



# Additional General Information regarding Estate Planning & Power of Attorney

## Disclaimer and Warning

*The information in this document is of a general nature only. It should not be used as a source to make financial decisions. It's also important to note that the legislation and figures related to this topic tend to change regularly and therefore the information above may not reflect the current status. We recommend that if you are looking for advice on this matter, you should contact us.*

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## [Information Regarding Estate Planning](#)

### [Estate Planning](#)

I would like to highlight the following points regarding your estate planning position. *Please note* that before acting, you should seek the professional advice and services of your solicitor.

#### **A. WILLS**

- **WHY SHOULD YOU HAVE A WILL?**

A will is the only way you can ensure that when you die your assets will be distributed according to your wishes. You can direct who is to take charge of your affairs on death (i.e. your executor) and see that your wishes are faithfully carried out.

- **WHAT HAPPENS IF YOU DIE WITHOUT A WILL?**

You will be deemed to have died "intestate". A court-appointed administrator will take control of your affairs and will distribute your estate according to the statutory formula under the laws of your State/Territory.

- **WHEN SHOULD YOU MAKE A WILL?**

Every person over the age of 18 and of sound mind has the legal capacity to make a will. It is sound practice for any person who is legally entitled to draw up a will to do so.

It should be made when you are in good health as you are then able to give it careful thought without stress or anxiety.

- **SHOULD YOU CHANGE YOUR WILL?**

You should review your will every few years or whenever your personal or financial circumstances change to the extent that the will does not reflect your current wishes.

Some of the changed circumstances where you should review your will include:

- Marriage, divorce of self
- Marriage, divorce, death of beneficiaries of the will
- Move residence to another State or Territory
- Executor is no longer alive or appropriate
- Substantial change in asset or debt position

- **WHAT IS A TESTAMENTARY TRUST AND HOW CAN YOU USE IT?**

A testamentary trust is a discretionary trust, which is usually established through part of a will and comes into operation on the death of the testator (i.e. will-maker). If a testamentary trust is used, on the testator's death certain nominated assets are transferred to the trust, by-passing the estate. The trustee(s) of the testamentary trust have the power to distribute income and capital of the trust in a flexible way to classes of, and particular, nominated beneficiaries. This can be useful for optimising tax and social security advantages for the remaining family of the testator.

## **B. POWERS OF ATTORNEY**

- **WHAT IS A POWER OF ATTORNEY?**

Granting power of attorney means that you legally appoint a person or organisation to make decisions, sign documents and generally act on your behalf in various matters. The grantee of a power of attorney is usually someone you trust implicitly.

- **ARE THERE DIFFERENT TYPES?**

**Yes.** A **LIMITED** power of attorney allows the attorney to only undertake actions specified by you.

A **GENERAL** power of attorney gives very wide powers to the attorney to undertake actions on your behalf.

Both Limited and General powers of attorney are automatically revoked when the person granting the power of attorney becomes mentally incapable of handling their own affairs.

- **WHAT IS AN ENDURING POWER OF ATTORNEY?**

To overcome the problem of the power of attorney being revoked if you become mentally incapable, it may be possible to create an **ENDURING** power of attorney, which will continue to operate if you become mentally incapacitated.

You may arrange your enduring power of attorney so that it is not acted upon immediately but will only be triggered in the event of specific nominated circumstances e.g. going on holidays, becoming ill or mentally unable to manage your financial affairs and so on.

## **C. WHO TO CONSULT**

In order to implement our strategies in these areas we recommend you consult an appropriately qualified person or organisation such as a solicitor or a trustee corporation because the laws relating to wills and powers of attorney are very complex and vary between states/territories. The function of the solicitor is to draft the relevant documentation and to provide more detailed and technical advice on implementation so that it is tailored to your particular circumstances.

*Please supply us with the name and contact details of the person(s) you have nominated to perform the legal services so that we may co-operate with them to implement these aspects of your financial plan.*