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Avoid costly estate planning mistakes

There are some easily-avoidable mistakes made in estate planning which unfortunately can result in a very different outcome to what the testator wanted, says Anna Hacker, senior manager – estate planning at Equity Trustees Limited and an accredited specialist in wills & estates.

“Probably the most common mistake I see is to do with superannuation, where people attempt to directly distribute superannuation assets through a Will.

“In most cases, superannuation funds cannot be ‘left’ to someone in a Will, unless prior arrangements have been made for superannuation to become part of the estate by making a valid binding death benefit nomination naming the legal personal representative as beneficiary.

“If no binding nomination has been made, either to the legal representative or to another beneficiary, the super fund’s trustees can decide how the assets are distributed, which may not result in the outcome the testator wanted.

“In addition, it’s worth keeping in mind that while binding nominations can be amended at any time, they are not automatically cancelled out by events such as divorce. Therefore a new binding nomination must be made to ensure that, for example, an ex-spouse doesn’t inherit the superannuation savings,” Ms Hacker said.

She added that another area where superannuation can cause complications in estate planning is insurance.

“Forgetting about the insurance policy of a super account is another common mistake.

“The person nominated as the beneficiary of the super fund will usually receive the insurance funds, which may mean a significant amount of money.

“This may result in unintended inequalities amongst beneficiaries of an estate.

“For example, a person may decide that they want to leave the family home to one child in their Will, and their superannuation savings to another child by nominating them as their beneficiary, as these two amounts are equal. But the second child also receives the insurance payout which may be as much again as the superannuation funds.”

Ms Hacker said that other areas that should be taken into account in estate planning, but which are often overlooked, include:

Different state laws

“Different states have very different rules about who can challenge a Will.

“For example, Victoria’s legislation allows for the broadest range of claimants against an estate, which means that anyone who the testator had a responsibility to – including neighbours or business partners – can challenge the estate in court,” Ms Hacker said.

Other state laws that need to be taken into account include NSW’s ‘notional’ estates provisions, which allow assets to be clawed back into an estate even if they were gifted to others by the testator during their lifetime.

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Power of attorney

Ms Hacker says that a 'power of attorney' arrangement should be part of any estate plan.

"It doesn't matter how young or old, wealthy, or healthy someone is, a power of attorney arrangement should be considered to specify who will have the authority to look after their financial, medical and personal situation if they are left unable to do so – for example, through an accident.

"In most cases, it is best if the attorney is someone truly independent to avoid conflicts of interest, rather than a family member or friend," Ms Hacker says.

About Equity Trustees:

Equity Trustees is a publicly listed company that provides a range of financial services to corporate and private clients. Its businesses include funds management, responsible entity appointments, private client wealth management and corporate and personal superannuation. The company has over \$4 billion in its funds management, private client and superannuation businesses and has more than \$19 billion under responsible entity administration. Equity Trustees employs over 180 people in its Melbourne, Sydney and Brisbane offices.

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