

irongroup lawyers



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Estate Planning - a client scenario

• One size does not fit all...

As with any advice, it's always important to understand each client's circumstances so that the solutions can be tailored accordingly. To highlight this, we have worked through a client scenario below, along with some variations.

Scenario: Chris and Anna are a married couple, both with children from a prior relationship

Chris and Anna both have two children each from prior relationships. Chris' children are in their 20's and both work in his business with him. Anna's children are 10 and 12 years old and live with her and Chris as Anna's first husband died a few years ago.

Chris owns the \$800K home they are living in while Anna has rented out her \$400K family home. Chris has a financial planning business worth \$1 million and has \$250K in shares in addition to \$1 million in a SMSF. Anna is also a member of the SMSF and has \$250K invested in it. They also have \$100K in a joint cash management fund.

Proposed estate plan distribution - Chris

Chris wants to provide for his children from a prior relationship by leaving them the business, made easier by the fact that they are already working in it. The business is owned by a family trust so Chris nominates his two children to be co-appointors of that trust. He also has a company acting as trustee for the trust so he also leaves his two children the shares in that company in equal proportions. All other assets are to be left to his wife Anna. The \$100K in the cash management fund automatically transfers to Anna as the other joint owner, by-passing the Will. Chris also wants Anna to receive the death benefits proceeds and as Anna will be executor of Chris' estate, she will step in as trustee for the SMSF and can pay herself as spouse. If Anna has pre-deceased him, his assets are to be left equally to his two children. Whether Chris leaves anything to the two step-children will depend on circumstances including whether they are financially dependent on him - an issue to be considered in light of potential challenges. Anna's children may also have already been provided for via her Will - more on that later.

Version Two: As above but with a twist...

In a variation on the above scenario, let's say Chris had another business partner rather than his children working with him in a \$2 million business and had a Buy Sell Agreement with life insurance policies in place to fund it. If so, the agreement would ensure his partner received the shares in the business and, if set up accordingly, the insurance proceeds could be directed to his estate and his chosen beneficiaries.

What are the options for looking after his children in this version?

1. Chris could leave the insurance proceeds to his children, preferably via testamentary trusts so they get asset protection, tax savings and control benefits or ...

Providing for Chris' children	
Allocate a current asset?	The business? Insurance? Share portfolio? Half a joint asset? Super (with tax implications?)
'Future' asset?	The home on step-parent's death or re-marriage?
Rely on the step-parent?	It's not uncommon depending on the length of the relationship

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2. Anna may receive the insurance proceeds via the Will. As Chris wants to leave his children from a prior relationship an inheritance, he could give them the family home immediately upon his death. Chris may be comfortable with this as Anna already has another house. If not, he could give Anna the right to occupy the family home until she dies or re-marries. The home would then pass over to Chris' children at that point.

3. Alternatively Chris could leave his children the share portfolio and consider amending the ownership of the cash management account to tenants-in-common and leave his half to his children.

4. Chris could also put a binding death nomination in place to direct some or all of his death benefits proceeds to his children. However depending on how much Chris wishes to leave them, ideally any superannuation will be directed to Anna with other estate assets to the older, non-financially dependent children to optimise the tax advantages.

And Anna's Will? Given her children's age and that Chris has sizeable assets Anna may want to leave her children the property and super death benefits. It's important that Anna understands that as Chris is her executor he would stand in her place as a member of the SMSF and could choose to pay himself the proceeds. Anna may therefore choose to put a binding death nomination in place directing the proceeds to her children.

Of course catering for the possibility that Chris has pre-deceased her, Anna may appoint both children as alternate co-executors, if they are old enough at the time, so they both have control of the SMSF.

Given their current age, she should also nominate a guardian, and if it is to be Chris, she could also make him appointor of the testamentary trusts that could be set up for each child. Chris will then manage those assets and any income on their behalf until they reach the age of Anna's choosing, at which point they take over responsibility. Alternatively she could appoint say, a sibling to do either or both roles.

What usually happens with children from a prior relationship? When Willmakers are in a second (or subsequent) relationship, we find that the issue of whether to leave an inheritance to their children from a prior relationship in what is known as the 'first line of beneficiaries' differs amongst clients, sometimes depending on the amount of time they have been with their current spouse.

The longer the time together, the more likely it is that the spouses will trust each other to look after their children from a prior relationship. This means they will often leave everything to each other and in the event the spouse has pre-deceased them, then everything equally to all children of both partners.

This however, is obviously a decision for the client.

Version Three: As above, but the couple also have a common child...

In most cases the Willmaker would not leave anything to the common child in the first line of beneficiaries, but rather the spouse as most clients assume their spouse, as the mutual parent, will look after their 'shared' child when they die. Again though, this is a matter for the client.

Irongroup's options for Advisers

1. Referrals

If you have clients who need estate planning advice, simply email their name and phone number to referrals@irongroup.com and we will contact them obligation free for an initial chat.

2. Irongroup Lawyers Estate Planning training for Advisers

We offer lunchtime seminars or full day workshops. See attached or visit www.irongroup.com

3. Irongroup Lawyers Estate Planning System

If you want to offer an in-house estate planning service you may like to consider licensing our system. Email us on info@irongroup.com or call 03 8621 9000 for more information.