

# irongroup lawyers



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## Estate Planning and second families...

### ...can you keep everyone happy?

#### ● Introduction

These days many people find themselves not only with a new spouse but often with children from a prior relationship and possibly from the current one. Working out how to look after everyone in your Will in these scenarios can seem difficult with people often finding it so daunting, they do nothing. This of course, does no-one any favours. There are solutions and we wanted to share some of them to help people start thinking about how they too can resolve this issue.

● **First, children from a prior relationship ...** The most common option is to leave a portion of the estate direct to these children. It's possible to leave everything to the current spouse and let them take care of the children from a previous relationship however to avoid uncertainty, such as what would happen if the spouse re-married, most people look after these children direct from their estate. That portion should be allocated from personally owned assets, not superannuation or family trust assets (discussed later). If there is not enough in personally owned assets a binding death nomination on superannuation may help, with another option being a separate life insurance policy.

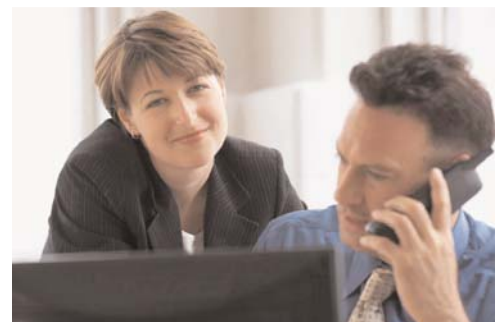
If the children are still young, a decision will need to be made as to who will manage those funds until the children come of age (most people want their children to be 25 years old before they can take control of the funds). Some are happy for the children's other parent (their ex-spouse) to manage it but others prefer one of their own siblings or even a close friend to do so.

#### SPECIAL NOTICES:

**Seminars and Workshops:** for details on upcoming education and training sessions please refer our website [www.irongroup.com](http://www.irongroup.com)

● **Second, children from the current relationship...** When clients also have children with their new spouse, they often don't leave them a direct inheritance, assuming they will be looked after by their new spouse i.e. their other natural parent. Of course everyone is different and it is up to the client.

● **Your new spouse...** Is your spouse financially dependent on you? To what degree? Do you want to leave them the house or apartment in which you have been living? Perhaps it is jointly owned. If so, your share by-passes your Will and automatically transfers to the other



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# *Estate Planning and second families...*

joint owner. If that's not what you want you will need to change the ownership structure from joint tenants to tenants-in-common. If it's changed to tenants-in-common you can then choose to whom you wish to leave your share in the property.

If you do not leave the property to the other co-owner your chosen beneficiary will become a co-owner with them. One option is to leave a life interest in the house to your spouse so that they can live there until their death (or, as in most cases, until their re-marriage or commencement of a de-facto relationship). At that point your beneficiary can deal with the property as they wish.

● **Everyone's situation is different ...** The ages of prior and current children and even expected future children all affect how someone plans their estate. In addition, the length of time spent in a first or second relationship can also impact as can consideration of the total estate value and even assets brought to the relationship. These factors can all come into play when working out the best estate plan to suit someone's needs. The important issue however is to sit down to address these issues before it's too late.

● **Issues to be alert but not alarmed about ...**

**Joint tenancy of assets ...** any properties owned as joint tenants (including bank accounts, shares etc) will automatically pass to the other joint owner. If you want to leave your share via your Will you need to change the ownership structure to tenants-in-common.

**Superannuation ...** unless you have a binding death nomination (an option not always available), the trustee of your super fund determines who will receive the funds and your superannuation will by-pass the estate. This could mean the spouse receives all of the funds and the children nothing. Once they are aware of this, some

people amend their Will to ensure their children, especially those from a prior relationship, receive additional assets from the estate.

Others have self-managed funds where often the spouse has the ability as a fund member to take control of the fund. Statements of Wishes can be prepared but as they are not legally binding, there is no certainty around where these super funds will be directed. Again this points to the need to allocate personally owned assets, wherever possible, to children from prior relationships.

**Family Trusts ...** If assets are held in a family trust it's important to identify who the Appointor will be after death as it's not possible to pass on assets owned by a family trust via the Will. The Appointor is then responsible for the appointment of the trustee, who is responsible for the management and distribution of those assets. This is especially important when a business is involved as not only can the business be affected by a 'departure', but uncertainty about the ownership can also impact with a business quickly deteriorating and losing value without clear direction. If the business is only one of the assets owned by the family trust the Willmaker will need to leave a Statement of Wishes. Again, this is not legally enforceable which means the Appointor must be someone who can be relied upon to carry out the Willmaker's wishes.

● **Can Irongroup Lawyers help?**

If you would like to provide your clients with more information on estate planning send an e-mail to [help@irongroup.com](mailto:help@irongroup.com) for a copy of our 'Comprehensive Wills & Testamentary Trusts' Insight.

Or for more information on irongroup's fixed price estate planning solutions please visit [www.irongroup.com](http://www.irongroup.com)