

PLANNING YOUR FUTURE

"For tomorrow belongs to the people who prepare for it today" African proverb

1. YOUR WILL

It is essential that everyone has a will as it is the only way that your property can be paid according to your wishes on your death.

Many people think that a will is not necessary, but without a will your property will not be left according to your wishes, but according to an order set out by the government. A proportion of your estate will then pass to your former spouse, even if you want to give all your property to someone else, like your children.

It is necessary to regularly update your will, as failure to do this might mean that your former spouse receives 100% of your property when you die, when you wanted them to have none.

Most wills are cheap. We prepare simple wills. We refer clients to expert firms for more complex wills.

The two key matters to look out for in wills is to have someone you trust running your affairs when you die – the executor- and someone to give the property to – the beneficiary. Many of our clients rely on a trusted family member as executor, such as brother sister or parent, and name their children as beneficiaries.

2. YOUR SUPERANNUATION

With most superannuation funds you have the ability to nominate your beneficiary. If you have not done so, you ought to do this without delay. Some funds allow this to be a binding form, but with others it is non-binding. You ought to check with your financial planner as to which form your superannuation fund allows. It can make a big difference.

Example

John applied to the Family Court to have contact with his daughters, as the parents of their mother (who was dead), refused to allow him to see them. They continued to frustrate his exercise of contact.

John considered that they were poisoning the girls against him, and in desperation he committed suicide. He had left a non-binding nomination, and stated in it that he wanted all his superannuation paid to his estate. His will provided that his mother was to be trustee for his girls. The superannuation trustee decided, instead, to pay all the superannuation to the parents of the mother, as they were caring for the girls.

You should also check with your financial planner as to any tax implications as to the names of any beneficiaries.

3. YOUR LIFE INSURANCE

If you have life insurance, check as to the name of any beneficiary or owner of the policy to make sure that they are up to date and reflect your wishes. If you are in doubt, speak to your financial advisor. If you do not have one, we can refer you to a reputable financial advisor.

4. YOUR HOME

Most people own their home and other real estate with their spouses as either joint tenants or tenants in common. One difference between the two is that if you own as joint tenants and one of you dies, the other automatically inherits from you, irrespective of what your will provides, but if you own as tenants in common that share is transferred to the estate of the deceased.

Given that the home is often the only major property owned by a couple, it is often essential that the interest is converted from a joint tenancy to a tenancy in common as quickly as possible. We can assist you to convert your interest quickly, simply and cheaply. This process is called *severing* the joint tenancy.

If you negotiate a property settlement and the other party dies before any orders are made (or financial or cohabitation agreement is entered into), then you may receive **none** of your partner's share in the house, no matter what has been agreed.

5. YOUR FINANCES AND HEALTH

It is wise to have a document that will enable someone you trust to be able to look after your affairs if for some reason you cannot do so. This can be done by an enduring power of attorney. You can specify whether your attorney is to look after your financial affairs or your health affairs, or both.

You can also, in consultation with your doctor, have an advanced health directive prepared. This is a very specific document stating what medical procedures you wish to occur.

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It is essential that any existing power of attorney appointing your spouse as attorney is revoked and replaced with a new enduring power of attorney.

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

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