



MODORAS
Financial Performance Solutions

ESTATE PLANNING

While contemplating how your family would cope without you can be difficult, planning for a future beyond your own life can provide peace of mind, knowing your loved ones will be cared for after you've gone.

Though many people think a simple Will is sufficient for transferring wealth upon their death, depending on their circumstances it may not be. Estate plans often need to be a little more complex, in order to protect your assets.

Estate planning is a process for working out the best way to structure your personal and financial affairs, including:

- your end-of-life care
- guardianship and care of your children
- the protection and distribution of wealth and personal assets to family, friends, or other parties.





These five strategies will help ensure your beneficiaries — the people or entities you've chosen to receive assets — are taken care of after you've gone:

1. Make a Will

A Will is an essential part of your estate-planning process. It ensures your property and other assets are distributed according to your wishes by the person you've nominated for the task (see 'Nominate an executor' section below).

It can also include details of who you'd like to look after your children or dependants if they're still under the age of 18 when you pass away, and instructions regarding your funeral.

Here are some tips for making a Will:

Engage a solicitor

Wills and estate laws are complex, so taking a do-it-yourself approach to your Will may cause you unnecessary stress and put your wealth at risk of falling into the wrong hands.

Consider getting it professionally drafted by a lawyer or solicitor, a private trustee, or the public trustee in your state or territory.

Nominate an executor

Nominating an executor for your estate is important as this person will be responsible for administering your estate in accordance with your Will.

This includes arranging your funeral, collecting your assets, paying your debts, and distributing your wealth among your beneficiaries after you pass.

You can choose a trusted family member or friend as your executor, though appointing a third party such as your solicitor, accountant or a public trustee may ease the burden on someone experiencing grief.

Appoint a guardian

If you have children who are 'minors' (i.e. under 18 years of age), it's important to have a Will that appoints a guardian for them.

If you and your partner die suddenly without a guardian being appointed, it may be left to the courts to decide who looks after your children.

Your appointed guardian — who naturally needs to agree to the arrangement — will be responsible for caring for your children until they turn 18.

Keep it up to date

Don't forget to keep your Will up to date.

Generally, a Will needs to be a written document that you've signed and had witnessed by two people. You also need to have had the mental capacity and intention to make the Will.

The requirements for a valid Will differ between states and territories.

If you get married, divorced or have children, you may want to consider updating your Will to reflect your changed circumstances. If you don't, there's a risk your Will may become invalid.

Don't leave it too late

If you die without a Will (or an invalid one), it means you've died 'intestate'. Intestacy laws set out the way in which an estate will be distributed if there's no Will.

These laws — which vary between the states and territories — set out the priority order of the recipients to whom the deceased estate is distributed.

It means the distribution of your assets may not reflect your personal wishes.

And the estate may incur higher tax liabilities.



2. Consider a testamentary trust

A testamentary trust is a trust established under a valid Will.

Rather than being paid directly to your beneficiaries, some or all of your assets are put into the trust, which is administered by a trustee nominated by you in your Will (until it expires).

You may want to consider this trust if, for example, your beneficiaries are minors; the trustee can look after the assets until the children come of age.

There are income tax and capital gains tax advantages to distributing assets through a testamentary trust.

For example, trusts don't have to pay tax on income that is distributed to beneficiaries, enabling your beneficiaries to enjoy more of the estate.

It can also protect your assets against divorce proceedings, bankruptcy, and even reckless spending by an irresponsible beneficiary.

3. Make an enduring power of attorney

An enduring power of attorney is a legal document in which you authorise someone you trust (e.g. your partner) to make decisions and sign documents on your behalf if you're no longer able to do so (e.g. if you're incapacitated by an accident or illness).

Without an enduring power of attorney, the administration of your financial affairs can be left in limbo for months, possibly years, because you're impaired and no one else has authority to take control.

Appointing multiple attorneys — the maximum number varies between state and territories — may be valuable in case one of them passes away or cannot continue in the role.

You can, of course, choose to make a power of attorney, however this form of authority is limiting and won't have effect if you lose mental capacity, i.e. it won't endure.

An estate lawyer would be able to explain the pros and cons of the two options to you.

4. Nominate your superannuation beneficiaries

Unlike property and other assets, your superannuation is not covered by your Will.

That's because your super is held for you in a trust by the trustee of your super fund and governed by superannuation laws.

And that's why it's critical to have a 'binding death benefit nomination' (BDBN) in place.

A BDBN is a written direction to the super trustee setting out who you want your super benefit to go to when you pass away (along with any life insurance payable from inside your super).

If you don't have a BDBN in place, the super trustee decides how and to whom the benefit is paid (e.g. your estate or dependants of their choice).

It's important to note that most BDBNs remain in effect for only three years from the date it's signed, amended, or confirmed. In other words, you may need to renew it regularly.

5. Draft an advance health directive

An 'advance health directive' allows you to outline what medical treatment or health care you do (or do not) wish to receive in certain circumstances, if you're incapable of making decisions for yourself.

It gives you and your loved ones peace of mind knowing they'll have the information they need to make the choices you would want.

The requirements for the directive (also known as an 'advance care directive') vary between the states and territories.

Your lawyer, private trustee or the public trustee should be able to help you understand how your directive relates to other important documents like your Will and enduring power of attorney.



Get expert advice

Estate planning can be difficult and confusing to navigate, which is why we recommend seeking professional advice.

Our planners can work with you and the estate planning specialist who drafts your documents, to ensure your estate planning needs are tailored to your unique circumstances.

Contact us to schedule a complimentary consultation at info@modoras.com or 1300 888 803.

Complete financial care is a phone call away.

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