary Trust.**

Before we get into the specifics of how this works, let's get back to basics. A Testamentary Trust is a powerful estate planning tool that is set up by your will and only comes into existence after your death. Under a Testamentary Trust structure, assets held by you at the time of your death don't pass directly into the hands of your family members or beneficiaries, but instead pass to one or more 'discretionary trusts' controlled by the people you name in your will (known as the Trustees). The Trustee and principal named beneficiary can be the same person(s), providing complete flexibility while managing the underlying assets.

There are two main advantages of Testamentary Trusts compared to leaving assets directly to your children or other chosen beneficiaries. These are asset protection and tax benefits.

## Using Testamentary Trusts for Asset Protection

Your chosen beneficiaries can be provided with the option to not receive their inheritance directly into their own names. This means that assets passing to and continuing to be held in a Testamentary Trust are protected from any existing or future creditors because the assets won't form part of the personal assets of the beneficiaries.

For example, Jack and Ann have a daughter, Kate, who is married to Nick and they have two children. Kate and Nick have their own hairdressing business, owning two salons. Jack died leaving all his assets to Ann and 12 years later Ann dies. Ann's Will provides for her assets to pass to a Testamentary Trust for Kate.

If Kate and Nick's business fails and they are declared bankrupt, their personal assets (for example their home and direct business assets) will be available to pay their creditors. Creditors cannot claim the assets held in the Testamentary Trust.

By establishing a Testamentary Trust in her will, Ann has ensured that her daughter's family will still benefit even if Kate encounters financial difficulties.

BlueRock

# How Does a Testamentary trust Protect Assets After Divorce?

**Parents are very often concerned that their children's inheritance will not be available to be divided if a family law issue arises in the future.**

The assets held in a Testamentary Trust may be protected from transfer to a son-in-law or daughter-in-law if the child's relationship breaks down. The assets are ring-fenced in the Testamentary Trust and can therefore be clearly identified and separated from the other family assets.

However, assets held in that trust may still be taken into account by the Family Court for the purposes of a property settlement in terms of weighing up the financial resources available to a spouse. There are various considerations regarding this issue, which can be built into the establishment of Testamentary Trusts and your wider estate plan.

# Can Testamentary Trusts Work if the Beneficiaries are Vulnerable or Need Protection from Themselves?

**Testamentary Trusts are flexible structures that can be tailored to meet the individual needs of the family.**

If the family includes beneficiaries who require protection from themselves, or are vulnerable to outside influences, Testamentary Trusts can protect the assets as well as provide a structure to support beneficiaries in making financial decisions. We'll take you through a couple of examples.

Example 1

## Young Children

Kate and Nick have two children: Amy, aged 8 and Tom, aged 12. Kate and Nick have established two Testamentary Trusts in their Wills; one each for Amy and Tom. Kate and Nick have nominated their close friend, Edward to act as trustee of the Testamentary Trusts. Edward will act if both Kate and Nick die before the children are old enough to act as trustees of their Testamentary Trusts and manage their inheritance.

Once the children reach the age chosen by Kate and Nick (they have selected 28 years), Edward can retire from the role, leaving the children in control of their inheritance. Kate and Nick have left it to Edward to decide if the children are ready to take on this role when they reach 28. If they're not ready, or are facing financial or family law issues in their own lives, Edward can stay in control.

Kate and Nick have also included a request that Edward appoint the children to act as joint trustees if they have reached the age of 18 at the time when Kate and Nick have both died. This would mean that the children would obtain experience in making decisions in relation to their inheritance, but in a protected environment having to act jointly with Edward. Edward retains the discretion to retire, leaving the children in sole control once they reach the specified age.

Example 2

## Vulnerable Adult Children

Peter and Susan have two sons: Sam and James, and a daughter Lucy. Sam is 32 and has a history of gambling problems. Sam accepts he has a problem and has recently obtained counselling. He is in full-time work and has got his life back on track. Sam is aware that his problems have the potential to re-surface. James is 28 and is intellectually disabled. He has a part-time job and lives in a group home.

Lucy is the eldest at 35 and is an accountant. Peter and Susan's Wills establish 3 Testamentary Trusts one for each of the children.

Lucy will act as joint trustee with Sam for Sam's trust. This means that Sam and Lucy make decisions together regarding Sam's share. If Sam's gambling problems re-surface, he will not be able to withdraw funds from his trust to gamble without the agreement of his sister.

