

# Good Will Hunting!



PRESENTED BY

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July 2021



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# Agenda



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WHAT IS ESTATE  
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AVOIDING  
DISPUTES &  
PROVIDING  
CERTAINTY

# What is estate planning?

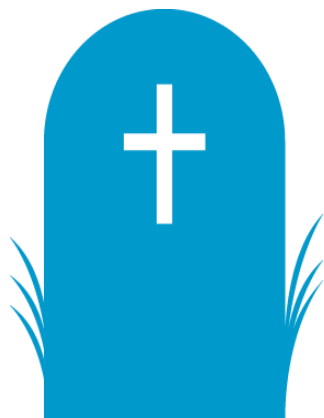


[‘What is estate planning?’ – click here](#)

# What happens if you die without a Will?



*I forgot to write my Will*



# Good Will hunting

## *The problem with DIY Wills*



## What should a good Will do?

1. Appoint appropriate executors and trustees
2. Take into account a beneficiary's circumstances
3. Be flexible
4. Be tax efficient
5. (Where appropriate) provide asset protection
6. Adjust for non-estate assets (eg superannuation)

**Not all Wills are the same**

['Why should you consider a testamentary discretionary trust' – click here](#)

## My Will covers all my assets, doesn't it?

Well.... **NO** –

a Will **cannot** gift:

- assets owned as joint tenants
- assets held in a trust
- assets held in a company

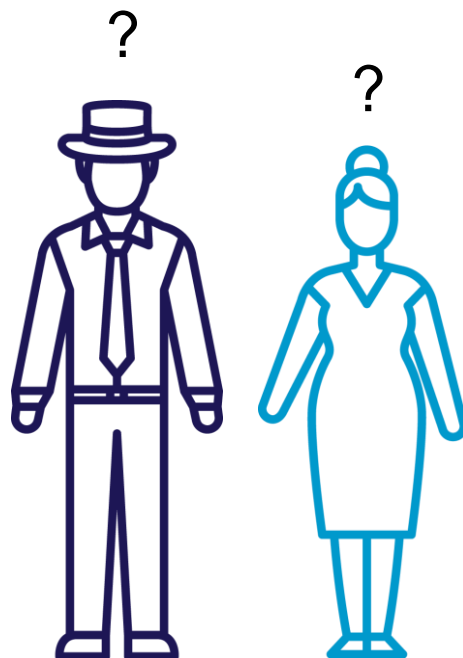
AND often these assets are **not** gifted in a Will:

- superannuation death benefits
- life insurance proceeds

[‘Why should you make a super death benefit nomination?’ – click here](#)



# Some important considerations...



## Choosing the right executor

[‘Your executor – an important appointment’ – click here](#)

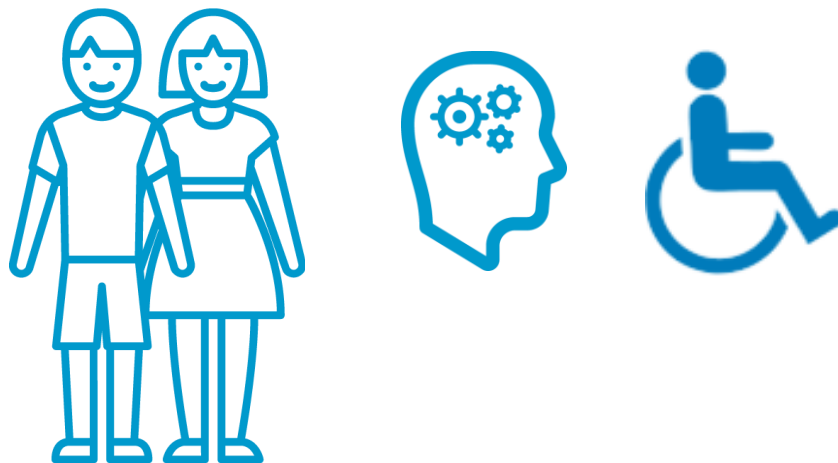
# Some important considerations...



