

Power of Attorney

A person granting a *Power of Attorney* legally appoints a person/s to act on their behalf.

Powers of Attorney can be revoked and organisations that can transact on the Power should be notified of the revocation.

The person/s being granted the Power of Attorney should be trustworthy and dependable to act in the best interests of the person granting the Power of Attorney (donor).

There are two main forms of Power of Attorney. An ordinary Power of Attorney ceases to have effect if the donor becomes mentally incapacitated while an Enduring Power of Attorney does not.

For more information on Powers of Attorney see NICRI leaflet *Enduring Power of Attorney*.

Funeral Expenses

Setting aside funds to cover funeral costs may reduce stress and worry for the family. For further information refer to NICRI's leaflet *Funeral Bonds and Prepaid Funeral Plans*.

It is possible to purchase insurance policies to cover the cost of funeral expenses. Age and the state of health of the insured affect premiums. Premiums paid are not usually refundable if a policy is cancelled.

Life Insurance

Life insurance cover should be reviewed to determine if it is still appropriate. Insurance essentially ensures that the nominated beneficiary/ies will be protected if specified events happen to the insured. The annual premiums can be an unnecessary expense if the insured has made other provisions for them.

Alternatively, life insurance can be a useful way of distributing wealth to beneficiaries. This strategy may appeal to people who have a number of beneficiaries and a major estate asset that is not easily broken up (such as a small business). Dividing estate assets can in some instances lead to the failure of a family business, capital gains tax liabilities or a contested Will.

Ownership of life insurance policies and nomination of beneficiaries should be checked as this may have an effect on the estate.

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Estate Planning



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What is Estate Planning ?

Estate planning is determining how assets will be divided upon death to ensure they are distributed efficiently and according to the deceased's wishes. Proper estate planning can reduce worry for spouses and/or beneficiaries. All sorts of problems can occur if a person's financial affairs are not planned properly.

A current Will is vital regardless of the amount of personal wealth and an Enduring Power of Attorney should also be in place.

Appropriate estate planning can allow a person to pass on assets to beneficiaries in a tax effective manner.

As part of the process it is important to check superannuation funds and life insurance policies to ensure correct beneficiary/ies are nominated and make changes if necessary and appropriate.

Property and investments which are held as 'joint tenants' cannot be distributed through a Will. Ownership passes automatically to the survivor. If owned as 'tenants in common' the deceased's share in the property is distributed through the Will.

It is also important to ensure that plans reflect the person's wishes and are fair to descendants and beneficiaries, or the Will may be contested in court. If there is a concern legal advice should be sought.

All legal documents and records should be kept in a secure place. They can be held by a solicitor or a bank in safe custody. Fees may apply. Ensure someone trusted is aware of the location of the Will.

Wills

A Will is a legal document that ensures the wealth accumulated in life is distributed to beneficiaries according to the deceased's wishes.

If a person dies without a Will (intestate) the estate is divided according to state or territory legislation. This may cause family and beneficiaries hardship or complications and can result in lengthy delays in winding up the estate.

A Will should be reviewed regularly, at least every 5 years or when circumstances change to ensure it is still appropriate.

A solicitor, the Public Trustee or a private trustee company can prepare a Will. Their fees vary so it pays to shop around. The requirements differ in each State or Territory and it should be discussed with the person or organisation chosen to prepare the Will. If the estate is administered by the Public Trustee and/or a private trustee the estate will pay an administration fee.

Do-it-yourself Will kits are available. This may be cheaper but care is essential to ensure the Will is legally enforceable and all relevant matters are covered.

Executor/s are appointed and have the responsibility of carrying out the wishes of the deceased. The person/s chosen should be trustworthy, responsible and willing to perform the tasks stated in the Will. Executors are entitled to fees for administration as well as reimbursement of any expenses associated with the administration.

Testamentary Trusts

These are trusts set up under a Will. Upon death the trust becomes the owner and manager of all assets that are passed to it through the Will. The trustee has the discretion, according to the terms in the Will, to distribute the income and capital to nominated beneficiaries.

The main benefit of a testamentary trust is that the income distributed from the trust may have taxation benefits, especially if it is to be paid to children (minors). They may also help maximise a spouse's Government Income Support payment (provided they are not the Trustee) and protect assets from bankruptcy, divorce etc.

There are both establishment and annual administration fees for a trust. It should be discussed carefully with legal and financial advisers to determine if a testamentary trust is appropriate for the situation.