

TYLER & CO. Business & Property Lawyers

ESTATE PLANNING INTRODUCTION

Introduction

Estate planning means arranging your affairs so as to minimise the problems that may be caused both while you are fit, healthy and solvent and also in case of various misfortunes, including:

- * Legal claims against you (e.g., liability as a partner or director)
- * Bankruptcy
- * Marriage breakdown
- * Temporary or permanent incapacity
- * Death

Such problems can include:

- * Paying more tax than you need to while you are alive
- * Loss of eligibility for governmental assistance
- * Confiscation of assets
- * Inability to access your bank account or to manage your business or other assets in case of your incapacity or death
- * Insufficient income to meet the present and future needs of yourself, your family or your business in case of incapacity or death
- * Distribution of your assets otherwise than as you would wish in case of death
- * Unforeseen tax and stamp duty consequences of disposal of your assets in case of incapacity or death

Plan now - review later

Estate planning is not something that you can do once for all time. Every plan needs to be prepared with both present circumstances and future intentions and possibilities in mind. Then it should be reviewed at least once a year and adjusted to suit changing circumstances and requirements. Flexibility of your plan is important.

It is also important to understand that, whilst you may plan for what you know, intend and foresee, unexpected events may lead to unintended outcomes. Thus, whilst we do our best to ensure that your aims are achieved, we cannot guarantee that they will be.

Basic information

To begin preparing your estate plan we need a summary of your present circumstances and your future intentions, including:

- * Your assets and liabilities
- * Your dependents
- * Your future plans for yourself and your dependents

Estate planning instruments

When we know your present circumstances and future plans, we can consider what would be the position in the situations listed above. In each case we analyse the likely effects of the event on you, your dependents and your assets and consider how we can optimise the position by use of a variety of estate planning instruments, including:

- * Powers of attorney
- * Companies, partnerships and trusts
- * Options and other buyout arrangements
- * Insurance
- * Superannuation
- * Enduring guardianship
- * Wills

Naturally, what is suitable for some circumstances may not be appropriate for others. In such cases it may be necessary to decide between competing priorities or to make compromises. Our aim is to explain the issues and alternatives to you so that you can make informed decisions.

Checklist

We attach a checklist of matters to be taken into account in preparing your estate plan. Please complete it and bring it with you when you come to see us.

ESTATE PLANNING CHECKLIST

1. Personal details

Please provide the following information about yourself:

Full name:	
Previous names:	
Address:	
Telephone no.:	
Email address:	
Age (if less than 18):	
Occupation:	
Health (if uncertain):	
Domicile:	
Marital status:	
Spouse/de facto's full name:	

2. Family details

Please provide the following information about **all** your family and other dependents.

NB: Please specify any de facto spouse, former spouse, intended marriage, step child, adopted child, foster child, illegitimate child and child of former de facto spouse, as appropriate.

Full name	Address	Occupation	Relationship	Age

3. Assets

Please give particulars of your assets and (for will purposes) intended beneficiaries on the assets form that follows.

4. Liabilities

Please give particulars of any debts or other liabilities not mentioned on the assets form.
****NB: Please include all guarantees, indemnities, mortgages, charges, etc. that you have given.**

Liability type	Amount	Creditor's name	Due date

PERSONAL ASSETS - continue on separate sheets as necessary

Description	Details & location	Ownership	Date acquired	Acquisition cost (total)	Current value	Encumbrances & extent	Net value	INTENDED BENEFICIARY (Name)
Real estate								
Leases								
Shares in public companies								
Shares in private companies (<u>incl. trustee companies</u>)								
Interests in public trusts								
Interests in private trusts								
Interests in partnerships/ other businesses								
Super funds								
Life insurance policies NB: show nominated beneficiaries (if any)								
Bank/building society deposits								
Debts due to you NB: show debtor's name								
Intellectual property and royalties								
Motor vehicles								
Boats, aeroplanes								
Livestock								
Furniture								
Paintings/other art objects								
Antiques								
Jewellery								
Household chattels								
Other personal effects								

<p>5. Your aims</p> <p>Please summarise your aims for yourself, your dependents, your business and your assets and the plans and arrangements you have made to fulfil those aims. Include (for example):</p> <ul style="list-style-type: none"> * Education of your children * Expansion of your business * Planning for your retirement (including business succession and post-retirement income) 	
<p>6. Your priorities</p> <p>In order of priority, what are the three most important aims you have listed in 5. above?</p>	
<p>7. Impact of adverse events</p> <p>Having regard to your stated aims, how would each of the following affect your plans if it occurred within the next 12 months:</p> <ul style="list-style-type: none"> * Legal claims against you (e.g., liability as a partner or director) * Bankruptcy * Marriage breakdown * Temporary incapacity * Permanent incapacity * Death 	
<p>8. Adverse events to ignore</p> <p>Please specify those of the circumstances listed in 7. above that you are <u>not</u> concerned to plan for.</p>	
<p>9. Power of attorney</p> <p>Do you have a power of attorney in place to enable other(s) to act on your behalf in the following circumstances:</p> <ul style="list-style-type: none"> * Your being interstate or overseas * Your temporary or permanent incapacity 	
<p>10. Validity of power of attorney</p> <p>If you have a power of attorney, is it valid for all jurisdictions where you own assets and is it registered in all such jurisdictions?</p>	

