

Estate planning – when should I start?



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Am I too young to need a will?

Having a will doesn't seem that important when you're caught up with the business of living. But like getting a job, owning a home or having kids, getting your estate plan sorted is really just another part of growing up. Chris takes the view that sorting out an estate plan as soon as you're earning a salary makes sense. "Your super balance may be close to zero, but you're still likely to have insurance through super and a life cover benefit to pass on," says Chris. "So, although your will should be fairly simple at this stage, it's still worth having to ensure this asset is transferred as you would intend."

When should I be making a will?

Here are some other key life stages suggested by Bernie and Chris as essential milestones for getting your estate plan in order, or to review it with your advice team:

Buying a home

“Usually this is the first significant financial commitment for a young couple or single person,” says Bernie. “As one of the most valuable assets they’re likely to own at this stage in their lives, it’s important to think about who they would like to leave their home to in their estate plan.”

Having kids – and more kids

According to Bernie, many couples place as much importance on custody arrangements for young children as they do the distribution of their assets. “It can lead to some robust discussions about who would be the best choice as guardian,” says Bernie. “Another key issue for parents is when kids will be ready to take control of their inheritance – if there is no will this happens as they turn 18 which almost everyone thinks is far too young.”

Getting married – or separating

Once you’re married, it would seem natural to agree on what should happen to your assets – joint and separate – if one of you were to die and draw up a will accordingly. However, as Bernie has observed, “often people are more motivated to update their plans when separating rather than when marrying.”

“When there’s a lack of harmony between family members – whether that’s between siblings or you and your ex – proper estate planning is even more important,” says Chris “It becomes absolutely crucial to get really good advice and make sure every document is thorough and comprehensive.”

Setting up a company, family trust or SMSF

“Owning a business or setting up a Self-Managed Super Fund will usually involve ownership of assets in a structure that may fall outside of your estate,” says Chris. “So, whether you intend for that structure to continue operating after your death, or make other arrangements for the assets, you’ll need expert advice to ensure everything is properly taken care of in your estate plan and other legal documents.

Bernie adds: “Over the past few years there have been a number of SMSF death benefit dispute cases in court. Almost all of them involve blended families so this is something for SMSF trustees and their legal and financial advisers to be aware of following a divorce.”

A death in the family

“When a family member dies or loses capacity, this can motivate people to start making estate planning arrangements,” says Bernie. “This can be particularly true when that family member has no estate plan or Power of Attorney, and it leads to a lot of stress and pressure when dealing with their affairs.

Receiving a significant inheritance is also a common trigger for beneficiaries to revisit their own estate plan arrangements.”

The five-year check-in

Even if you haven't experienced one of these life events recently, Chris recommends reviewing your estate plan at least every five years. “Aside from these milestones, there can be a whole host of triggers for making a change to your estate plan and will,” says Chris. “This is why there is value in checking in regularly with your adviser and an experienced estate planning solicitor who can provide detailed advice on your legal rights and responsibilities and tax effective transfer of your assets.”

Don't forget to think about...

Wills and estate plans can be fairly simple, but it really depends on your individual financial and family situation. Owning a business, being married more than once or having children are just some circumstances that can demand a more complex estate plan. While it may take a lot more detail and structure to ensure all your assets are properly distributed, it's worth doing to take care of everything that matters to you.

Here are a few of the areas that can be overlooked when it comes to your assets, estate and will. It's important to have these on your agenda when seeking advice about your estate plan:

Power of Attorney – “When you're younger, your risk of losing capacity to manage your own affairs is probably greater than the risk of dying,” says Chris. “And as you age, there's still a fairly high chance of being incapable for a time before you die. This is why most advisers will consider an enduring Power of Attorney arrangement to be an essential part of your estate plan.”

Executors, attorneys and trustees – Give careful thought to who you should appoint in these very important roles. “Many clients nominate their eldest child as attorney and executor,” says Bernie. “Our litigation team are often acting for clients concerned about the way in which their siblings, as financial attorney or executor of an estate, are managing their parent's affairs.”

Chris agrees that conflict between siblings can become a problem, even when they usually get on well. “When a parent's estate plan is executed, it can trigger unexpected battles, no matter how fair the distribution as intended to be,” says Chris. “Your best defence against having family members fighting it out in court is to ensure you carefully document and regularly review your whole estate plan, to make sure executors are appropriate and all terms are aligned with your wishes.”

Beneficiaries – The circumstances of your beneficiaries also need to be considered when drawing up and reviewing your estate plan. “If a beneficiary were to predecease you, or go through bankruptcy

proceedings for example, this could certainly have an impact on who will actually receive any assets you transfer to them,” says Chris.

Tax – The tax consequences of transferring assets to your beneficiaries can be varied and complex, but strategies for managing them may be relatively simple. “Setting up a testamentary trust is a very simple example of tax-effective estate planning,” says Chris. “Another would be transferring assets to beneficiaries instead of selling them off and distributing the proceeds. Selling property, shares and other assets can create a significant capital gains tax (CGT) burden for the estate. From a tax perspective, it can make more sense for each beneficiary to receive their share of an asset to spread the CGT liability among them.”

Super – “Superannuation isn’t an estate asset,” says Chris. “So, you cannot include instructions for distribution of your super death benefit in your will. If you haven’t made a binding nomination, then your benefit will be distributed at the discretion of the fund trustees. This may also be the case if your nomination is non-binding or has lapsed. Nominating your estate as the beneficiary is one option you can choose and then your executor can distribute the funds or assets according to your instructions.”

Advances to children – “It is increasingly common for clients to help out one or more of their children with cash advances during their lifetime,” says Bernie. “It’s important that the parents and the relevant child (and, sometimes, the other children) are clear as to whether these advances are gifts or loans. This is increasingly becoming a reason for disputes between children, once their parents have died.”