James' intellectual disability means that, while he is able to live independently, he needs support in making financial decisions. Lucy and Sam will as trustees of his fund to manage his inheritance.

There are ver important considerations that need to be worked through with your financial advisor regarding the above examples.

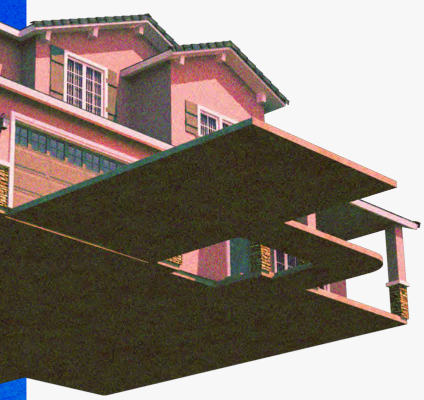
BlueRock

# Using Testamentary Trusts for Tax Benefits

As well as asset protection, there are significant tax benefits that can be realised in a well-planned Testamentary Trust structure. Testamentary trusts are 'discretionary', which means that the trustee decides how the trust assets are invested and distributed.

The trustee can decide which of the beneficiaries receives the income from the trust. This means that the trustee can make distributions from the trust in a tax effective manner, for example by distributing income to beneficiaries having the most attractive marginal tax rates.

## Are There Tax Advantages for Beneficiaries Under the Age of 18?



**Beneficiaries under the age of 18 (e.g children and grandchildren) receiving distributions from a Testamentary Trust are not subject to the usual penalty tax rates applicable to minors who receive unearned income from say, a family trust, and instead have an adult's tax rate.**

A flat rate tax equal to the highest individual tax rate of 45% is applied to all investment income of children under 18 years for assets held personally or where an existing family trust distributes income to them. These penalty tax rates do not apply to income which comes from Testamentary Trusts.

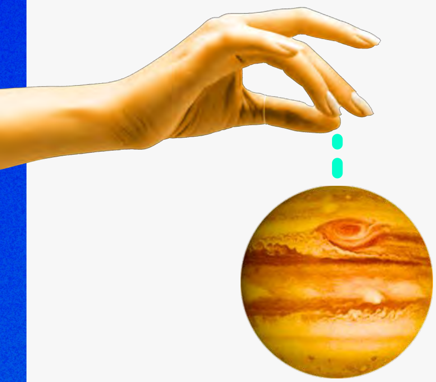
When children receive income from Testamentary Trusts, they are taxed at ordinary marginal rates. This means that children can take advantage of the low income tax offset, tax free threshold and more generous tax rate thresholds, which can significantly improve the net worth provided by your estate.

For example, Sarah dies leaving David a widower with three young children all in private schools. Sarah's estate included a life insurance policy of $1,500,000 which is now invested to generate $60,000 per annum (4% return). If the life insurance policy passed to David all the income would be included in his tax return and he would pay tax on it at his marginal rate. If David was on the top marginal rate of 45%, he would pay tax of $27,000.

If the insurance policy passes to a Testamentary Trust established by Sarah's Will, David can decide to distribute the $60,000 Testamentary Trust income equally between the three children taking advantage of their lower marginal rates. If each child received $20,000 per annum, the tax payable is $0 as they are within the tax free threshold.

In this example, the Testamentary Trust provides a tax saving of $27,900 per annum.

# How are Testamentary Trusts Established and Controlled?



**Testamentary Trusts are established only after the death of the person making the will ("Will Maker"). Testamentary Trusts can operate for a period of up to 80 years from the date of death of the will maker.**

The trustee is given powers by the terms of the Testamentary Trusts to invest and distribute assets and income (and capital if it is required for something unexpected) to persons who are beneficiaries, so has control of investment and distribution decisions relating to the Testamentary Trusts.

Once the Testamentary Trusts are established the person nominated as the Appointor has ultimate control over the Testamentary Trusts as they have power to remove and replace the trustee(s) and appoint additional trustees.

The children or the person who is to be the main beneficiary of the Testamentary Trust is usually nominated as the "Primary Beneficiary". The spouse and relatives of the "Primary Beneficiary" can receive benefit, but only if the trustee decides that they are to receive a benefit. Just because they are members of the class of beneficiaries does not mean they have any rights over the assets held in the Testamentary Trust.

