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Newsletter

Seven Steps to Peace of Mind

The information provided in this newsletter is merely a guide and is not meant to be a detailed explanation of the law on each subject. Please contact us for legal advice. Information content provided by courtesy of © Allan Swan. SJQ Services.

Introduction

Estate planning is all about a saving and increasing the value of your assets or possessions, so that you can enjoy these to the most during your lifetime, and after your death, help others you care about. It is about taking control to make sure that what you want happens and that those you want to benefit actually get the benefits. You and your beneficiaries get most enjoyment from these assets if your estate plan also reduces costs and taxes. Estate planning is something that has got to be done properly if you want this to happen. That means that you and your advisors need to take seven key steps:

Getting Estate Planning Right

7. Review
6. Put your plan into action
5. Strategy
4. Choices and Difficulties
3. Where does the Money come from?
2. Your Circumstances
1. Your Aims or Goals

In the past you did your estate planning in your Will. Now that is only part of the solution, because both the way we save, and the way our assets are taxed has become more complex.

Crucial estate planning decisions are now often made in the choice of saving by superannuation and insurance. Often the assets are held in a way in which they can be lost, and large amounts of tax can be paid, and the person trying to save with these assets does not even know the risks they take.

If they get it wrong the property may not even go to the people they want, pensions are lost and large amounts of tax are paid. We can not understand why anybody wants to benefit children and other relatives who have been positively hostile throughout life, let alone former spouses or creditors. Why work so hard to save if the wrong person benefits?

Good estate planning needs to fit in with a persons aims to accumulate wealth, cover their working life including any business that they are involved in and (importantly) what happens to the business after they leave and how do they fund their retirement. All of this needs to be properly documented to ensure that the plan actually happens.

The estate planner and their professional advisors (Solicitors, Accountants, Financial Planners and Insurance Consultants) need to undertake:

Step 1 – Decide the Goals or Aims, and there importance

- ✓ Who (or what) does the estate planner want to benefit?
- ✓ In what order of priority.
- ✓ Identify any specific objectives, eg the support of a spouse in retirement, the education of children and grandchildren, future control of family or other business.

Step 2 – What are current and likely future Circumstances

- ✓ Of the estate planner - how are assets ultimately owned or controlled, eg family home, superannuation, discretionary trusts, joint tenancies, cross ownership of insurance, etc.
- ✓ Of the intended beneficiaries - particularly important if the beneficiaries can not be trusted with assets, eg if they are very young, infirm, financially at risk or personally vulnerable. *(For further information, ask for our newsletter - Vulnerable Beneficiaries.)*
- ✓ Beneficiaries who are financially at risk include people:
  - ✓ who have given significant personal guarantees; or
  - ✓ whose business or profession carries significant risk (just about anyone these days). eg medical practitioners.

Where possible changes to circumstances should be part of the plan, eg a medical crisis, or accident resulting in death or incapacity to make their own decisions can happen to anyone.

Step 3 – Where does the money come from for Short Term and Long Term Goals?

- ✓ If this part is not done well, the aims are just dreams. The planner and intended beneficiaries can all lose.
- ✓ Sources of funding include:
  - o existing assets;
  - o plans to increase wealth;
  - o retirement plans;
  - o asset protection plans, eg ensuring that business assets will retain value on the death of a business principal; and
  - o insurance cover for death, incapacity or for continuation of business.

Step 4 - Assess Options and identify Impediments

Choices and possible barriers.

- ✓ The ability of the estate planner to transfer wealth effectively will depend upon no legal problems, eg can hostile family members and relatives challenge the term of the Wills, whether the superannuation fund trustees ignore the instructions of the estate planner. *(For further information ask for our Newsletter - Superannuation/Insurance.)*

- ✓ Income tax will make certain choices more attractive (eg because of concessional tax rates and capital gains rebates). It will also reduce other choices, eg the tax on superannuation death benefits passing to non-beneficiaries, reasonable benefit limits, capital gains tax, debt forgiveness rules, family trust elections and deferred tax liabilities, eg on retaining profits passing to shareholders.

