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TECHNICAL GUIDE NO 4

ESTATE, ASSET PROTECTION & PENSION PLANNING

One vital area of family wealth planning is Estate and Asset Protection planning. Most people are keen for their hard-earned assets to remain in the family and not be diverted elsewhere due to marriage breakdown or other causes. We detail below a number of the issues that need to be considered in preparing and reviewing your wills.

1 Non Estate Assets

The following assets cannot or may not be able to be dealt with directly by a will:

- joint tenancies;
- most superannuation and life insurance proceeds;
- unallocated assets held in discretionary trusts;
- pensions and annuities

The documents that govern these assets may assume greater importance than a person's will.

2 Choice of Executors - Options

(a) **Family Member**
Advantage - is familiar with assets and wishes of deceased.
Disadvantage - may be inexperienced in estate administration but can use services of accountant or solicitor to assist in more difficult issues.

(b) **Professional Accountant or Solicitor**
Advantage - responsibility of administration is delegated from family member.
Disadvantage - may not always be aware of deceased's personal wishes and family politics.

(c) **Family Member and Professional Accountant or Solicitor**
Combines *advantages* and removes *disadvantages* of (a) and (b) above.

It is important to understand the fee charging basis of the professional executor. Accountants and solicitors generally charge on a time basis, whereas trustee companies charge on a percentage of the estate assets basis, which can become extremely expensive on larger estates over say $500,000.

3 Discretionary Trusts and Trustee Companies/Trustee Individuals

It is important for wills to address the following issues relating to discretionary trusts and trustee companies:

(a) Replacement of directors and shareholders of trustee companies
(b) Replacement of individual trustees
(c) Replacement of appointor (person who appoints new trustees)

4 Testamentary Trusts

Testamentary trusts come into effect on the death of a person and contain assets of the deceased for the benefit of the beneficiaries, usually children. The advantages of such trusts are:

(a) The income earned from such trusts is taxed in the children's name at adult rates of tax, ie the first $18,200 of income per child is tax free.
(b) The assets are generally vested in the child's name at a certain age, eg 25, and accordingly the child is unable to access the capital amount until a mature age is reached.
(c) The assets continue in the blood line of the deceased, so the new partner of a remaining spouse is unable to access assets of the deceased.

5 Superannuation

A member of a superannuation fund can prepare a written nomination form to direct superannuation proceeds to a spouse or children. This will then override any direction as specified in the will. A superannuation proceeds trust can also be set up via a will, similar to a testamentary trust to direct superannuation proceeds to certain family dependents, where no written nomination via a superannuation fund is prepared.

6 Other Issues

(a) Business succession plans covering assets and life policies of businesses should supplement the preparation of a will.
(b) The ownership of assets is important to prevent assets being claimed by creditors or spouses of children on marriage dissolutions. Discretionary trusts can be used to protect family assets from such claims.

Pension Planning
Estate planning can also include the ability to obtain Government Age Pension by organising asset and income to maximise any eligibility.

The critical issues involved in this planning are:

1. The entitlement ages for age pension are 65 years but this is gradually moving up to age 67 years for persons born after 1 January 1957.

2. There are asset and income tests which have to be met to qualify. These tests are indexed every 6 months.

3. Business and investment assets can be transferred or gifted to relatives 5 years before pension eligibility age, without any effect on the pension entitlement.

   Obviously there are other issues to consider such as capital gains tax, stamp duty, losing control of business ownership, losing security and income flow from assets, and ability of relatives to manage the assets properly, so that such a transfer or gifting program should be considered as an overall part of the family estate and succession planning issues.

4. Business and investment assets can be transferred or gifted to relatives during periods of pension eligibility, subject to the following rules:

   Maximum gift of $10,000 per year per couple
   Maximum gifts of $30,000 over 5 year period per couple

   Any excess over these limits is treated as an assessable asset and is included in the calculation of the pension under the assets test and is deemed to earn income under the income test.

5. Any assets that are held in family companies or trusts that are "controlled" by the pensioner as director, shareholder, trustee or beneficiary are automatically included in the assets test calculation.

6. Assets can be reduced by expenditure on consumable items, travel expenses, home maintenance/improvements and prepaid funeral arrangements. Obviously such expenditure should only be made if the normal income generated from the assets before expenditure is not required for living purposes.

7. Assets held in bank accounts, shares and account based superannuation are deemed to earn income based on the prevailing deeming rates set by Centrelink rather than the actual amount earnt as interest or dividends.

8 The Commonwealth Seniors Health Card is potentially available to self funded retirees of age pension age who do not qualify for an age pension because of assets or income levels. However, while there is no assets test, there is an income test which is much higher than the age pension income test.