

COMPLEX ESTATE PLANNING: LEAVE IT TO THE EXPERTS

Introduction

For most people, estate planning has moved well beyond planning for a simple transfer of personal property. The reality of modern **financial and property arrangements** and modern **personal and family arrangements** is that the transactions that occur upon your death will resemble, and must be planned as, a complicated commercial transaction.

Consider the following scenarios:

Financial and property arrangements

- You own a business or have an interest with others in a business. This ownership is held through corporate, trust and/or partnership structures.
- You own property through such structures.
- Loans (or loan account entries made by your accountant) exist between such structures and you or your family.
- You have (or wish to have) a business succession agreement or arrangement with other partners in your business or investors in property. This may or may not be funded by life insurance.
- You have a self managed superfund. You may have significant life/ TDP insurance within this or outside this.

Personal and family arrangements

- You have children from a previous relationship and/ or children from your current relationship. You wish to safeguard testamentary gifts that you wish to leave to those children.
- You are concerned about the financial well being of your children from your current relationship, or your children from a previous relationship, in the event that your partner meets a new partner after your death.
- You are concerned about the likelihood of a family member or other person challenging your will after your death.
- You have a disabled child.
- You have an adult child who is not able to manage wealth responsibility for any number of reasons including, for example, an addiction.
- You have an adult child who is bankrupt, in financial difficulty or in a profession that carries a high risk of litigation (e.g. company director, own business, medical practitioner) and you are concerned that creditors will be entitled to your assets in the future after your death.
- You are concerned that your partner's future spouse or your child's current or future spouse will be entitled to your assets in the event of a marriage or relationship split in the future after your death.
- You have lent money to a child during your life but wish for this advantage either to be equalised between all of your children, or for the debt to be forgiven, upon your death.

If any of these scenarios applies to you, you require **complex estate planning**.

If that is the case, a **simple will** – a standard will prepared by a standard lawyer for a modest fee - will not carry out your testamentary wishes or address your concerns. Similarly, a **testamentary trust** – a trust established under your will when you die - without proper structuring or consideration, will not carry out your testamentary wishes or address your concerns.

Estate Plan Objectives

The principal objectives of every estate plan should be:

Certainty

Your estate plan should provide for the orderly transition of ownership and control (as appropriate) of your property, in accordance with your wishes, free from ambiguities and potential for argument between those that survive you.

Tax efficiency

In death, as in life, a particular result may have a tax sensitivity that can be mitigated quite legitimately with proper planning. Moreover, death is, in many ways, a legitimate tax planning opportunity. Your estate plan should be prepared in a manner that reflects this.

Asset protection

Similar to tax efficiency, a particular outcome can be structured in many ways, each with a very different risk profile. Your estate plan should optimise careful structuring and similar tools.

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An inappropriate will made without appropriate advice, applied in complex circumstances, will exacerbate, rather than address, the risks attendant in these objectives.

The Process

In order to implement a complex estate plan, it is typically necessary for the following to be addressed and considered by your lawyer in connection with the 3 principal objectives discussed above:

- Meet with you to understand your testamentary wishes and concerns, your family structure, your enduring wishes (e.g. powers of attorney/ enduring powers of guardianship) and to obtain other relevant information.
- Most likely, meet with your accountant and financial planner to obtain information and discuss your wishes.
- Review the trust deeds of your trusts, the partnership deeds of your partnerships, your companies' constitutions and shareholder agreements (if any) to ascertain what is required to pass control and to ensure appropriate formalities are followed.
- Conduct ASIC company searches (and review such results) in relation to your companies.
- Conduct LTO property searches (and review such results) in relation to your properties.
- Review the trust deed of your self managed superfund, and meet with your financial planner, to implement your death benefits nominations.
- Review recent balance sheets and profit/ loss statements of your entities, and meet with your accountant, to determine among other things whether any loan accounts (or other debts and entitlements) require particular treatment upon your death.
- Prepare your wills (incorporating testamentary trusts), enduring powers of attorney and enduring powers of guardianship. It may also be necessary to prepare deeds of amendment of your trust deeds and/ or superfund deed if they are deficient from an estate planning or tax point of view.
- Meet with you to execute your wills and powers.

There are very few lawyers that even know the right questions to ask - never mind that have the background or skills - to do this properly.

An Observation

In our experience, most people in personal and business arrangements during their lives are careful, prudent and seek expert and up to date advice; yet, the same people may be ambivalent, and may accept well meaning but inappropriate advice from non-expert lawyers and others, as regards their testamentary wishes.

Given the stakes involved (and the persons affected) when you die, this is surprising.

Quite simply, unless you are expertly advised and implement appropriate estate planning documentation, your wishes will not be addressed and your estate will be exposed when you die. In addition to the usual grief families feel when a member dies, this will play out, in our experience, as **financial hardship**, an **unnecessary tax burden**, **business disruption**, **disputes/ litigation** and **large legal fees**.

What Now?

It is commonly thought that wills and estate planning is an elementary field and that 'any solicitor' can advise adequately in these areas. This is a **misconception**. To advise properly in these areas requires **command** of a number of **complex branches of law** including business structures, family provision law, wills, succession and probate law, superannuation, tax and stamp duty, trust law, guardianship and powers of attorney law and practice, family law, social security rules, partnership law, company law and bankruptcy law.

If you seek expert advice in complex estate planning, you should contact Baggiolegal. We are experts in **complex personal and business succession, tax and commercial transactions**. Our documentation is written in modern English and our advice is presented in a form that can be understood by non-lawyers. This blend of **expertise** and **skill** is almost **unique** in Adelaide.

Our principal, Andrew Baggio, is an **expert** in tax, complex estate planning and commercial transactions. In addition to **Law** and Arts degrees, he has a **Masters in Taxation**. Before establishing Baggiolegal, Andrew practised tax, structured finance and commercial law, for some of the largest law firms in the world, in England, Hong Kong, Melbourne and Adelaide. Besides his **outstanding technical expertise**, Andrew is well known for his ability to be commercial, to connect with clients and to communicate complex legal issues in a **simple** and **understandable** way.

About Us

Baggiolegal is a boutique law firm, specialising in commercial, taxation and private client law. **We understand** our client's objectives and provide clear and independent advice. Service is paramount to us. **We deliver** technically sound, timely and commercially oriented solutions. **We know** and understand the South Australian landscape, but our international perspective is unique in Adelaide. Our people have excelled in the legal profession in private practice and industry all over the world. **We apply** international best practice to our local client's needs. **We work** with our clients. **We listen** to our clients. We are approachable, accessible and personable.

More information about our firm and our principal is available at our website. Baggiolegal has prepared other Information Leaflets relating to estate planning. These are available from our website or on request.

These materials are for general information purposes only and do not constitute legal advice. Before acting on any of our views expressed in this publication, careful consideration of the case specific facts should be undertaken by a qualified lawyer.