When the Testamentary Trusts come into existence, there will be costs to maintain the structure, including the cost of preparing and filing a tax return for the trust. Again, these costs will vary depending on the type of assets and investment activities carried out by the Testamentary Trusts.

# Understand the Estate Planning Implications of Life Insurance

**Life insurance policies essentially have two key structural components: being a policy owner and a life insured. The life insured must be a natural person, while the policy owner can be a natural person, a corporation or a trust (such as a super fund).**

The two most common structures for personal life insurance held is for the person to be the life insured, with the ownership often varying between being "personally held" and "held through superannuation", both having different implications from an estate planning perspective.

## Self Ownership of Life Insurance

When a person is the life insured and the policy owner, any death benefits would be paid to the person's estate to be distributed to their nominated beneficiaries in their will.

Often people don't factor in life insurance policies held when considering assets; however, once life insurance proceeds are paid out, there can be a material amount of money that needs to be managed for the beneficiaries. This is why it's important for Testamentary Trust provisions to ensure the right people take control of these benefits in a protected and tax effective structure.

## Life Insurance Owned through Superannuation

Alternatively, when a person is the life insured and the policy owner is a superannuation fund, the life insurance proceeds in the first instance are paid into your superannuation fund, and then to your estate.

Given that superannuation is subject to some specific rules around beneficiaries and paying out member benefits, it's critical to ensure that you have appropriately planned for the distribution and control of your member account balance in your superannuation fund in the event your life insurance was paid out, who the nominated beneficiaries are, and whether you have a Superannuation Proceeds Trust drafted into your will. Your accumulated benefits which may include life proceeds paid to the trustee of your super fund and added to your account, 'superannuation death benefits'.

# Build and Protect Your Wealth Through Superannuation Nominations

**Superannuation death benefits are often made up of the investments accumulated throughout your life as well as any life insurance proceeds that are paid out upon your death. What differentiates superannuation from personally owned assets is that superannuation is subject to specific legislation and, depending on how it is structured, can be an estate asset or a non-estate asset.**

So what's the best approach? A common tactic is to nominate your spouse as the beneficiary in order to take advantage of a reversionary pension. This allows the surviving spouse to keep as much of the proceeds as possible (up to $1.6 million, with the remainder having to be paid out or placed back into taxable accumulation mode) in superannuation in order to continue to take advantage of the tax-effective environment and draw down upon the funds as needed.

Alternatively, you could nominate your estate (Legal Personal Representative) as the beneficiary to receive the death benefit in a testamentary trust or a superannuation proceeds trust. A superannuation proceeds trust is a special form of testamentary trust that is set up to receive superannuation death benefits solely for 'tax law dependants' as the primary beneficiaries and who must take the capital when the superannuation proceeds trust is vested. Tax law dependants are generally the spouse of a deceased member, children of the member under 18 or children over 18 who were actually financially dependent on the deceased at the date of death.

Superannuation death benefit nominations are legal directives to a trustee of a superannuation fund informing the trustee of how a member would like their superannuation death benefits paid in the event the member was to pass away, provided the beneficiary/ies named are eligible to receive the benefits under superannuation legislation.There are a few other considerations when it comes to superannuation nominations.

## Binding vs Non-Binding Superannuation Nominations

Superannuation death benefit nominations may either be binding or non-binding on the superannuation fund's trustee. If they are binding, the super fund trustee is bound to pay the beneficiaries in accordance with the member's wishes. If they are non-binding, the trustee will consider the member's nomination, but retains an overriding discretion to pay the death benefit in the way it decides.

It is critical to ensure your superannuation nominations are made to the correct entity to avoid any unnecessary tax implications as a result of death benefits being paid to a non-dependant for tax purposes, such as an adult or non-financially dependent child (or at least to be aware that 17% tax will be payable on the taxable component of your death benefits if a non-tax law dependant such as an adult child receives the benefits).

## Lapsing vs Non-Lapsing Superannuation Nominations

The difference between lapsing and non-lapsing superannuation nominations is that a lapsing nomination is generally valid for three years; whereas a non-lapsing nomination doesn't expire. To break it down, your superannuation nominations could be:

- Non-Binding & Lapsing
- Non-Binding & Non-Lapsing
- Binding & Lapsing
- Binding & Non-Lapsing

It's important to understand what the current nomination in your superannuation fund is to have a greater level of certainty in your estate planning arrangements.

