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The 5 stages, 7 rules & 7 risks of effective estate planning

What are the 5 stages of an effective estate plan?

There are normally 5 stages in putting an effective estate plan in place.

Stage 1 - the fact find

This is where you tell your lawyer about yourself (and where relevant, your family) so that your lawyer can make sure that when you lose your capacity or die, your assets will be managed / passed in the way that you want - this includes telling your lawyer what are your:

- **personal assets** - those held in your personal name or jointly with another party such as your home, shares, bank accounts, personal life insurances outside superannuation; and
- **non personal assets** - those that you don't own personally such as in a company, trust or superannuation fund, including life insurances held inside superannuation.

Stage 2 - your power of attorney and guardianship appointment

Stage 2 is potentially going to be more important to you much earlier than your will.

This is where you provide for what happens if you lose your mental capacity, by setting up an enduring power of attorney and guardianship appointment.

Stage 3 - what happens when you die, including with your assets

In this stage, you tell your lawyer what you want in your will including what you want to happen with your assets when you die. At this stage, you should not worry about the risks that are dealt with in stage 4. Just say what you want to happen with your assets when you die and then in stages 4 and 5, you can work out how to make it happen.

Stage 4 - shaping the estate plan and the will

In stage 4, you tell your lawyer how to structure what you want to happen when you die. You will normally choose whether you want testamentary trusts and if so, whether you want asset protection measures included in them.

This stage is all about how testamentary trusts and other protective measures can save tax and protect assets against the risks that need to be considered when passing wealth on death. See the risks referred to later in this document and in separate documents that we can supply that will explain the risks.

Stage 5 - your housekeeping

You need to ensure that all of your assets [personal assets and non-personal assets] and the entities that own the non-personal assets are structured in a way that will permit your wealth to pass as you intend when you die. In this stage, your lawyer can tell you what needs to be done to make this happen.

Simply having a will doesn't mean that assets pass as you want and need them to. You still need to do your housekeeping, particularly if you want to maximise the tax saving and asset protection opportunities that can be provided to you with a well-structured will and estate plan.

For example, changing joint tenancies of a family home to a tenancy in common, getting life insurances well structured and making sure superannuation death benefits will, when appropriate, be paid to the estate, are all steps to ensure that post death, wealth can be better managed from a tax and risk perspective.

What are the 7 rules of effective estate planning?

Sydney Estate Planning Lawyers' 7 standard rules to use in making decisions about how to structure your estate plan are set out here. The EATSTYR acronym is how we remember them.

Rule 1 The golden rule is to manage **EXPECTATIONS**. When the time is right, you should tell your family what you have done and why to avoid unexpected outcomes, which are a very common cause of disharmony in managing wealth after a death. Tell them and tell them often, as people have a great capacity to forget things.

Rule 2 There is no correct **ANSWER** - it is about making informed decisions.

Rule 3 **TRUST MODEL** - unless there are good reasons not to, trust those that will be in control of your wealth while administering your estate if you lose your capacity or when you die.
Also, trust those that you will give your wealth to when you die to get it right.

Rule 4 We only hear of the bad cases about the managing and passing of wealth on loss of capacity and death - do you want to box at **SHADOWS?** Normally it happens very smoothly, so why complicate things on the basis of what is not likely to happen?

Rule 5 Keep your will as flexible as possible - estate planning is as much as possible about creating flexibility and **TAX** planning opportunities unless there are reasons not to.

Rule 6 There are hundreds of **YEARS** of law that relate to the estate planning process and so we do not need to be too prescriptive about how we want it all to work unless the plans require something more specific (eg the application of capital and income for the benefit of a minor beneficiary where the beneficiary's parents die prematurely).

Rule 7 Estate planning is not set and forget. Don't try to be too long range. Regularly **REVIEW** your circumstances and documents. Each year when you do your tax is a good reminder for this incredibly important need. Despite this, our commitment to you is to give you something that is quite long range providing your circumstances don't change substantially.

What are the 7 risks to effectively passing wealth on death?

The 7 risks to effectively passing wealth on death are the **3S's, 2B's and 2D's**:

Risk 1 - SPENDTHRIFT - what if an intended beneficiary is not good at managing money and you want to protect them against that?

Risk 2 - SPECIAL NEED of a beneficiary - what if an intended beneficiary has a physical and/or intellectual disability that means they are not able to manage the wealth themselves?

Risk 3 - SPECIAL NEED of a beneficiary - what if an intended beneficiary develops a drugs, alcohol, gambling or mental illness problem before they take control of their gift?

Risk 4 - BANKRUPTCY of a beneficiary - what if your surviving spouse, child or intended beneficiary is bankrupt when you die or becomes a bankrupt after you die having inherited assets from you?

Risk 5 - BETRAYAL by surviving spouse - will your surviving spouse change their will after your death and disinherit your children or other intended beneficiary?

Risk 6 - **DIVORCE** of a beneficiary

What if your surviving spouse forms a new relationship and it breaks down?

Will the assets that you intend to eventually pass to your children be exposed in a claim by your surviving spouse's new partner?

What if a relationship of your child or other nominated beneficiary breaks down?

Will the assets that you leave them be exposed in a claim by the partner of your child or intended beneficiary's partner?

For more information about Risk 6, see our separate document about the solutions for the 7 risks of passing wealth on death.

Risk 7 - DEATH of a beneficiary

What if your surviving spouse forms a new relationship and on their death, their new partner challenges their will as your surviving spouse has not made adequate provision for their new partner?

Will the assets that you intend to eventually pass to your children be exposed in a claim by your surviving spouse's new partner?

What if your child dies and their partner challenges their will as they have not made adequate provision for them?

Will the assets that you leave them be exposed in a claim by your child's partner?

For more information about Risk 7, see our separate document about the solutions for the 7 risks of passing wealth on death.

How to effectively assess the 7 risks?

Instead of getting worked up about the 7 risks of passing wealth on death and spending a lot of time talking about things that don't matter to you, we find the **ICADI** acronym a useful tool. It goes like this:

IDENTIFY it - what is the risk.

CARE - do you care about it? If not, forget about it and move on. If yes, does it concern you enough to want to do something about it?

ANALYSE - if you do care enough to do something about it, you need to analyse the solutions to deal with it.

DECISION - after knowing what the solution is and what you can do about it, are you prepared to restrict your intended beneficiaries as is required to protect against the risk?

IMPLEMENT - if you are, the solution can be put in place.

See our separate document about the solutions for the 7 risks of passing wealth on death.

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