

HarrisLieberman
solicitors

SUCCESSION PLANNING



WILLS & ESTATES LAW
SUCCESSION PLANNING

commitment to make a difference

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10 THINGS YOU NEED TO CONSIDER

1. What are your personal assets and how do you own them?

Assets that you hold personally including real estate and bank accounts can be held in your sole name or with a co-owner. If there is another owner the asset might be held jointly or as tenants in common. This will impact on whether you can leave your share of the asset to someone else in your Will. If you are tenants in common then your share will go in accordance with the terms of your will but if the asset is in joint ownership then the rules of survivorship will apply and the asset will pass automatically to the surviving owner regardless of what might be set out in your Will. It is therefore important that the manner in which you hold your assets is clearly understood.

2. Do you understand your business structure?

There are a number of different ways that a business might be set up. You might be operating as a sole trader, a partnership, a company or in a family trust. The different forms of ownership will have different implications for your succession planning. You need to understand your business structure so that your business assets will go to the intended beneficiaries. Your accountant should be able to provide you with an organizational flowchart for your business which will help us to advise you on the best way to deal with your business assets.

3. What happens if you become incapacitated? Who can take control?

Everyone regardless of their age or state of health should have Enduring Powers of Attorney in place to ensure that someone of their choice is able to step in and manage their affairs if necessary. Deciding who to appoint as your Attorney is an important decision as they effectively stand in your shoes and can do anything that you could lawfully do. It is therefore important that they are someone in whom you have complete trust and you are confident that they would not do anything to benefit themselves at your expense. If you do not have a Power of Attorney in place and you become incapacitated and Administrator might be appointed to manage your affairs and it might not be the person you would have chosen.

4. What happens if you die? Who can take control?

The answer to this question will depend on which assets are being dealt with and the arrangements that you have put in place. Your Will will dictate what is to happen with your Estate and who is to benefit. As a general rule your Executor will take control of your assets but there may be circumstances where others have the authority to act. For example, if you are a minority shareholder of a company, the other shareholders might appoint different directors. If you are one of the trustees of a trust the surviving trustees will retain control.

5. Who do you need to provide for e.g. spouse, infant children, disabled children, adult children, more remote family members?

When you are making a Will you have to consider the various people for whom you have an obligation to provide. Spouses and children who are financially dependent on you are the obvious beneficiaries but there may be circumstances where non-financial dependants and other family members need to be considered. Modern families are more complicated than the traditional nuclear family but even they can throw up competing interests. If you do not make proper and adequate provision for your spouse and/or children a claim pursuant to the relevant Testators Family Maintenance legislation for further provision might be made. These claims are notoriously stressful for all parties involved and the costs of defending a claim can be a substantial drain on the Estate.

6. Do you have sufficient assets to balance the competing needs?

You need to look at all your financial resources and see who is going to get the benefit. You may need to consider using life interests to provide for some beneficiaries immediately on your death, with others to benefit at a later date. This can be messy and can sometimes cause unexpected consequences if for example the life tenant lives longer than expected or has a change in circumstances. Unfortunately there can sometimes be circumstances where there is simply not enough to go around and someone inevitably has to miss out.

7. Do you have adequate life insurance and who is the beneficiary?

Life insurance is one way that you can provide additional resources for your family. If you have life insurance in place you need to know who the beneficiary is. If the insurance is not going to form part of your Estate, because the policy is actually owned by someone else. This needs to be clearly understood because it might mean that you do not need to make provision for that person in your Will.

8. Are there safe guards in place to protect vulnerable family members e.g. testamentary trusts, Special Disability trusts

Particular care needs to be taken if you have vulnerable family members. There are a number of mechanisms we can use to ensure that the benefits you intend to bestow are protected. For example, if you have a disabled child funds can be invested in a Special Disability Trust to provide for accommodation and other specific expenses without interfering with the beneficiaries Centrelink entitlements. A testamentary trust can be used to protect a beneficiary who has poor money management skills or who could be preyed upon by the unscrupulous.

9. How is your Superannuation set up and who is the beneficiary?

Superannuation is fast becoming one of our biggest assets, but you may be surprised to know that you do not actually own your super. Whether your super is in a retail fund, an industry fund or a self managed fund it is the Trustee of the fund that will be responsible for the payment of any death benefit on your death. The Trustee will be governed by the trust deed and the rules of the fund. In order to ensure that your super goes to the right people you need to make sure that you have a valid binding death benefit nomination (BDBN) in place. Without a BDBN the Trustee will exercise its discretion and make a decision which may or may not reflect what you would have wanted.

10. Do your adult children have expectations that may or may not be met?

Talking to your family about what you are putting place is the best way to manage expectations. These can be difficult conversations but if handled sensitively they can enable all parties involved to understand what is planned for the future. Sometimes adult children have a sense of entitlement that is in conflict with your other obligations. Sometimes they are simply not prepared to wait and want control of assets before you are ready to hand them over. There is no one way to deal with these situations but there are



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