

INFORMATION SHEET YOUR ESTATE PLAN



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PLEASE READ CAREFULLY AND DISCUSS WITH US ANY ASPECT OF YOUR PLAN ABOUT WHICH YOU ARE NOT SURE

Thank you for your instructions to act on your behalf to prepare your Will and Enduring Power of Attorney. As our lives and asset ownership structures have become increasingly more complex in the last thirty years, so too have the laws governing their transfer and disposal on our deaths. Estate planning has extended beyond the preparation of a simple Will to an examination of your financial and family structures to minimise disruption between family members and maximise financial security at a time when your family is dealing with your absence. There are several matters we feel require special mention before you complete your estate plans.

TAXATION MATTERS – THERE IS NOTHING MORE CERTAIN THAN DEATH AND TAXES

We note our advice to you that we give no taxation or accounting advice about the implications of the Will and its structure in respect of the benefits that may be achieved by beneficiaries. We highly recommend that you address these matters with your accountant and financial planner, and *if you have any concerns in that regard please contact us further.*

Superannuation death benefits may be taxed at a higher rate in the hands of a beneficiary, subject to whether a person is classified as a “dependant” under the taxation legislation. We urge you to seek specific advice from your accountant or financial planner in that regard. We are happy to draft an appropriate Binding Death Benefit Nomination if required, subject to the circumstances. **Please note a Binding Death Nomination will lapse automatically after three years of its creation.** It is therefore vital, if you have made a Binding Death Nomination that you remember to renew it after



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three years.

If in your Will you have requested a “life interest” in a house or other property in favour of someone, there are Capital Gains Tax implications and we urge you to seek advice from your accountant and financial planner.

We have advised you regarding the opportunity to incorporate a Testamentary Trust in the terms of your Will and the potential benefits that may have for your chosen beneficiaries. We urge you to seek independent accounting and financial planning advice about the taxation implications particularly where there are infant beneficiaries under eighteen (18) years of age.

ASSET OWNERSHIP – YOURS, MINE AND OURS

Not all your property will fall into your estate when you die. It is important that you look at “who owns what” now, to make sure you can deal with that asset in your Will.

1. If you own a property as joint tenant, then it will pass to the other joint tenant by way of survivorship. If you own such property as a tenant in common, then you may transfer your share pursuant to the terms of your Will.

Please check the ownership of any bank accounts, shares and debentures and note whether they are owned jointly. The joint ownership will mean that it will pass to the surviving joint owner on the date of death, and will not form part of your estate to be dealt with under your Will.

2. If a life insurance policy is owned by a particular person, then the proceeds on your death will be paid by the insurance company *directly to the owner of that policy*. We urge you to carefully check the ownership of any life policies to ensure that this meets your estate plan. This includes policies held in Superannuation.

3. If you have nominated a beneficiary in your superannuation policy, then that beneficiary may take the benefit of that superannuation, upon your death. This will certainly happen if you have made a valid *binding nomination* in your policy. It is imperative that you consider your superannuation nominations along side your Will, to ensure it is an asset that can be dealt with in your Will.

ASSET PROTECTION – LETS KEEP IT IN THE FAMILY!

It is vital that you ensure control of your corporate trustee and your family trust remain in the hands of the right people when you die; your beneficiaries.

We need to examine your trust deeds and trustee company constitution to ensure specific provision is made in those documents, and, if not, then in your Will, for the transfer of shares and directorship in your trustee company to the person you would wish to control those entities when you have died.

It is also important to provide for the appointment of an alternative Trustee of your self-managed super fund.

Do you want to run the risk of dying, leaving your spouse with a partnership or business interest that your business partners cannot afford to purchase from her/him? This scenario occurs more often than we would like, compounding the grief, stress and financial uncertainty of your loved one at a time when she/he can least cope with it. For this reason, we *strongly urge* you to allow us to review your business agreements for partnership and/or joint ventures, to ensure when you die or become incapable there is adequate provision to ensure a quick transition of control and payment to your beneficiaries for your share in the business. There may be arrangements in place including a Buy/Sell Agreement,

which cover the circumstances. We *strongly recommend* that these issues be attended to at the same time as your Will.

FAMILY PROVISION LEGISLATION – ANTICIPATE ANY ISSUES!

Please consider carefully any child, spouse or former spouse who has the care of your child or children, or any person that may be financially dependent upon you at this time. If you fail to adequately provide financially for them in your Will, they may make a Court claim against your estate for a greater share than you have provided for him/her. This can embroil your estate in a lengthy and costly Court battle and decrease substantially the assets your estate has to distribute to all of your beneficiaries.

If you feel there may be a person or persons for whom you have not provided in your Will, *please discuss this with us*.

RECONSIDERING YOUR WILL

We recommend that you review your Will regularly (at least once a year) and consult us if you wish to change it, especially if any of the following events occur:

- You change your name or anyone named in the Will changes their name.
- If an executor dies or becomes unwilling or unsuitable to act due to ill-health, age or any other reason.
- If a beneficiary dies.
- If any specific property has been left to a specific beneficiary and you subsequently sell that property or it changes in nature.
- If the family situation of yourself or any beneficiary changes (eg marriage, divorce, matrimonial problems, children or further children, de facto relationships).
- If you become involved in a new business, company or trust.

YOUR ENDURING POWER OF ATTORNEY

Please read through the documentation carefully, especially the explanatory notes contained in your Enduring Power of Attorney. You will see that your Enduring Power of Attorney is a very powerful document in that it gives your attorney power to stand in your shoes and deal with your assets as if he/she was you. It is therefore imperative that the person you choose as your attorney has the maturity and financial sophistication to properly undertake the tasks for which you have appointed him/her.

CONCLUSION

We have prepared the documentation in good faith based upon your instructions and taking into account the advices that we have given you. *Should you have any concerns or amendments in light of the above, please do not hesitate to contact us in order that changes can be made prior to execution of the final documentation.*

Thank you for giving us the opportunity to act on your behalf in these matters.

CRILLY LAWYERS