7 THINGS you need to know about PLANNING YOUR ESTATE

1. What is estate planning?

While it used to be of importance only to the very wealthy, those who do a good job investing and saving throughout their lives can benefit greatly from estate planning.

The purpose of estate planning is to plan for the transfer of your money and assets to the people you want to inherit it in the most financially efficient and tax-effective way possible. Another important reason to engage in estate planning is to make sure your assets attract as little tax as possible.

SumTotal
Accounting & Business

2. Leaving your estate to a spouse isn't always the best option

Leaving your estate to a spouse or partner depends on a number of factors, such as the age at which you or your spouse die and the age and marital position of your children.

Today, people are living a lot longer than what we were 50 years ago. This means that if you or your partner passes away at a relatively young age, there is a fair chance that the surviving partner may remarry or enter a de-facto relationship.

Leaving all of your wealth and assets to a spouse (at the expense of your children) who enters a new relationship after your death can create some serious issues in the future. For example, if your partner breaks up with their new partner or spouse, there is quite a high possibility that part of your estate will end up in the hands of their estranged spouse.

Furthermore, if your spouse does not remarry and leaves the balance of your combined estate to the children, the above scenario can take place yet again if your children marry and then subsequently divorce from their partners.

To avoid this from happening, many people include a testamentary discretionary trust in their will. Testamentary discretionary trusts only come into existence when a person passes away.

The person's wealth is settled on this trust upon their death and the beneficiaries of this trust are solely blood relatives. While the trustee can have full discretion as to who receives the trust income or capital, testamentary discretionary trusts are not always effective when taken up in the Family Court. However, they can provide some substantial protection.

3. Your property may not be included in your estate

Property and superannuation accounts are often considered to be large value assets. Whether a family home is part of an individual's estate depends on how the property is held or owned.

Most couples in Australia own their home as joint tenants. Joint tenancy entitles each joint tenant to possession of the whole property, also known as 'unity of possession'. This means that each tenant does not have a separate identifiable interest or share in the property. In the event of a tenant's death, the property will automatically pass to the surviving tenant. In this case, an individual's share of the property does not form part of their estate.

Some people opt to hold the property as "tenants in common". In this case, when one tenant passes away, their share of the property will be dealt with in terms of their will and will not go to the surviving co-owner.

4. Appointing a power of attorney

Appointing someone to be your power of attorney gives that person the authority to look after your affairs on your behalf once you are unable to. The authority of a power of attorney depends on which state or territory you live in.

A general power of attorney makes financial and legal decisions on your behalf for a specified period e.g. if you are overseas and unable to manage your affairs at home. An enduring power of attorney makes decisions on your behalf if you lose the capacity to make decisions.

A medical power of attorney can make only medical decisions on your behalf if you become unable to do so. Individuals should nominate a power of attorney that is trustworthy, and, if possible, financially astute.

5. You may need a binding death benefit nomination

A fact that many are unaware of is that using a super fund to hold an individual's super savings means that the individual doesn't have full, independent control of their super. They are instead, reliant on the trustee of the super fund to distribute their super, which includes any life insurance saved, to those intended to receive it.

However, individuals can independently control their super by specifically instructing their super fund trustee to distribute the super in a certain way. To do this, individuals must provide a non-lapsing binding death benefit nomination. The written nomination is binding on the parties involved and remains in place until the individual revokes it.

Because every super fund trust deed is different and may have specific provisions about the nomination content, it is critical for individuals to follow the requirements of their trust deed to ensure that the nomination is binding on the trustee.

6. Incorporating a put/call option agreement

If you own or run a business with a partner, then you may benefit from including a put and call agreement in your estate plan. A put and call agreement is a way of specifying how your business will be sold or transferred upon your death.

It is an arrangement between two parties regarding the sale of a business by a pre-determined date or event. It provides one party the right to buy and the other party to sell a business at a future time and at a particular price.

There may also be taxation benefits for the person selling the business, such as delaying CGT on the sale to the following financial year. It is a good idea to seek financial or legal advice to confirm if a put/call arrangement is suitable for your circumstances.

7. Testamentary trusts provide greater security and control

A testamentary trust is created through a Will, and can provide a greater level of control over the distribution of assets to beneficiaries, as well as protect your assets when they pass to your beneficiaries. There are also quite a number of tax advantages associated with creating a testamentary trust.

There are two types of testamentary trusts: discretionary and protective. Discretionary testamentary trusts give beneficiaries the option to take part or all of their inheritance via the testamentary trust. The primary beneficiary can remove and appoint the trustee, and they can appoint themselves to manage their inheritance inside the trust.

Protective testamentary trusts involve the beneficiary taking their inheritance via the trust and not having the option to appoint or remove trustees. This kind of trust is useful when a beneficiary is not able to responsibly manage their inheritance due to age, disability or spending tendencies.

This newsletter is for guidance only, and professional advice should be obtained before acting on any information contained herein. Neither the publishers nor the distributors can accept any responsibility for loss occasioned to any person as a result of action taken or refrained from in consequence of the contents of this publication.