

PERSONAL AND BUSINESS SUCCESSION: HEALTH Q&A

PERSONAL

<i>Have you:</i>	<i>If not, you need to get a:</i>	<i>If you don't get this sorted, then:</i>
Made arrangements to ensure that if you lose your mental/ legal capacity (e.g. illness, accident or dementia), a trusted and competent person(s) can step into your shoes seamlessly to attend to your legal and financial matters as regards yourself and your property?	Enduring Power of Attorney	<ul style="list-style-type: none"> • Legal/ financial decisions will be frustrated and delayed • Your dependents may suffer financially because your assets will be frozen • An inappropriate person may take control of your assets • Costly Court proceedings will be required to remedy the situation
Made arrangements to ensure that if you lose your mental/ legal capacity (e.g. illness, accident or dementia), a trusted and competent person(s) can step into your shoes seamlessly to attend to management and control of your self-managed superannuation?	Enduring Power of Attorney	As above
Made arrangements to ensure that if you lose your mental/ legal capacity (e.g. illness, accident or dementia), a trusted and competent person(s) can step into your shoes seamlessly to carry out your wishes and make medical and lifestyle decisions on your behalf?	Advance Care Directive	<ul style="list-style-type: none"> • Medical/ lifestyle decisions may not be made at all • An inappropriate person may make these decisions for you • Your family may find themselves in a dispute with each other about your care • Your wishes may not be carried out
Made arrangements to ensure that when you die your superannuation is transferred efficiently, economically, tax effectively, without complication, legal challenge or delay to your designated beneficiaries?	Binding Death Benefit Nomination/ Written Pension Agreement	<ul style="list-style-type: none"> • The Law, a Tribunal or some other person may decide who receives your super • Your dependents may pay tax on their inheritance when they need not have • Administration of your super may be delayed, costly and stressful • Your wishes may be challenged by a disgruntled beneficiary
Appointed a trusted and competent person as executor to manage your personal estate when you die and ensure it is conveyed efficiently and economically, without complication, legal challenge or delay to your designated beneficiaries?	Will	<ul style="list-style-type: none"> • The Public Trustee may act as executor and charge a significant fee related to the size of your estate • The Law will decide who inherits your property • Administration of your estate will be delayed, costly and stressful • Your will may be challenged by a disgruntled beneficiary whose legal fees may be paid by your estate
Significant personal assets that you wish to pass to beneficiaries in a manner that is extremely tax effective and, so far as is possible, sheltered from future legal claims?	Will with a Testamentary Trust(s)	<ul style="list-style-type: none"> • Your beneficiaries will pay significantly more tax, year after year, than they need to • Your beneficiaries' inheritance in the future may be at risk to legal challenge including matrimonial property disputes, creditors' claims etc. • Your beneficiaries may incur unnecessary taxes/ duties in the future to restructure their inheritance to protect against such risks

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.

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BUSINESS AND STRUCTURES

<i>Have you:</i>	<i>If not, you need to get a:</i>	<i>If you don't get this sorted, then:</i>
Implemented a set of legally enforceable and clear rules for operating your business with your family/ business partners? These should address, for example, management, limitations on authorities, protection of clients/ intellectual property/ confidential information/ goodwill, pre-emption rights and restrictions on transfer, dispute resolution, exit mechanisms, valuation methodologies etc?	Shareholders Agreement (or a Partnership Agreement or Unitholder Agreement as appropriate)	<ul style="list-style-type: none"> You may find yourself in a costly legal dispute with no roadmap to resolution You may find yourself part of a business in which you have no control and no access to information Your business partner may sell his interest to a complete stranger You have no roadmap to exit or realise your interest Your business partner may vanish but continue to own your business
Implemented a set of legally enforceable and clear rules to apply should you or your business partner die or suffer TPD or trauma? These may include, for example, a right for the non-affected partner to buy out the affected partner for a pre-agreed price (financed by insurance or vendor finance), whether or not retained earnings are paid out, whether or not loan accounts are repaid, whether or not long service leave is paid etc.	Business Succession Agreement (with/ without appropriate insurance)	<ul style="list-style-type: none"> If your business partner is affected, you may find yourself in business with a severely disabled business partner or a grieving and disinterested spouse or children who continue to be entitled to profits but have no obligation to sell their interest in the business to you If you are affected: Your spouse or children may find themselves in business with your business partner and unable to sell or realise their interest in the business: Your business partner has no obligation to buy out your spouse or children: You will have missed an opportunity to monetise your business to provide cash and security to your spouse/ children if you are affected by accident, trauma or death
Business arrangements between family members and/ or your business entities (such as equipment or real property leases, IP licences or loans) that are undocumented?	Lawyer to document the arrangement	<ul style="list-style-type: none"> There is no certainty in the arrangement Your property may be at risk to creditors Another person may dictate or terminate your arrangements at their discretion
In preparing your will, paid particular attention to the succession of your family trust(s) and companies and other business interests? Did the lawyer that prepared your will review your trust deeds, company constitutions and financial accounts when preparing your will to ensure succession occurs in accordance with your wishes? Did that lawyer consider whether your trust deed included adequate language to ensure control of your trust(s) passed in accordance with your wishes or whether an amendment was required to be made for this purpose?	Lawyer that is competent with tax, superannuation, commercial/ business matters and complex estate planning	<ul style="list-style-type: none"> Property may be controlled by you but not legally owned by you. Succession of such property is not a function of your will but of its own peculiar documentation and laws. Many wills and succession plans ignore such property altogether. If that occurs, the orderly succession of that property is in doubt

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.