- ✓ Capital gains tax laws will also influence the choice of assets in particular forms of ownership, eg the 50% rebate for personally owned and excluded trust assets is usually particularly attractive for assets that are likely to appreciate.

- ✓ Ownership of assets may need to be changed, eg to fund testamentary trusts; to avoid loss of means tested pension eligibility; to achieve asset protection or to pre-empt challenges to a Will.

- ✓ (For estate planners with family controlled businesses), the ability and feasibility of family members to take over those businesses.

Step 5 — The Strategy - Formulating the Estate Plan

Once the aims, circumstances, funding, choices and barriers have all been identified, a strategy can then be worked out for identifying what can be done for the estate planner and how best to have the estate planner's wishes come true:

- ✓ If appropriate, this can include the establishment of a savings or wealth accumulation strategy (often as part of wider asset protection or retirement planning).

- ✓ It can be very useful for a written estate plan to be prepared - often drafted by a financial advisor on instructions from the estate planner with advice from an Accountant and Solicitor who has knowledge in these areas.

Step 6 — Putting the Plan into Action

Without implementation, estate planning is a waste of time. Implementation may involve a number of actions or the use of a number of products, eg:

- ✓ The immediate or progressive building up of an investment portfolio

- ✓ (Where appropriate and possible) taking out life and other forms of insurance cover

- ✓ Changes of ownership of insurance policies, eg a switch from cross ownership to self or superannuation ownership of personal life insurance so that a testamentary trust or pension can be funded

- ✓ The preparation of Wills and Enduring Powers of Attorney — it is important that the estate planner makes sure that these documents have special clauses to cover different circumstances, eg an equalisation clause, a gearing clause, the provision for a suite of testamentary trust options, nomination of preferred advisor (if any). Such steps are beyond all do-it-yourself Will kits, and many Solicitors.

- ✓ Changing joint asset ownership, eg from joint tenancy to tenancy in common

- ✓ The binding or advisory nomination of preferred beneficiaries to the trustee of a superannuation fund

- ✓ A switch to a self managed or other superannuation fund if there is concern about how the existing trustees might exercise a discretion
- ✓ Amendments to the Trust Deeds for both self managed superannuation funds and discretionary trusts to ensure that future control and powers of appointment are properly exercised (eg if two or more children are to share control)
- ✓ Arranging for other members, eg children, to become members of a self managed superannuation fund so that assets can remain in the fund even after the original members have died
- ✓ The immediate or provisional (eg irrevocable on death) winding up of discretionary trusts, superannuation funds and other entities
- ✓ The "tidying up" (with the agreement of the beneficiaries) of unpaid trust allocations
- ✓ The preparation and funding of business succession, pre nuptial or pre relationship or other agreements
- ✓ Ensuring that life and other insurance proceeds produce income with minimum tax loss.
- ✓ (And sometimes) the immediate or progressive transfer of assets (including insurance) out of personal names into non-estate ownership such as spouses, discretionary trusts or superannuation, eg to forestall challenges or achieve asset protection
- ✓ Adequate records need to be kept to ensure that capital gains tax liabilities can be ascertained and minimised

Step 7 — Ongoing Review of estate planning needs to adjust for changes

- ✓ In the personal, financial or business circumstances of the estate planner or the intended beneficiaries
- ✓ In wealth accumulation, retirement, career, business and/or business succession plans
- ✓ To tax and other laws - the estate planning implications of changes to tax laws in particular can be easily overlooked, particularly where accountants and financial planners are unaware of their client's estate plans and have not been asked to have any input in the terms of Wills.
- ✓ Too often the estate planning services provided by lawyers and other advisors are only reactive to client initiative and clients are not kept up to date with developments affecting estate planning

Further information: Do not hesitate to contact us for further information should you require it.