

*Greven  
& Co.*

# Estate Planning



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# WHAT IS ESTATE PLANNING?

Estate Planning is the process of arranging for your assets to be dealt with, after death, in accordance with your wishes while minimizing the impact of stamp duty, tax & administration expenses.



## WILLS

### Why make a will?

Making a valid will is the only way you can be sure your property is distributed according to your wishes after your death. If you don't have a legal will, relevant State laws will determine how your property (or 'estate') will be divided.

A will allows you to appoint an executor-that is the person who will administer your estate.

## What assets are governed by a will?

A will does not govern all the assets that the testator owns or controls, but will only govern the estate assets.

Estate assets include:

- All assets owned personally;
- Shares in a company (private & public);
- The share of any asset owned as a tenant-in-common;
- Any superannuation death benefit or life insurance policy proceeds paid to the estate;
- An interest in any partnership assets, unless agreed otherwise; the right to recover any funds owed; and
- Any rights held under any contract

Estate assets do not include:

- Assets owned as a joint tenant;
- Assets held in trust;
- Assets owned by a company; and
- Superannuation death benefits or life insurance policy proceeds paid directly to a beneficiary

## What happens to assets in the estate if a person dies without a will?

If you die without a legal Will, the distribution of your assets or your “estate” is determined by the provisions of the *Administration and Probate Act 1919*. This means that the family and/or friends who you wanted to receive your assets may not if you have not provided for this in a legal Will.

This could produce a result which may mean hardship to your family and may be contrary to your wishes.

A set formula is used to distribute your assets & varies in every Australian jurisdiction. There are a range of issues which will determine which jurisdiction's rules will apply.

## The DIY will

There is no legal requirement that a lawyer must prepare a will, but it is recommended that you use a solicitor or legal professional. This ensures your will is compliant and reduces the possibility of it being contested.

There are certain formalities which must be followed when making a will & often 'DIY' wills fail because these formalities have not been observed.

If a mistake is made, or if the will is ambiguous, it will need to be interpreted by the Courts, with the substantial costs being paid for from the estate. It could also mean that somebody other than the person you intended may benefit from your estate.

## Beware of the 'free' will.

The Public Trustee prepares wills as follows:

- Free-only if Public Trustee are appointed as your executor, or
- Fees Payable-if you appoint another executor, however, Public Trustee must be named as the substitute executor in the event your nominated executor is unwilling or unable to carry out these duties

Private Trustee Companies also usually arrange that they be appointed executors for the wills they prepare.

Public & Private Trustee companies acting as executor, charge a sliding scale of fees based upon the gross value of the estate as well as commissions upon income collected on behalf of your



## EXECUTOR

### What role does the executor perform?

An executor (also referred to as the 'legal personal representative') has many duties, including the following:

- To supervise the funeral arrangements;
- To call in the assets of the estate: this involves applying to the court for permission to deal with the assets under the will & collecting all assets & debts due to the estate;
- To pay all outstanding debts: ideally this should be done within 12 months of the date of death, but the court does allow a longer period if that is reasonable in the circumstances;
- To invest estate funds so as to earn interest whilst the estate is being administered;
- To insure the assets for the estate against fire & other risks; to distribute the assets in accordance with the will;
- To arrange the completion of tax returns for both the testator & the testator's estate.

If no executor is named in the will, it becomes necessary to apply to the court, so that the court can appoint someone to administer the deceased estate.

### Who should be appointed as an executor?

From a legal point of view, the only requirements when appointing an executor are that they be at least 18 years of age & of sound mind.

However, careful thought must be given to the appointment of executors. The qualities needed of an executor are those of honesty, business acumen & organization.

The testator should choose someone who is likely to survive them & who will carry out the administration of the estate in accordance with their wishes. Common choices are family members, respected

business associates, trusted friends, lawyers, accountants or professional trustees.

It is important that the person chosen as the executor knows & understands the responsibilities involved, and is capable of carrying them out-especially where the estate might be large or complex.

## Who would You like to be Your executor?

Considering the above, who would be appropriate to carry out these duties for yourself?

