

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/de facto relationship 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				
Date of birth				
Occupation				
State of health				
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								
Superannuation 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, etc.								
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</p>	

your business in case of your temporary or permanent incapacity?	
13. Keyman insurance: business liabilities Does your business have adequate keyman insurance to cover its current and long term liabilities in case of your temporary or permanent incapacity or death?	
14. Buyout agreement Do you have a written buyout agreement with your partners with respect of your business?	
15. Retirement provision - incapacity How will your retirement be provided for if you are incapacitated and unable to continue working to your planned retirement date?	
16. Enduring guardianship Who will make personal and lifestyle decisions for you in case you become incapable of making them for yourself? Would you like to appoint someone for that purpose?	
17. Provision for dependents in case of death How will each of your dependents be provided for in case of your death?	
18. Current will Does your current will leave all your property as you intend?	
19. Recent review Have you recently reviewed your arrangements mentioned above?	
20. Recent advice Have you obtained up-to-date advice with respect to your arrangements mentioned above from specialists in: <ul style="list-style-type: none"> * Insurance * Superannuation * Tax * Law 	

ADDITIONAL INFORMATION FOR POWER OF ATTORNEY PURPOSES

<p>1. Enduring power Is your power of attorney to continue to be effective if you become of unsound mind?</p>	
<p>2. Attorneys</p> <p>(a) Who do you wish to appoint as your attorney(s)? Please provide each attorney's full name, age, residential address, occupation and relationship to you.</p> <p>(b) Are all your attorneys (if more than one) required to act jointly or can they also act separately?</p> <p>(c) Is the appointment of all your joint attorneys (if more than one) to be terminated if one of them dies, resigns or otherwise vacates office?</p> <p>(d) Have you obtained the appointees' consent?</p>	
<p>3. Substitute attorneys</p> <p>(a) Who do you wish to appoint as substitute attorney(s) if your attorney(s) vacate office? Please provide each substitute attorney's full name, age, residential address, occupation and relationship to you.</p> <p>(b) Are all your substitute attorneys (if more than one) required to act jointly or can they also act separately?</p> <p>(c) Is the appointment of all your joint substitute attorneys (if more than one) to be terminated if one of them dies, resigns or otherwise vacates office?</p> <p>(d) Have you obtained the appointees' consent?</p>	
<p>4. Gifts/donations 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>5. Power to benefit the attorney(s) Is/are your attorney(s) to be able to use the power to pay his/her/their own living and medical expenses?</p>	
<p>6. Power to benefit others Is/are your attorney(s) to be able to use the power to pay others' living and medical expenses? If so, whose?</p>	

<p>7. Limited powers Is the power of the attorney(s) is to be limited to certain specific acts? If so, please specify those acts.</p>	
<p>8. Conditions Are any conditions to apply to the way the attorney(s) act(s)? If so, please specify the conditions.</p>	
<p>9. Commencement and ending of <u>general</u> power Is your power of attorney to operate:</p> <ul style="list-style-type: none"> • Immediately • From a particular date (please specify) until a particular date (please specify) • While you are overseas • At other times (please specify) 	
<p>10. Commencement of <u>enduring</u> power Is your power of attorney to operate:</p> <ul style="list-style-type: none"> • When your attorney(s) accept the appointment • When a medical practitioner certifies that you are unable to manage your affairs? • When your attorney considers that you need help to manage your affairs • At other times (please specify) 	

ADDITIONAL INFORMATION FOR ENDURING GUARDIANSHIP PURPOSES

1. Guardians

- (a) Who do you wish to appoint as your guardian(s)? Please provide each guardian's full name, age, residential address, occupation and relationship to you.
- (b) Are all your guardians (if more than one) required to act jointly or can they also act separately?
- (c) Is the appointment of all your joint guardians (if more than one) to be terminated if one of them dies, resigns or otherwise vacates office?
- (d) Have you obtained the appointees' consent?

2. Substitute guardians

- (a) Who do you wish to appoint as your substitute guardian(s)? Please provide each substitute guardian's full name, age, residential address, occupation and relationship to you.
- (b) Are all your substitute guardians (if more than one) required to act jointly or can they also act separately?
- (c) Is the appointment of all your joint substitute guardians (if more than one) to be terminated if one of them dies, resigns or otherwise vacates office?
- (d) Have you obtained the appointees' consent?

