

Update 8 May 2008: Estate planning: More than just a Will



Fleming Muntz
Solicitors



Summary

A properly drawn Will ensures a smooth transition of wealth to beneficiaries, but assets that are not “legally owned” by a Will maker require special attention.

What’s changed?

The increasing complexity of business, and greater focus on personal retirement planning, mean that many individuals hold their wealth in trust structures. These assets may not be legally “owned” by a Will maker at death – this can mean that any part of a Will attempting to deal with those trust assets may be ineffective.

Superannuation and discretionary (family) trusts are just two examples of this type of “non-estate” asset.

What are the issues to be considered?

The planning needed to deal with “non-estate assets” will vary according to circumstances.

As an example, however, intended beneficiaries of benefits held in a superannuation fund can be nominated by a fund member but that “nomination” is conventionally by an *extra* document outside of the Will.

In the case of a discretionary trust, an orderly passing of control of the trust and its assets is *crucial* to ensure trust assets are distributed appropriately. Once more, the passing of control and expressions of wish as to distribution of trust assets, are matters requiring careful planning *and*

appropriate *extra* directions – usually a “Memorandum of Wishes”.

How can Fleming Muntz help?

When taking instructions in estate planning, we closely examine *all* of our client’s affairs, with particular regard to trust and corporate structures. This attention to detail includes a careful review of any trust or corporate documentation, examination of financial accounts, and preparation of appropriate documents to reflect the wishes of a Will maker for *all* assets.

In the course of this detailed approach to estate planning, we work closely with a client’s accountant and financial planner, to ensure a successful collaborative outcome.

Please feel free to contact us at any time for general information or assistance on any aspect of estate and succession planning – this is a free service to our referring professionals.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

For more information, please contact:



Kellyanne Allwood LLB
Articled Clerk
Telephone: (02) 6021 2222
Email: ka@flemingmuntz.com.au

Solicitors for New South Wales and Victoria

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

fmlaw@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804
Telephone (02) 6021 2222

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