

### ESTATE PLANNING

Having a valid and up-to-date will is a great way to ensure that your assets are dealt with in the way that you want when you die. However, it is not necessarily the end of the story. Estate planning will look at the whole of your estate and help you make the most of your assets so that you can both enjoy them now and ensure that you provide for your beneficiaries. Without proper planning you could inadvertently place a financial burden on your beneficiaries rather than simply pass on the benefit of your assets. Estate planning is important if you want to ensure that your beneficiaries get the maximum benefit from your assets.

Originally, estate planning was done primarily to minimise the impact of death and estate duties. Death duties were abolished in Queensland in 1976 and federal estate duties were abolished in 1979. However, there are lots of circumstances where estate planning is important.

### TAX

Taxation issues are one of the key reasons for estate planning. The person that you appoint as your personal representative will be liable for your tax obligations in the period before death. They will also be liable for any tax on income arising as a consequence of the administration of your estate.

One of the most important things to bear in mind in planning your estate is any property, which will be subject to capital gains tax. Assets that attract capital gains tax include land or buildings, shares, units in a unit trust, collectables and personal use assets. Capital gains tax is not payable until the property is sold and therefore it is important to avoid the need for assets which attract capital gains tax being sold unnecessarily. The way in which capital gains tax is calculated differs depending on whether the property was acquired before or after 19 September 1985.

### OTHER CONSIDERATIONS

There are a number of other factors, which can make estate planning important:

- If you have a family business;
- If you want to make a charitable gift;
- If you have family debts or capital losses;
- If you have superannuation or life insurance: while the nomination of a beneficiary under an insurance policy or superannuation scheme is not testamentary like a will, it can have taxation and other implications for the beneficiary and it is important to factor this into an effective estate plan;
- If you have particular assets or family that you want to be given to specific people rather than being sold to pay the liabilities of the estate.
- If you have complicated family relationships, such as children from multiple marriages.

### FLEXIBILITY

The most obvious way of distributing your estate is to leave your assets through the will. However, it is not the only option. Estate planning can give you flexibility about how you pass on your assets and interests. You may want to limit the duration of an interest, For example if you want to ensure that certain assets will pass to your children after your spouse's death. You may also want to attach conditions to a gift, for example by specifying that it be used for a certain purpose. There are a number of different options for achieving these aims. By drafting your will in a particular way or through other options such as family or testamentary trusts. A lawyer can help you choose an appropriate option, which will minimise taxation consequences.

### FAMILY PROVISION

Proper advice can also minimise the risk of disputes arising over your estate after death. There is legislation in Queensland that means that even if you have a valid will it can be subject to challenge under what is know as a Family Provision Claim. These provisions are found in Part IV of the *Succession Act 1981*. The legislation allows a spouse, child or dependant, as defined by the legislation, to challenge a will if they can show that adequate provision has not been made for their maintenance and support. This is a complicated area of law; there are a number of factors a court will take into account when determining whether adequate provision has been made and these need to be borne in mind when planning your estate. You also need to bear in mind that there is certain property to which a family provision order may not apply normally. Legal advice can help minimise the risk of a family provision claim. This cannot only minimise the impact on the value of your estate but also minimise the strain of potential litigation on your loved ones.

### CONCLUSION

The ultimate aim of estate planning is to maximise the value of your estate and reduce hardship to your beneficiaries. It is important that an estate plan takes into account all your assets and liabilities as well as the financial and other circumstances of your intended beneficiaries. It is also important that an estate plan is administratively simple and cost-effective to maintain. Proper advice can provide an appropriate balance between your ability to enjoy your assets in your lifetime and the preservation of assets for your family after you die.

At Ferguson Cannon Lawyers we have extensive experience in this area and would be more than happy to discuss with you details of estate planning. Please contact Byron Cannon on 07 5443 6600.