<p>11. Insurances - incapacity</p> <p>Do you have adequate insurances in place to meet the debts, living expenses and future expenses for which you are responsible in case of your temporary or permanent incapacity?</p>	
<p>12. Insurances – business overheads</p> <p>Do you have adequate insurances in place to meet the overheads and other ongoing costs of your business in case of your temporary or permanent incapacity?</p>	
<p>13. Keyman insurance: business liabilities</p> <p>Do you have adequate keyman insurance to cover current and long term liabilities of your business?</p>	
<p>14. Buyout agreement</p> <p>Do you have a written buyout agreement with your partners with respect of your business?</p>	
<p>15. Retirement provision - incapacity</p> <p>How will your retirement be provided for if you are incapacitated and unable to continue working to your planned retirement date?</p>	
<p>16. Enduring guardianship</p> <p>Who will make personal and lifestyle decisions for you in case you become incapable of making them for yourself?</p> <p>Would you like to appoint someone for that purpose?</p>	
<p>17. Provision for dependents in case of death</p> <p>How will each of your dependents be provided for in case of your death?</p>	
<p>18. Current will</p> <p>Does your current will leave all your property as you intend?</p>	
<p>19. Recent review</p> <p>Have you recently reviewed your arrangements mentioned above?</p>	
<p>20. Recent advice</p> <p>Have you obtained up-to-date advice with respect to your arrangements mentioned</p>	

above from specialists in:

- * Insurance
- * Superannuation
- * Tax
- * Law

ADDITIONAL INFORMATION FOR POWER OF ATTORNEY PURPOSES

- 1. Attorneys**
- (a) Who do you wish to appoint as your attorney(s)?
 - (b) Who do you wish to appoint as your attorney(s) in case the first appointee(s) is/are unable or unwilling to act?
 - (c) If you have substantial interstate or foreign assets, do you wish to appoint interstate/foreign attorney(s)?
 - (d) Have you obtained the appointees' consent?

2. Attorney(s) details

Please provide the following details about each person whom you intend to appoint as an attorney:

NB: Please obtain those persons' consent to act, if necessary.

Full name	Address	Occupation	Relationship	Age

3. Enduring power

Is your power of attorney to continue to be effective if you become of unsound mind?

Yes / No

- 4. Commencement and ending of power**
- Is your power of attorney to operate:
- Immediately
 - When your attorney(s) accept the appointment
 - On a particular date (please specify)
 - Until a particular date (please specify)
 - When your attorney considers that you need help to manage your affairs
 - At other times (please specify)

<p>5. Joint or several power</p> <p>Are all your attorneys required to act together or can each of them act separately?</p>	<p>Joint / Several</p>
<p>6. Gifts/donations</p> <p>If you are in the habit of making gifts/donations to others, is/are your attorney(s) to be authorised to give gifts out of your property?</p>	<p>Yes / No</p>
<p>7. Power to benefit the attorney(s)</p> <p>Is/are your attorney(s) to be able to use the power to pay his/her/their own living and medical expenses?</p>	<p>Yes / No</p>
<p>8. Power to benefit others</p> <p>Is/are your attorney(s) to be able to use the power to pay others' living and medical expenses?</p> <p>If so, whose?</p>	<p>Yes / No</p>
<p>9. Limited powers</p> <p>Is the power of the attorney(s) is to be limited to certain specific acts?</p> <p>If so, please specify those acts.</p>	<p>Yes / No</p>
<p>10. Restrictions on powers</p> <p>Is the power of the attorney(s) is to be restricted in any way?</p> <p>If so, please specify the restrictions.</p>	<p>Yes / No</p>

ADDITIONAL INFORMATION FOR ENDURING GUARDIANSHIP PURPOSES

<p>1. Guardians</p> <p>(a) Who do you wish to appoint as your guardian(s)?</p> <p>(b) Who do you wish to appoint as your guardian(s) in case the first appointee(s) is/are unable or unwilling to act?</p> <p>(c) Have you obtained the appointees' consent?</p>	<p>Yes / No</p>
---	-----------------

2. Guardian(s) details

Please provide the following details about each person whom you intend to appoint as a guardian:

NB: Please obtain those persons' consent to act, if necessary.