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## POWERS OF ATTORNEY

### What is a Power of Attorney?

Appointing someone as your power of attorney gives them the legal authority to look after your affairs on your behalf.

Powers of attorney depend on which state or territory you are in: they can refer to just financial powers, or they might include broader guardianship powers.

Generally speaking, there are different types of power of attorney:

- A general power of attorney is where you appoint someone to make financial and legal decisions for you, usually for a

specified period of time, for example if you're overseas and unable to manage your legal affairs at home. This person's appointment becomes invalid if you lose the capacity to make decisions for yourself.

- An enduring power of attorney is where you appoint a person to make financial and legal decisions for you if you lose the capacity to make your own decisions.

A Power of Attorney should only be given to someone you trust completely. They are an extremely useful documents in the right hands, but very dangerous in the wrong hands.

## Do I need an Enduring Power of Attorney?

If you own assets & lose mental capacity, someone will have to be appointed to look after your financial affairs. If you have granted an Enduring Power of Attorney, you will have chosen that person (or persons) yourself.

If you have not granted an enduring power of attorney, someone (e.g. your spouse, children, trusted relative or friend) will need to apply to a court or a government tribunal to be appointed. It is likely that an officer from the government will also need to be involved in the management of your affairs which generally adds significant extra expense both financially and emotionally.

## Who would You like to manage Your financial affairs if You were unable to do so?

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# ADVANCED CARE DIRECTIVE

## What is an Advanced Care Directive?

As of 1 July, 2014; Advanced Care Directives have replaced Power of Guardianships in South Australia and allow people over the age of 18 years to:

- write down their wishes, preferences and instructions for future health care, end of life, living arrangements and personal matters and/or
- appoint one or more Substitute Decision-Makers to make these decisions on their behalf when they are unable to do so themselves.

It cannot be used to make financial decisions and only takes effect if you are unable to make your own health & welfare decisions, whether temporarily or permanently.

## Who will make decisions for you when you cannot?

It is your choice whether or not you appoint one or more Substitute Decision-Makers, who will be legally able to make decisions for you about your health care, living arrangements and other personal matters when you are unable to. You can specify the types of decisions you want them to make in the Conditions of Appointment portion of your Advance Care Directive Form.

If you do not appoint any Substitute Decision-Makers, others close to you may be asked to make decisions for you if you are unable to (Person Responsible). They must follow any relevant wishes or instructions you have written in your Advance Care Directive. Anyone making a decision for you will need to make a decision they think you would have made in the same circumstances.

## Refusals of health care

You may have written in your Advance Care Directive that you do not want certain types of health care, also known as a refusal of health care. It is important to make sure you have written down when or under what circumstances any refusals of health care apply.

If you have refused specific health care in your Advance Care Directive, your Substitute Decision-Maker(s) (Person Responsible) and your health practitioner must follow that refusal if it is relevant to the current circumstances. This means that your health practitioner will not be able to give health care treatment you have refused. If you refuse health care but do not write down when the refusal applies, it will apply at all times.

## Who would you like to manage your personal wellbeing if you were unable to do so?

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## Document Preparation

Having a current & comprehensive estate plan will help ensure that your finances & assets are managed or transferred in accordance with your wishes in the event of death or incapacity.

Greven Financial Services project manages the process between the solicitors & our clients, providing you with plain language explanations of the types of estate planning directives & discussion of your options in detail. We convey all suitable options discussed

to the solicitors & liaise with them to implement your estate planning documents.

The fee for this service is outlined in the table below:

Service	Fee Charged (incl. GST)
GFS Fee to manage estate planning (non Business)	\$660.00
Referral-Solicitor Fee to prepare Will/s, Powers of Attorneys & Advanced Care Directive	From Individual \$425.00 Couple \$740.00

## Disclosures

Any advice in this publication is of a general nature only and has not been tailored to your personal circumstances. Please seek personal advice prior to acting on this information.

The information in this document reflects our understanding of existing legislation, proposed legislation, rulings etc as at the date of issue. In some cases the information has been provided to us by third parties. While it is believed the information is accurate and reliable, this is not guaranteed in any way. Opinions constitute our judgement at the time of issue and are subject to change.

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