# Plan Your Business Succession

### Consider a Buy-Sell Agreement

In situations where you have more than one business owner, it's prudent to have a process in place to manage the exit of an owner, or even the addition of a new one. Many business owners don't appreciate the idea of being forced to have a new business partner without a very important say in that decision.

For instance, should one of the partners pass, it's not ideal for the surviving spouse of that partner to then step into a position of control or influence in the running of that business. This is where a buy-sell agreement can come into play.

A buy-sell agreement is a legally binding contract that stipulates how a partner's (or shareholder or unitholder's shares or units) share of a business may be reassigned if that partner dies, becomes permanently disabled or otherwise leaves the business. Most often, the buy-sell agreement stipulates that the available share must be sold to the remaining partners or to the partnership.

The agreement may be drafted in a way that applied to any business structure such as a partnership, a unit trust or a proprietary company.

## How are Buy-Sell Agreement Payouts Generally Funded?

**Generally, a buy-sell agreement is fully funded by the proceeds of a life insurance policy. It provides for the departing owner or their estate to be paid an amount equivalent to the market value of a departing owner's interest in the business in the event of their death or total and permanent disablement.**

So, should a partner in a business pass or become permanently disabled, the insurance proceeds (funded by the business or on a self insurance basis where each key person takes out and pays for a life and TPD policy solely for the purposes of the buy/sell agreement) will be paid to their estate, ensuring their beneficiaries are fairly and swiftly compensated, avoiding an often drawn out payment of equity. In turn, the equity in the business is passed to the surviving partners in line with the buy-sell agreement.

## Specific Gifts, Family Businesses & Estate Equalisation

What is often the case with family businesses that have spanned two to three generations is that some family members can be heavily involved while others may have never worked in the business a day in their life. This, however, doesn't mean the parents, or the will makers, don't want to leave their assets equally to all of their children. They might just be reluctant to pass on equity or control of a family business to members who haven't been involved in its success.

This is where specific gifts and estate equalisation come into play.

A specific gift is relatively simple - you are giving your beneficiary something specific, that you already own, which severs the gift from the rest of the estate. Thus, the gift gets preference before the payment of debts, which should come from the residue. Specific gifts could be your engagement ring, a family heirloom or anything of sentimental value.

However, specific gifts can also be shares or interests in a particular company, such as a family business.

Estate equalisation is most commonly used to facilitate the equitable passing of a family business to the next generation. It's the process involving one asset, such as shares in a family business, being gifted to one child or group of children, and an asset of equal value, such as real property, being gifted to others. A common approach to ensure this strategy is equal, and less vulnerable to being contested at court, is through the use of life insurance, equalising the value of the shortfall.

Estate equalisation can be instrumental in helping prevent future family disputes and can protect the value of the business you have worked to build up, as assets do not have to be sold (often with tax implications) and can remain for the family's benefit.

# Nominate Your Powers of Attorney

**An enduring power of attorney (EPOA) allows you to appoint a person or persons to make decisions about your personal and financial matters.**

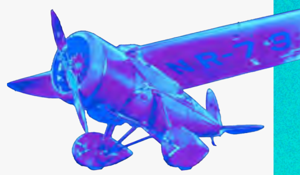
You can appoint your attorneys to make financial decisions on your behalf (e.g paying bills, dealing with bank accounts), personal decisions (e.g. where you live) or both. Your EPOAs can take effect immediately, or you can commence at a later dat, such as when you no longer have capacity to make decisions.

Attorneys need to be 18 or older and must not be insolvent or provide health care or accommodation services to you. Your financial attorneys also need to disclose to you whether they've been found guilty of an offence involving dishonesty.

If you appoint more than one person to act as your financial and personal attorneys, you can specify how you want them to make decisions. For example, you can specify that they need to act jointly (together), severally (separately), jointly and severally (together or separately) or that decisions need to be made by a majority of attorneys.

You can also set out specific instructions to your attorneys regarding things like:

- making gifts on your behalf to relatives
- entering into conflict transactions
- making payments to any dependants you have, like children



Attorneys have obligations under the Powers of Attorney Act 2014 (Vic) to act honestly, exercise reasonable skill and care, keep accurate records and accounts, and not use their position for profit.

If you travel a lot or have periods where you're uncontactable, having an EPOA in place can assist in time-sensitive situations where a document needs to be signed by you, or an important decision that affects you needs to be made.