Full name	Address	Occupation	Relationship	Age

<p>3. Joint or several guardianship</p> <p>Are all your guardians required to act together or can each of them act separately?</p>	<p>Joint / Several / Joint & several</p>
---	--

<p>4. Death, resignation or incapacity</p> <p>Is the death, resignation or incapacity of one or more of your joint guardians to terminate the appointment of any of the others?</p> <p>If so, please specify who else's appointment is to terminate.</p>	<p>Yes / No</p>
--	-----------------

<p>5. Guardian(s) powers</p> <p>Do you wish your guardian(s) to have the power to:</p> <p>(a) Decide where you live?</p> <p>(b) Decide what health care you receive?</p> <p>(c) Consent to carrying out of medical or dental treatment on you?</p> <p>(d) Decide what other kinds of personal services you receive?</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
--	---

<p>6. Guardian(s) other functions</p> <p>Do you have any other functions which you wish your guardian(s) to have the power to exercise?</p> <p>If so, please specify them.</p>	Yes / No
<p>7. Directions to your guardians</p> <p>Do you have any directions that you wish to give to your guardian(s) about how he/she/they are to exercise their powers?</p> <p>If so, please specify them.</p>	Yes / No

ADDITIONAL INFORMATION FOR WILL PURPOSES

1. Previous wills

- (a) Have you made any previous will?
- (b) If yes:
 - (i) Please provide a copy for review.
 - (ii) Do you wish to revoke it in whole or in part?

Yes / No

Yes / No / Not applicable

2. Testamentary contracts

- Have you made/do you intend to make any testamentary contract:
- (a) To leave all or part of your property by will to any person?
 - (b) Not to revoke/vary any provision of your will?
- NB: these include a binding agreement with your spouse/partner that the survivor's estate is to be left in a mutually agreed way.

Yes / No

Yes / No

3. Executors and trustees

- (a) Who do you want to appoint as your executor(s) and trustee(s)?
- (b) Who do you want to appoint as your executor(s) and trustee(s) in case the first appointee(s) is/are unable or unwilling to act?
- (c) If there are substantial foreign assets, are foreign executors and trustees to be appointed?
- (d) Have you obtained the appointees' consent?

Yes / No

4. Executors' details

Please provide the following details about each person whom you intend to appoint as an executor:

NB: Please obtain those persons' consent to act, if necessary.

Full name	Address	Occupation	Relationship

5. Beneficiaries' details

Please provide the following details about each intended beneficiary, as noted on the property form.

NB: Please specify any de facto spouse, former spouse, intended marriage, step child, adopted child, foster child, illegitimate child and child of former de facto spouse, as appropriate.

Full name	Address	Occupation	Relationship	Age

6. Exclusion of potential beneficiaries

Please specify any members of your family/other persons whom you might have an obligation to provide for but whom you do **not** intend to benefit.

7. Gifts of specific property

Please specify any gifts of specific property that you wish to give apart from those mentioned in your asset list, eg.:

- (a) To executors or guardians.
- (b) To charities.

Please specify any conditions or limitations to apply to such gifts.

8. Life interests

Please specify any:

- (a) Beneficiaries to whom; and
- (b) Property in respect of which; you intend to leave a life interest only.

9. General residuary gift

To whom (and in what proportions) do you wish to leave any property not specifically gifted in your will?

<p>10. Ultimate residuary gift</p> <p>Who is to be your ultimate beneficiary if all other gifts fail?</p>				
<p>11. Powers of appointment</p> <p>Please specify any powers of appointment under trusts that you hold.</p>				
<p>12. Protective trusts</p> <p>Are any of your children's or other beneficiaries' interests to cease on bankruptcy or alienation, with power to your trustees to apply income on protective trusts?</p>				
<p>13. Debts, expenses, duties, taxes</p> <p>(a) Is the liability for debts, expenses, duties and taxes to fall wholly on your estate?</p> <p>(b) If not, please specify the incidence of liability for each gift/ beneficiary.</p> <p>(c) Please specify any <u>debts that are due to you</u> that are to be forgiven.</p>				
<p>14. Guardians</p> <p>(a) Are your trustees or others to be guardians of your children during minority jointly with your spouse – or alone where your spouse has predeceased you or failed to survive for a short period?</p> <p>(b) Who are to be guardians in case the first appointees are unable or unwilling to act?</p> <p>(c) Have you obtained the appointees' consent?</p>	Yes / No			
<p>15. Guardians' details</p> <p>Please provide the following details about each person whom you intend to appoint as a guardian of your children:</p> <p>NB: Please obtain those persons' consent to act, if necessary.</p>				
Full name	Address	Occupation	Relationship	Age

<p>16. Trustees' and guardians' remuneration</p> <p>Are your trustees or guardians to be remunerated for the work that they do?</p> <p>If so, are they to be paid by:</p> <p>(a) Legacy;</p> <p>(b) Annuity; or</p> <p>(c) Commission; or</p> <p>(d) A combination of those?</p>	<p>Yes / No</p>
<p>17. Professional acting as trustees</p> <p>Is any solicitor, accountant or other professional acting as a trustee to have power to charge profit costs and, if so, only for professional work or for time and trouble in acting in these offices as well?</p>	<p>Yes / No</p>
<p>18. Indemnity to trustees</p> <p>Are trustees to receive broad protection against liability for any loss not attributable to their own fraud or dishonesty or their own wilful acts known to them to be in breach of trust?</p>	<p>Yes / No</p>
<p>19. Disposal of your body</p> <p>Do you have particular wishes regarding:</p> <p>(a) Use of your body for anatomical examination or use of organs for transplant, medical research, etc;</p> <p>(b) Burial or cremation;</p> <p>(c) Disposal of your remains;</p> <p>(d) Expenditure on erection or maintenance of grave, gravestone or other memorial.</p>	