



Chat Legal Pty Ltd

*Let's chat*

# ESTATE PLANNING – DO'S AND DON'Ts

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# The request

- ◆ Things we should be thinking about with estate planning (tips and dos/don'ts)
- ◆ Binding and non-binding nominations and reversionary pensions
- ◆ Other matters of interest you believe we should be informed about

# Background



- ◆ eLawyer
- ◆ McCullough Robertson
- ◆ View Legal

# Tip 1

- ◆ Always draw a family tree
  - ◆ Full name
  - ◆ Date of birth
  - ◆ Partner (if any)
  - ◆ Children (if any)
  - ◆ Occupation
  - ◆ Health
  - ◆ Residency
  - ◆ Relationship (including details if great, good or estranged/not talking)

# Example family tree

# Tip 2

- ◆ Always draw a structure diagram
  - ◆ Ownership
  - ◆ Assets
  - ◆ Valuations
- ◆ Who owns what asset
- ◆ Joint tenants or tenants in common (including proportions)
- ◆ Who are the directors/shareholders
- ◆ Who are the trustees/appointors/guardians

# Example structure diagram

# Tip 3

- ◆ Estate planning in three questions:
  - ◆ Who do you want to benefit from your assets?
  - ◆ Who do you want to be in charge of those assets (relevant if benefiting persons are minors)?
  - ◆ (If applicable) Who do you want to look after any minor children?
  
- ◆ Side question – Are there particular people you do not want benefiting from your assets



## Tip 4

There are various factors that can impact how assets can pass

Specific details about asset including who legally owns

- ◆ Who owns the asset: you personally, your superannuation, you jointly with another, a company, a trust, a partnership (through one of the other methods)
- ◆ How does the asset pass: transferring the asset directly into the name of the intended beneficiary or giving control over the asset to the intended beneficiary
- ◆ Are there other factors that can impact the above: the potential for your Will to be challenged or the need to be rigid in how you pass the asset (e.g. the succession of a business)

It is important to appreciate that having assets held in different manners – such as jointly with other people, through trusts and through companies – will impact what needs to be done. A Will *might* not be enough!

# Summary table

<b>Ownership</b>	<b>What governs</b>	<b>What to look for</b>	<b>How to pass asset for simple estate plans</b>
Personal	Will If no Will – the law	N/A	Direct or control
Superannuation	Superannuation document and beneficiary nominations	Has a 'beneficiary nomination' been made and is it binding?	Direct, and if 'SMSF' – control
Jointly	Either the law, or how the joint interest is owned	Joint tenants or tenants in common	Depends on how owned
Company	Company constitution Legal owner of share	Who is the director or shareholder	Control
Trust	Trust document If unsure, trust law	Who is the trustee or appointor (controller)	Control
Partnership	Depends on how owned and third party agreements	Depends on how owned	Depends on how owned

# Tip 5

- ◆ Use a table to summarise client's intentions
  - ◆ Asset
  - ◆ Owner
  - ◆ Value (and debt)
  - ◆ Who's to benefit
  - ◆ Who gets the asset if you do nothing/how will this be achieved (you pick!)

# Example

Entity	Asset	How your asset will pass based on your existing estate plan
Personal – Dad and Mum as joint tenants	PPR	As the asset is held as joint tenants, the survivor of Dad and Mum will automatically receive the asset on either of their passing
Personal – Dad and Mum as tenants in common 50/50	Investment Property 1 Investment Property 2	[Optional 1] Per your Wills dated 31 May 2000. Clause 2 and 3 – 100% to the survivor. Clause 5 and 6 – Equally between your children in their personal name. [Optional 2] Under intestacy law, spouse receives \$150,000 and 1/3 of the estate while four children receive the rest equally
Family Trust	Shares worth \$1.5 million	The trustee is a company. No appointor named, although being mentioned. There is a third party as a guardian for the Family Trust. Without anything else being done, the third party will still be involved with the Family Trust
Company	Trustee company	Members are currently Dad and Mum. Directors are currently Dad and Mum. If nothing else is done, then the shares will pass into your Will to be split between your four children (who may then subsequently appoint a representative director)

# Tip 6

- ◆ To hardwire or not to?
- ◆ How flexible do you want to leave things?
- ◆ The more 'set in stone', the more complicated it is to implement
- ◆ War stories
- ◆ Practical examples (too particular to a detriment and controlling the uncontrollable)
- ◆ Potential alternative – a guideline document?
- ◆ Trusting people
- ◆ If untrustworthy, keep things simpler, appoint more people or include independent persons?

# Flexibility – questions to consider

- ◆ Do you want to leave some 'guidelines' or 'rule beyond the grave'?
- ◆ If ruling beyond the grave, we will simplify things to remove any potential for abuse of power.
- ◆ If leaving some 'guidelines', do you trust those in control to **not** abuse their power?
- ◆ Think – if the persons in control *could* take all the assets for themselves, do I trust them **not** to?
- ◆ Should I appoint multiple people or an independent person(s)?
- ◆ Importantly, do I trust those in control to consider my guidelines and act in the best manner possible?

This 'guideline' document is called a 'memo of directions', and we provide you with a template to complete at your leisure.

# Introduction

Hello!

My name is **Eep**, the *educational estate planning* program.

I hope you are going well today.

Let me introduce myself before we get started.

I am a simple minded program intended to provide you with relevant information and issues to consider when estate planning.

I was created by my boss, who only did a crash course in HTML, CSS and Javascript, so apologies for any formatting issues you might come across.

My boss is a lawyer, but I am not (as a computer program, it's hard to obtain the qualifications and relevant work experience that humans do!). Therefore, the information I provide you may be true and correct, but should not be seen as legal advice. Neither does anything I say constitute a lawyer-client relationship between my boss and you.



## Meet Eep

*The educational legal knowledge program in conjunction with Chat Legal Pty Ltd ABN 64 621 391 553.*

### Current functionality

- Estate planning information
- Free Do It Yourself Will Kit

### Upcoming updates

- Improving user experience
- Translation to other languages
- Investment structuring information



**Want to learn more?**

<https://darius-hii.github.io>

# Contact details



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