

Estate planning is more than just a will



Michael Georghiou, MGI Brisbane, says there are two certainties in life – death and taxes. Over the past few articles, we’ve written about tax issues, so we are overdue to write about how the two certainties intersect.

I don’t want to write extensively about the legalities of wills and trusts – but I will touch on some often overlooked issues that you should consider when you undertake estate planning.

Now a lot of people think estate planning is all about getting a will, but it is in fact about a whole lot more including:

- Determining if there are sufficient assets available to meet your family needs
- Ensuring assets are transferred to the appropriate people
- Ensuring assets are transferred at the appropriate time.

Estate planning doesn’t just involve a lawyer and an accountant – it often requires financial advisors and insurance agents.

The first documents that are normally drawn up are a *Power of Attorney* (POA) and a will. Whilst I have seen some off the shelf documents sold on the internet or in various shops – the fact is that these documents are governed by state legislation – so that a blank Queensland document may not necessarily be valid if signed in New South Wales. That’s why you need expert legal advice in drafting these documents.

Why do you need a POA?

Quite simply, if you are incapacitated or even simply overseas, a POA will allow someone to act on your behalf – to access the necessary funds to pay for your family, or simply to make decisions about your medical treatment. But there are several types of POAs, so it is best to seek the expertise of a lawyer.

What about a will?

A will is vitally important, and again is a specialised legal document. If you do not have a will, your estate will be decided under state law. However, this is where the tax aspects of estate planning start to come in. If you have children under 18 years of age, special needs children due to a medical condition or handicap, or children from a previous marriage then you can ensure that your wishes in regards to those children are carried out via your will.

However, not all wills have the same tax effect. For example, if you have children under 18 years of age, then under the current year tax

rates, the most money that they could receive from a will under the current tax rates would be \$2,666 per year before being taxed at the top marginal rate. If, however, your will contained a testamentary trust they would be subject to the adult tax free threshold. This means your children could receive a \$6,000 distribution tax fee. In addition, that child could receive \$180,000 before they were subject to the top marginal rate!

So what is a testamentary trust?

Well, it is simply a trust established under a will that does not come into effect until after the death of the person making the will. The terms of the trust are similar to most family discretionary trusts. They can be created to suit your circumstances. The terms are also effective for adult beneficiaries who you believe might spend all the money if it is given to them in one lump sum.

Estate planning

But there is more to estate planning than simply seeing a lawyer, getting a POA and a testamentary trust drawn up.

Estate planning involves looking at all your circumstances – for instance, do you have sufficient life insurance so that the surviving spouse could pay off any loans or the mortgage? Or do you have a business succession plan, including sufficient insurance for a business partner to buy out your share of the business?

If you have superannuation, do you need a ‘binding death benefit nomination’ so that any superannuation and associated insurance is paid to the correct party? If you don’t have a binding death benefit nomination, it will be up to the trustee of the fund to determine who receives the death benefit payment, which may well be someone you would never have left the money too.

So, as you can see, estate planning is a complex area that requires the combined efforts of your accountant, lawyer, financial advisor and insurer. But, don’t leave it too late! The tax and legal consequences of poor estate planning can be horrendous.

If you need assistance with your estate planning, call MGI Brisbane on (07) 3002 4800 or email info@mgibris.com.au.

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