3. Guardian(s) powers

Do you wish your guardian(s) to have the power to:

- (a) Decide where you live?
- (b) Decide what health care you receive?
- (c) Consent to carrying out of medical or dental treatment on you?
- (d) Decide what other kinds of personal services you receive?
- (e) Perform other particular functions? (If so, please specify the functions.)

4. Limits of authority

Do you wish to limit the authority of your guardian(s) in any way?

If so, please specify the limits.	
<p>5. Directions to your guardians</p> <p>Do you have any directions that you wish your guardian(s) to follow?</p> <p>If so, please specify the directions.</p>	
<p>6. Termination of artificial life support</p> <p>Do you wish to give directions for termination of artificial life support if there is no likelihood of your recovery?</p> <p>If so, please specify the directions.</p>	

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?

2. Disposal of your body

Do you have particular wishes regarding:

- (a) Burial or cremation of your body;
- (b) Disposal of your remains;
- (c) Expenditure on erection or maintenance of grave, gravestone or other memorial.

3. Body available for other purposes

Do you wish your body to be available for anatomical examination or use of organs for transplant, medical research or scientific purposes?
If so, please specify what is permitted.

4. Survival of beneficiaries

Are your beneficiaries required to survive you by 30 days in order to inherit?

5. Exclusion of children

Do you wish to exclude:

- (a) Adopted children (e.g., of beneficiaries)?
- (b) Ex-nuptial children (e.g., of beneficiaries)?

6. Exclusion of others

Are there any members of your family/other persons whom you might have an obligation to provide for but whom you do **not** intend to benefit?

If so, please provide in relation to each such person:

- (a) Their full name, age, residential address, occupation and relationship to you;
- (b) The reason for excluding them.

7. Appointment of guardian(s) of children

- (a) Who do you wish to appoint as guardian(s) of your minor children? Please provide each guardian's full name, age, residential address, occupation and relationship to you.
- (b) Have you obtained the appointees' consent?

8. Financial provision for guardians

Are the guardians of your minor children to be protected against financial hardship?

9. Will made in contemplation of marriage

Are you planning to marry or are you in a relationship which may result in marriage?	
10. Blended family Do you or your spouse/partner have children from another relationship?	
11. Executors and trustees (a) Who do you want to appoint as your executor(s) and trustee(s)? Please provide each guardian's full name, age, residential address, occupation and relationship to you. (b) Have obtained the appointees' consent?	
12. Substitute executors and trustees (a) Who do you want to appoint as substitute executor(s) and trustee(s) in case your first nominees are unable to act? Please provide each guardian's full name, age, residential address, occupation and relationship to you. (b) Have obtained the appointees' consent?	
13. Conditions affecting executors (a) Are your executors to be prohibited from claiming commission? (b) Are gifts to your executors dependent on them acting as your executors?	
14. Professionals acting as executors Is any solicitor, accountant or other professional acting as an executor or 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?	
15. Forgiveness of debts Are there any debts due to you that you wish to forgive? If so, in respect of each such debt please provide details of: (a) The debtor's full name, age, residential address, occupation and relationship to you; (b) Full particulars of the sum owed, including the nature of the debt, the agreement or other basis under which it arose, the due date for payment, any interest payable and payments that you have received in respect of the debt; (c) Any security that is to be released upon forgiveness of the debt.	
16. Specific gifts of money or other property (a) Do you wish to make specific gifts of money? If so, please provide in respect of each gift:	