## Blended families

['Case study – Jack and Irene' – click here](#)

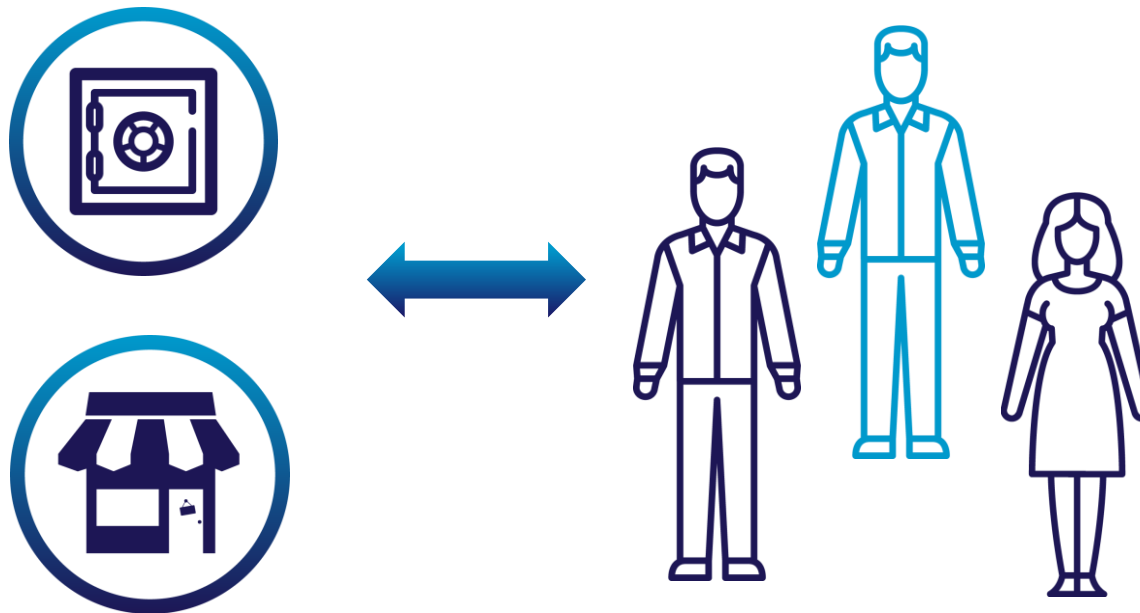
## Some important considerations...



### Vulnerable beneficiaries

['How can you protect a beneficiary with special needs' – click here](#)

## Some important considerations...



### Control of family trusts and private companies

['How do you transfer control of your family discretionary trust?' – click here](#)

# Avoiding disputes and providing certainty

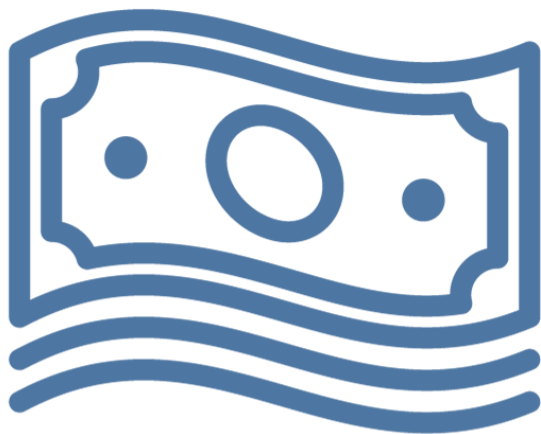
- ✓ Consider an independent professional trustee
  - Unbiased
  - Professional
- ✓ Disputes best avoided by creating certainty
- ✓ All estate plans must consider family dynamics and pre-empt issues

[‘Can anyone challenge your Will?’ – click here](#)

# Superannuation Death Benefit Nominations

- **Binding nominations** = *certainty but inflexibility*
  - Ensures payment to nominated beneficiary
  - Avoids Superannuation Complaints Tribunal
  - Minimal delay in payment
  - Blended families
- **Non-binding nominations** = *flexibility but uncertainty*
  - Leaving decision to a later date
  - Claim staking procedure undertaken
  - Risk Trustee will make a decision inconsistent with the nomination
  - Complaints may be lodged with superannuation complaints tribunal

# Enduring Power of Attorney



['Why should you have an enduring power of attorney?' – click here](#)

# Who should you appoint as your attorney?

## Substituted decision making

- Who you know and trust will act in your best interests
- Who knows you and what you want
- Who you can rely upon to be there and to get things done
- Who has the time and is willing to accept the burden
- Who doesn't have any conflicts of interest
- Who will consult with and take advice from your trusted advisers
- Who has the appropriate experience and business acumen to make decisions
- Who will act to maintain family relations
- Who you know and trust will act in your best interests



# Appointing an attorney

## How many attorneys can you appoint?

- You can appoint one or more attorneys.
- You should choose people who can cooperate with each other and work together in your best interests.

