

irongroup lawyers

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Reviewing Wills - what to look for...

• The client's 'final' financial plan...

A Will is in essence a deferred financial plan which is probably why the regulators believe Financial Planners have a duty to perform in estate planning. Many accountants also help clients sort out the best way to pass on assets after death. Part of helping clients assess what they need may involve reviewing existing Wills. To help you with that we highlight some of the key elements to look for to help ensure your clients' final plan is properly implemented.

Specific assets nominated? Alarm bells...

If assets are itemised in the Will and have been left to particular beneficiaries, alarm bells should ring. Asset ownership and values can change over a lifetime, as can possible capital gains tax liabilities. Will that same asset be available after death? Will it have a relative net worth equivalent to what the Willmaker thought they were leaving an individual? In the majority of cases it is best for the client to leave a percentage of their estate to beneficiaries. Of course there are always exceptions but that is exactly what they should be.

To highlight the problems this can cause, a client approached us, concerned that when her father died she and her brother would no longer be receiving an inheritance. The problem? The father had left his two children some land, with the family home and an investment portfolio to the second wife. The second wife was also power of attorney and when her husband went into an aged care facility, she sold the land to pay for his care. There was nothing to suggest the wife had acted improperly, however it did mean there was nothing left for the children. If they had been left a percentage of the estate the outcome would have been different.

Key Elements	Some issues to consider
Have assets been nominated?	Are percentages more appropriate?
Discretionary testamentary trusts	Can each beneficiary set up their own?
Executor role	Who is it? What will it cost?
Superannuation & Family Trust	Are these properly handled?
Adjustment Clause	Unforeseen possibilities catered for?

Testamentary trusts are not all the same...

Over 90% of our clients choose to have testamentary trusts in their Wills. Whether it's the bankruptcy protection benefits, the tax benefits or family law benefits, once they understand them, they more often than not want them put in place for their families. However not all testamentary trusts are the same.

If you review a Will with testamentary trusts, first ensure there is provision for each beneficiary to have their own testamentary trust. If the Will is written so that the inheritance goes into one testamentary trust with a number of trustees and appointors, it can become difficult to administer over time. It is usually far better for each beneficiary to be able to take their share in their own testamentary trust that they control. Second, some testamentary trusts are fixed ie the income and capital distributions are pre-determined. This can remove one of the key benefits - distributing income amongst beneficiaries and thus reducing total income tax payable.

Would you like to offer an estate planning or business succession planning service to your clients? Email info@irongroup.com for more information on our **Alliance Partner advice model**.

phone: 03 8621 9000
fax: 03 8621 9001

email: info@irongroup.com
web: www.irongroup.com

irongroup Lawyers Pty Ltd ACN 102 794 249
Level 4, 45 William Street Melbourne 3000

Reviewing Wills...

Who really has control?

Who has been nominated as executor? We have recently reviewed a Will where the trustee company that prepared it was nominated as alternate executor ie if the spouse had pre-deceased the Willmaker, the trustee company became executor. In this case, the client had not realised the ramifications in that it also meant the trustee company could step into the role of appointor of their family trust, change the trustee and take control of the assets. Potentially dangerous.

Who is the executor? What will they charge?

We usually advise clients to appoint a trusted family member or friend to avoid unnecessary costs. An executor does not need to be a 'financial guru,' simply someone the Willmaker trusts. Once the executor is needed, they can direct the lawyer to organise probate in the first stage (if it's required) and in the second stage, can call on the Financial Adviser to assist with administering the estate. These costs can be paid for by the estate but they won't be a percentage of the total estate which is what most trustee companies charge.

Some clients of course, have no choice. They don't have someone they can appoint and/or have beneficiaries who require a lot of assistance over time but it's important they understand the costs and implications of doing so.

In most cases we recommend neither the lawyer nor the Financial Adviser act as executor due to potential conflicts of interest. That does not mean you can't get involved and indeed with our Wills the vast majority of clients want their Adviser firm noted in the Will, with a request that the executor refer to them for assistance.

Superannuation... the devil's in the detail

We have covered this before, so in short, unless the Super Fund trustees direct the money into the estate or there is a binding death nomination (BDN) in place, superannuation death benefits proceeds will by-pass the estate. Many clients believe their "final" financial

plan ie their Will, has covered this off but in many cases it won't have. Again each client's needs must be considered and a blanket approach to this cannot be applied. It may not be appropriate to put a BDN in place for example and could expose you to litigation by the beneficiaries.

If the client has directed their super into their estate, check to ensure the tax benefits for superannuation death benefits proceeds are maintained.

Family Trust? A law unto itself...

Who is nominated to take over the critical appointor role for the family trust? The Will can nominate the executor for the role or someone else may be nominated. Either way, consider the implications as that person(s) will have total control over the family trust assets. It is also important to ensure the trust deed provides for the Appointor role to be changed via the Will. If it doesn't, it may need to be amended.

The adjustment equalisation safety net...

Does the Will contain adjustment provisions? These are like a "catch-all" that ensure that the executor must adjust the estate distribution for payments made to beneficiaries outside of the estate. For example, if superannuation death benefits proceeds are paid direct to one child in a family and others miss out, the executor must give the other children more from the estate to help equalise it (where possible).

If your clients are looking for advice in planning their estates, we would be pleased to help. After consultation, our experienced lawyers will provide advice on the best solutions to suit their needs. Contact us for more information on our fixed fee services.

Attention Alliance Partners: Login to view our "Reviewing a Client's Existing Will" information page.

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2. Referrals

If your clients need estate planning or business succession advice, email their name and phone number to referrals@irongroup.com and we will contact them obligation free to discuss our fixed fee services.

3. Irongroup Lawyers Alliance Partner advice model

We work with Advisers around Australia who, having licensed our system, are now offering in-house estate planning and/or business succession planning services. If you would like more information please email us on info@irongroup.com or call 03 8621 9000.