<ul style="list-style-type: none"> (i) The beneficiary's full name, age, residential address, occupation and relationship to you; (ii) The sum to be given; (iii) Whether the sum is to increase in line with the consumer price index; (iv) The age at which the beneficiary is to receive the gift; (v) Whether your executors can advance income or capital for the beneficiary's maintenance, education or advancement before that age. <p>(b) Do you wish to make specific gifts of other property? If so, please provide in respect of each gift:</p> <ul style="list-style-type: none"> (i) The beneficiary's full name, age, residential address, occupation and relationship to you; (ii) A full description of the property to be given; (iii) The age at which the beneficiary is to receive the gift. 	
<p>17. Avoidance of double gifts</p> <p>If your spouse/partner is making a will in similar terms, is duplication of identical gifts to be prevented?</p>	
<p>18. Gifts of personal effects</p> <p>To whom do you wish to leave your personal effects?</p>	
<p>19. Substitution of gifts</p> <p>If a specific gift fails (e.g., because the beneficiary predeceases you) is the gift to pass to the original beneficiary's children (if any) or to someone else?</p> <p>If so, please provide with respect to each substitute beneficiary:</p> <ul style="list-style-type: none"> (a) Their full name, age, residential address, occupation and relationship to you; (b) The share that he or she is to receive; (c) The age at which he or she is to receive it; (d) Whether your executors can advance income or capital for the substitute beneficiary's maintenance, education or advancement before that age. 	
<p>20. Annuities and protective trusts</p> <p>Do any of your beneficiaries' finances need to be controlled, supervised or protected?</p> <p>If so, please specify the beneficiary, the reason and the type of control, etc. required.</p>	

<p>21. Testamentary discretionary family trust</p> <p>Do you wish to establish a trust for any beneficiary and his/her family in your will?</p> <p>If so, please specify the beneficiary, the property to be placed in trust and conditions to apply to operation of the trust.</p>	
<p>22. Discretionary disability trust</p> <p>Do you wish to establish a trust for any disabled beneficiary in your will?</p> <p>If so, please specify the beneficiary, the property to be placed in trust and conditions to apply to operation of the trust.</p>	
<p>23. Life interests and rights of occupation</p> <p>Do you wish to leave only a life interest in any property or a right of occupation of real estate to anyone?</p> <p>If so, please specify the beneficiary, the property or real estate and the conditions to apply to use of the property or real estate.</p>	
<p>24. Gift of whole estate or residue</p> <p>To whom do you wish to leave your whole estate (or the residue of your estate if you have given specific gifts to others)?</p>	
<p>25. Substitute beneficiary/beneficiaries</p> <p>If the gift of your estate or the residue of your estate fails (e.g., because the beneficiary predeceases you) is the gift to pass to the original beneficiary's children (if any) or to someone else?</p> <p>If so, please provide with respect to each substitute beneficiary:</p> <ul style="list-style-type: none"> (a) Their full name, age, residential address, occupation and relationship to you; (b) The share that he or she is to receive; (c) The age at which he or she is to receive it; (d) Whether your executors can advance income or capital for the substitute beneficiary's maintenance, education or advancement before that age. 	
<p>26. Alternative substitute beneficiaries</p> <p>If the substitute gift of your estate or the residue of your estate fails (e.g., because all the substitute beneficiaries predecease you) is the gift to pass to your siblings or your spouse's/partner's siblings or to someone else?</p> <p>If so, please provide with respect to each alternative substitute beneficiary:</p>	

<ul style="list-style-type: none"> (a) Their full name, age, residential address, occupation and relationship to you; (b) The share that he or she is to receive; (c) The age at which he or she is to receive it; (d) Whether your executors can advance income or capital for the substitute beneficiary's maintenance, education or advancement before that age. 	
<p>27. General or residuary gift to charity</p> <p>Do you wish to make a gift to charity either:</p> <ul style="list-style-type: none"> (a) Before the gift of the residue of your estate; or (b) Of the residue of your estate if all other gifts fail? <p>If so, please provide, with respect to each charity:</p> <ul style="list-style-type: none"> (i) The full name of the charity, including its Australian Business Number; (ii) Details of the gift you wish to make; (iii) The purpose or purposes for which the gift may be used. 	
<p>28. Other directions</p> <p>Are there any other specific directions that you wish to give in your will? If so, please specify them.</p>	
<p>29. Powers of appointment</p> <p>If you hold the power of appointment (e.g., of new trustees, controller, appointor, custodian or beneficiaries) under any trust or will, please provide:</p> <ul style="list-style-type: none"> (a) Details of the trust or will; (b) The full name, age, residential address, occupation and relationship to you of each person whom you wish to appoint to the position by your will. 	
<p>30. Testamentary contracts</p> <p>Have you made or do you intend to make any testamentary contract:</p> <ul style="list-style-type: none"> (a) To leave all or part of your property by will to any person? (b) Not to revoke/vary any provision of your will? <p>NB: these include a binding agreement with your spouse/partner that the survivor's estate is to be left in a mutually agreed way.</p>	