If you don't have an EPOA in place and you become incapacitated, your family or someone you know will need to make an application to VCAT to appoint someone to make decisions on your behalf. This can be costly and time-consuming exercise, especially if another family member objects or seeks to apply to become the guardian and/or administrator.

# Dealing with Medical Decisions

**The appointment of a medical treatment decision-maker allows you to appoint someone to make medical decisions on your behalf in the unfortunate event that you're unable to.**

Your decision-maker must be at least 18 and should be someone you trust to carry out your medical decisions and preferences. You can appoint more than one person to be your decision-maker, but only one person can act at any one time.

An appointment must be in writing and be signed and witnessed in accordance with specific requirements under the Medical Treatment Planning and Decision Act.

If you don't have an appointment of a nominated decision-maker in place, then the Medical Treatment Planning and Decision Act effectively nominates someone for you. Your decision-maker will be the first adult from the following default list who is ready, willing and able to take on the responsibility:

- your spouse or domestic partner
- your primary carer
- your adult child
- your parent
- your adult sibling

The above default list is unlikely to suit everyone's circumstances. If you don't want the above people making decisions on your behalf, than you should make sure you have a valid appointment in place.

## Providing an Advanced Care Directive

Once you have nominated your medical treatment decision-maker, it's important to create legally binding instructions about future medical treatment you wish to receive and refuse. This is known as an Advanced Care Directive (ACD) and will be referred to by your medical decision-makers and health practitioners in circumstances where you can no longer make decisions about your own treatment. A valid ACD will override a medical decision maker's decision on a particular and specific treatment that is mentioned in the ACD (such as here the maker of the ACD states that they would not wish to receive a particular medical treatment). To make an ACD you need to be 18 and over and have decision-making capacity.

The document is made up of two sections: an intructional directive and a values directive.

A values directive is a statement about your values and preferences for medical treatment. Such preferences relate to what's important to you. Is it important that you stay at home as long as possible? What worries you the most about your future? Do you have particular spiritual, religious or cultural preferences or requirements?

An instructional directive provides specific details and instructions about treatment you consent to and/or refuse. To be binding, instructional directives need to be as specific as possible. Because of this, ACDs must be witnessed by at least one person who is a registered medical practitioner.

BlueRock

# Preparing for the Estate Planning Process

## 1 Discuss your 'Trusted People'

**One of the most productive things you can do in the lead-up to an estate planning meeting is to begin discussions with your family on who the 'trusted people' in your world are. Who do you want to step into positions of care and control should something happen to you, your spouse or both of you?**

There are numerous roles of responsibility within a comprehensive estate plan, such as executors, guardians of children, trustees, appointers or powers of attorney and there may be trusted people in your life that are suitable for some roles and not others. An experienced estate planning lawyer will help you navigate these roles and nominate the right people.

## 2 Collect Your Assets and Liabilities and Gain an Understanding of Ownership

**It's always helpful to have a clear idea of your personal assets and liabilities leading into an estate planning conversation. One of the most important exercises you should be going through with your estate planning advisor is a discussion around specific wishes for each asset and how this can be achieved in your estate plan.**

As you can probably tell by now, it's important to have an understanding of each asset and the ownership implications, which can be worked through with your advisor to ensure your wishes are met.

## 3 Maintain and Monitor Your Estate Plan

**Once you have created your estate plan, best practice is to revisit your plan every three to five years to make sure it's still appropriate to your circumstances and that your wishes are still reflected.**

One of the key benefits of going through a comprehensive process is that you can arrange and plan for multiple circumstances, and will only need to amend your will if there's a significant change in personal circumstances.

# Get in touch with one of our Estate Planning Experts

**To establish a structurally sound estate plan that best meets your wishes, we recommend you arrange a cost and obligation free first meeting with our estate planning team.**

BlueRock offers a multidisciplinary approach to estate planning that brings together the expertise of our lawyers, financial advisors and SMSF experts.


Annette Templeton
Bayside
*Associate Director - Law*
+03 9580 8311
annette.templeton@thebluerock.com.au



Danielle Kammergruber
*Lawyer - Law*
+61 410 539 385
danielle kammergruber@thebluerock.com.au



Mary Bugeja
*Law Clerk - Law*
+03 9604 9402
mary.bugeja@thebluerock.com.au



Amanda Convey-Ryan
Bayside
*Legal Assistant - Law*
+03 9580 8311
amanda.conveyryan@thebluerock.com.au