

# Don't leave it too late!

## Important succession planning considerations for SMSF Trustees



**Lisa Sinclair, Estate Planning Lawyer**  
Nexus Law Group



PPM has, for over 20 years been focused on successfully building the wealth of our individual clients and SMSF trustees. Part of our service in managing our clients investments, is also to work with related professionals to assist our clients plan, for not only their financial future, but also to establish appropriate arrangements and structures to plan for their financial future when one or more of our clients is no longer alive. Estate planning is an important issue that should be considered by SMSF trustees, particularly where there is more than one trustee or more than one beneficiary under the fund. Whilst these conversations seem somewhat awkward at the time, they are important discussions to have and we have seen the benefits that forward planning brings.

Recently, PPM has worked with Lisa Sinclair of Nexus Law Group, whose practice focuses in succession and estate planning, with a particular experience in assisting SMSF trustees. Given the increasing complexity, and unfortunately the increasing number of disputes in this area, we have asked Lisa to provide some insight of current issues that should prudently be considered before it is too late.

### Times have changed

In days gone by it was common for your local solicitor to quickly whip up a simple will, probably in the office, in front of you perhaps and sign it then and there. Your will was generally then whisked away into the safe on the premises and a 'set and forget' approach to estate planning ensued.

It may be argued that a simple will and a 'set and forget' approach is appropriate in certain circumstances. However, the circumstances in which this now applies are virtually non-existent in our modern world. The era in which a simple will was commonly accepted amongst professionals has ceased to exist because our social and financial landscape has changed almost beyond all recognition over the last 50 years.

An estate planning lawyers' role is to protect the client's interests, so it is neither wise nor in the best interests of our clients not to make the appropriate enquiries and traverse to myriad of new and technical aspects to estate planning that exist today.

Some may argue not much has changed at all, but consider the following situations for a moment:

- blended families, step-children, step-parents, adoption and fostering, same sex marriage;
- superannuation, death benefit nominations, allocated pensions, reversionary beneficiaries;
- family trusts, unit trusts, self-managed superannuation funds;
- investment properties, holiday homes, time-share, down-sizing, aged care accommodation bonds, retirement village leases and licenses, granny flats;
- share portfolios and trading accounts, everyday accounts, savings, account, mortgage offset accounts, credit cards;
- the GFC, the housing market cycle, the royal commission;
- bitcoin, digital assets, Facebook, Instagram, QANTAS Frequent flyers, retail loyalty programmes;
- estate litigation claims, formers spouses, financial settlements; and
- an aging population.

All of these terms are new and either did not exist or were generally considered to be terms of no utility in the estate planning of the 'regular' family in the past.

These days however, it is an ever changing, fast paced, global and vastly different era. Many of our clients are familiar with these terms and may have these asset classes or, are in a family structure or financial structure listed above.

So, what does any of that have to do with estate planning and ensuring that beneficiaries receive everything they are entitled to? Absolutely everything, and the following are some simplified examples of why.

## Common problem issues

**Step-children** – many people remarry with small children and raise step children having no separation in their mind as to their biological children and their step children. Unfortunately, the court does and some legislation dictates that step children are actively excluded in certain aspects unless specifically nominated.

**Death Benefit Nominations** – are commonly used as a tax effective vehicle and the funds kept out of the estate. However, when the beneficiaries are either no longer alive, or they are no longer dependents, then having the benefits go via the will to the beneficiaries or into a trust may be a better option.

**Specific Gifting** – many people wish to leave personal effects to certain beneficiaries and these should be nominated in the will if the gift is to be certain. A simple letter to the executor is just that, it is a 'letter' and your executor has discretion, which means they can override your wish if it is not in the will.

**Pecuniary Gifting** – is a valuable and often generous surprise to many beneficiaries particularly for beneficiaries of estates where there were no children. However, whilst leaving a sum of \$250K to each of 4 beneficiaries today,





based on your assets being \$1M may seem logical, it can be disastrous. Why? For example if the market drops suddenly and the asset base is now \$750K, then it is possible that only the first 3 beneficiaries may receive their full entitlement. One beneficiary may miss out entirely. Further, if the market rises suddenly to say \$3M your 4 beneficiaries still only get \$250K each and your residue beneficiaries, who many people do not put a lot of thought into would receive the lion's share of the estate, being \$2M.