## How will they make their decisions?

You can appoint your attorneys to act:

- Severally (any one of the attorneys may decide)
- Jointly (the attorneys must agree on all decisions)
- Other (successive attorneys).

# Independent attorney

AET can be appointed as an independent attorney for financial matters if:

- You do not have a family member or friend you can trust and rely upon
- There is family conflict
- You have complex family arrangements (eg second marriage, stepchildren, family disputes)
- You have complex assets that need to be managed efficiently (eg trusts, companies, commercial property, SMSF)
- All of your trusted family members and friends reside overseas
- You do not wish to burden your family members and friends with a such an onerous task
- There is a prior history of violence or other abuse
- Your potential attorney has difficulty managing their own personal and financial affairs

# Starting an enduring power of attorney

An enduring power of attorney can commence:

- Immediately
- On a set date
- On a particular occasion (eg loss of capacity)

*‘When a medical practitioner usually responsible for my care certifies that in his or her opinion I am unable to manage my affairs.’*

# Advance care directive



# Estate planning doesn't need to be complicated but it needs to be right for you

## Best laid plans often fail because ...

- The Will wasn't tailored to your family's circumstances
- Non-estate assets are not appropriately addressed
- Estate planning didn't keep pace with changing circumstances
- Threats were not addressed
- Insufficient consideration was given to who to put in charge

**Getting the right advice and estate planning documents is critical**

# Are your estate planning affairs in order?

- Do you have a Will?
- Have your family circumstances changed?
- Do you have an enduring power of attorney (financial and medical)?
- Have you nominated a guardian for your children?
- Do you know precisely where your super death benefits will go?
- Is the executor named in your Will still appropriate?
- Do you want to make a gift to charity?



**Estate planning**  
Your estate planning checklist

Have you been more than five years since you last reviewed your Will?

Have you had children or grandchildren since you last reviewed your Will? You may be entitled to significant tax benefits if you establish a testamentary trust within your Will.

Have you married, remarried, entered into a relationship or divorced since you last reviewed your Will? Do you know that marriage revokes your existing Will but divorce does not (unless a Will where divorce revokes a Will)?

Do any of the beneficiaries in your Will have special needs?

Do you have any beneficiaries in your Will that you no longer wish to provide for or who have passed away?

Do any of your beneficiaries live overseas? If any of your beneficiaries are non-residents of Australia, there may be tax payable when you die.

Is the executor named in your Will still appropriate? If you have a complex family structure such as a blended family, it is important that you have an independent and impartial executor to administer your estate.

Are you concerned about how your trustee will invest or protect funds held by your estate?

Have you sold your principal residence and moved into a retirement village since you last reviewed your Will?

Have you dealt with your superannuation in an appropriate manner? Did you know that superannuation is not usually covered in your Will?

Have you completed a binding death benefit nomination form and lodged this with your superannuation fund? Has the binding nomination expired, if more than three years out?

Do you have items mentioned in your Will which you no longer own?

Have you nominated guardians for any minor children?

Have you given instructions in relation to your funeral?

Are you worried that anything you leave to your children may end up in the hands of their spouse in the event of a relationship breakdown? You can protect your assets by incorporating a testamentary trust in your Will.

Do you wish to provide an education fund for your children or grandchildren?

Do you wish to make a gift to any charitable organisation?

Do you have an enduring power of attorney in place so that your financial affairs are looked after if you become incapacitated?

Do you have an enduring power of guardianship in place so that your lifestyle and medical treatment decisions can be made by a trusted family member or friend, in the event that you become mentally incapable?

Do you have an anticipatory director in place in the event that you become temporarily ill and are unable to instruct your wishes?

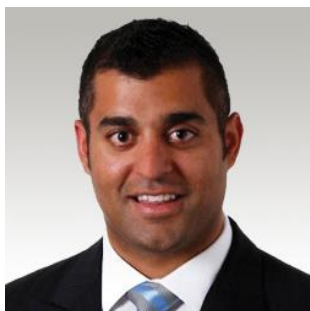
Estate planning is more than just your Will. If you ticked any of the above boxes, we recommend you consider your estate planning needs. If you would like to speak to one of our estate planning specialists, please call us on **1800 882 218**.

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**Thank you**