**Digital Assets** - anyone who has any online accounts which require passwords for secured access has a form of digital assets. For example your QANTAS Frequent Flyer points can be transferred, they are digital and they have a monetary value so they are a digital asset.

**Aged Care Accommodation Bonds** - who paid for the bond? It is often not the resident. Often the family has decided not to sell of the major asset being the principal place of residence and the children raise the funds to pay the bond. Is the facility aware of this? Do they have the internal protocols to enable the bond to be paid directly to the person who raised the capital and not have it go into the estate and split between all the beneficiaries?

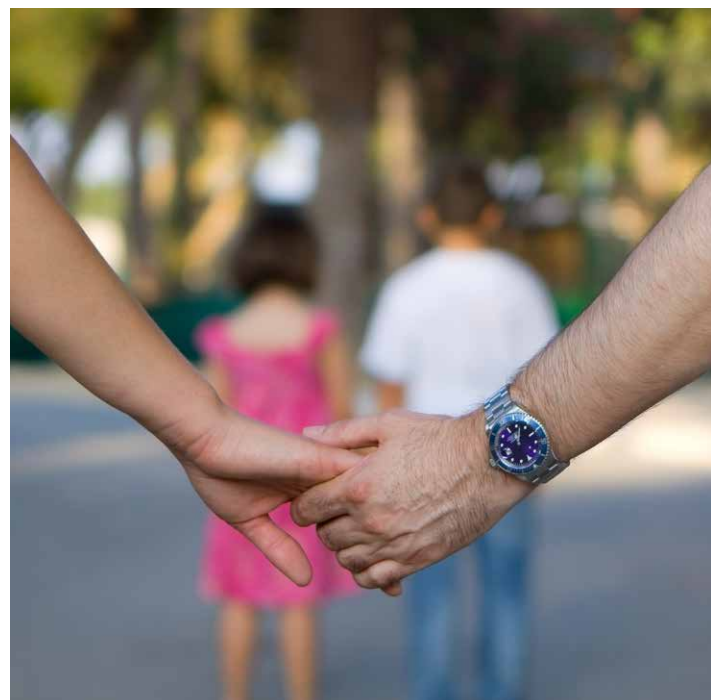
**Granny flats** - who is on the title? Is the granny flat the principal place of residence? If so for whom? Will it attract a CGT exemption and if not, what and how will it be taxed?

What about other siblings who assumed the main residence was the asset upon which their share of the family inheritance would be based. What if title is now in a sibling's name because of some 'tax structure' not properly thought through and advice given in isolation of the entire estate plan.

What you can foresee you can plan for. We can't foresee tax changes or the next GFC but we can through proper enquiry and proper advice based on a holistic approach that takes into account you, your family, your estate, your business interests and your wishes provide you with some measure of certainty.

Therefore, it is prudent to ask your estate planning lawyer about issues that are current and likely to impact your testamentary intentions and that you understand the role of your executor and the court in effecting those intentions. An executor's role is to distribute the estate in accordance with the will and they have considerable discretion on their side. In the event that something is not clear, they or the beneficiaries may apply to the court to interpret your will.

We recommend that you give yourself the opportunity to be guided by a dedicated estate planning lawyer. Not only does this reduce the possibility of things being left to chance, but proper estate planning is designed to help prevent estate litigation by disgruntled beneficiaries and/or a breakdown in the family relationship because the parties involved have made an incorrect assumption about the will and/or the estate.





## What to do next?

We would actively encourage you to review your current estate planning arrangements and if necessary would be happy to work with your lawyer or refer you to Lisa who can provide more detailed advice specific to your circumstances.

**Should you have any questions, please do not hesitate to contact us on (02) 8256 3777.**



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