

# Building a fit financial future



# Protecting your assets





# ESTATE PLANNING



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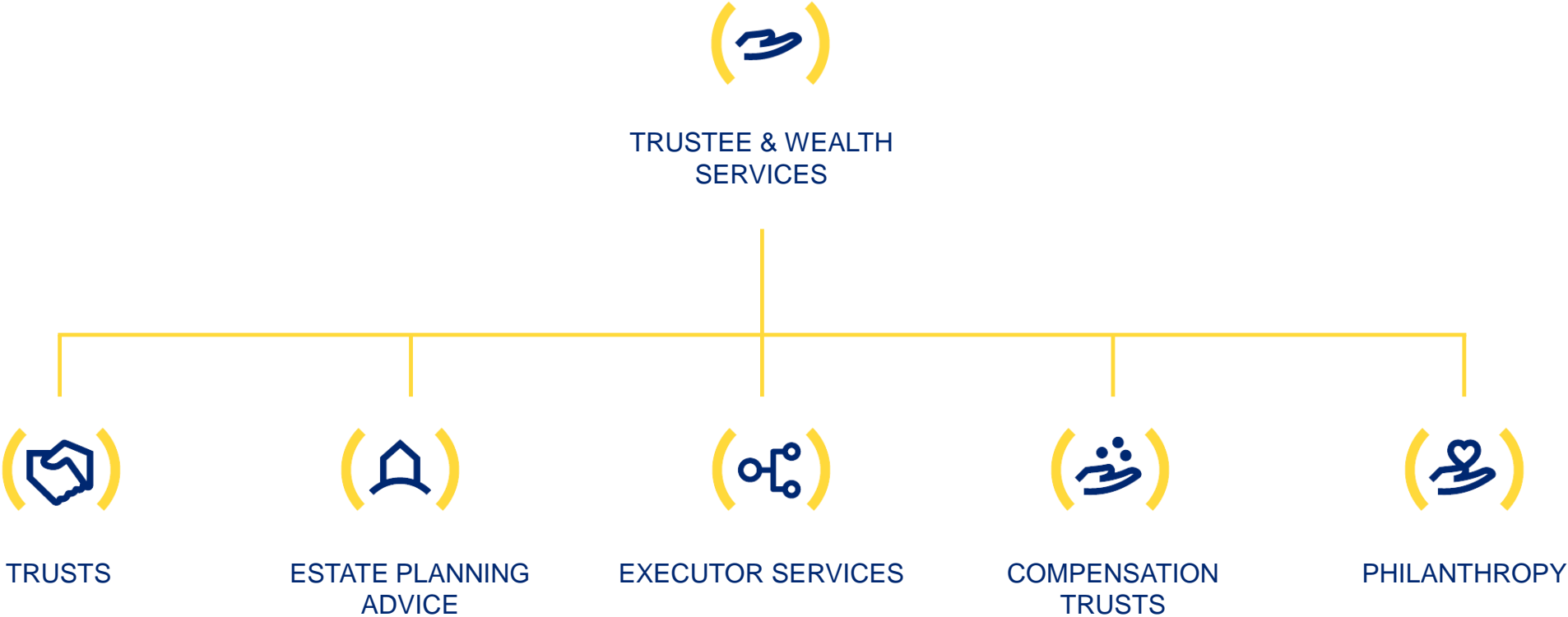
# AGENDA

- (1) INTRODUCTION
- (2) COMMON ESTATE PLANNING MISTAKES
- (3) PROCESS
- (4) QUESTIONS



# INTRODUCTION

# WHAT WE DO







Is it estimated that  
over 40% of  
Australians don't  
have an appropriate  
or valid will.

\*Having the last word: will making and contestation in Australia (March 2015) <http://www.uq.edu.au/swahs/Having%20the%20last%20word.pdf>

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# WILL VS ESTATE PLAN

## WILL

A will is a written document which:

- Appoints an executor
- Gifts assets and money personally owned to intended beneficiaries
- Nominates guardians of minor children
- Contains trustee powers
- Is signed and dated by the will maker in the presence of two independent witnesses.

## ESTATE PLAN

An estate plan:

- includes a will
- involves a full review of estate and non-estate assets
- enables wealth to be transferred on death from one generation to the next in the most tax-effective manner possible
- considers the needs and circumstances of the beneficiaries
- identifies risks and challenges to the estate
- ensures the right executor is appointed
- ensures the right person will be managing financial and personal affairs in the event of incapacity





# COMMON ESTATE PLANNING MISTAKES

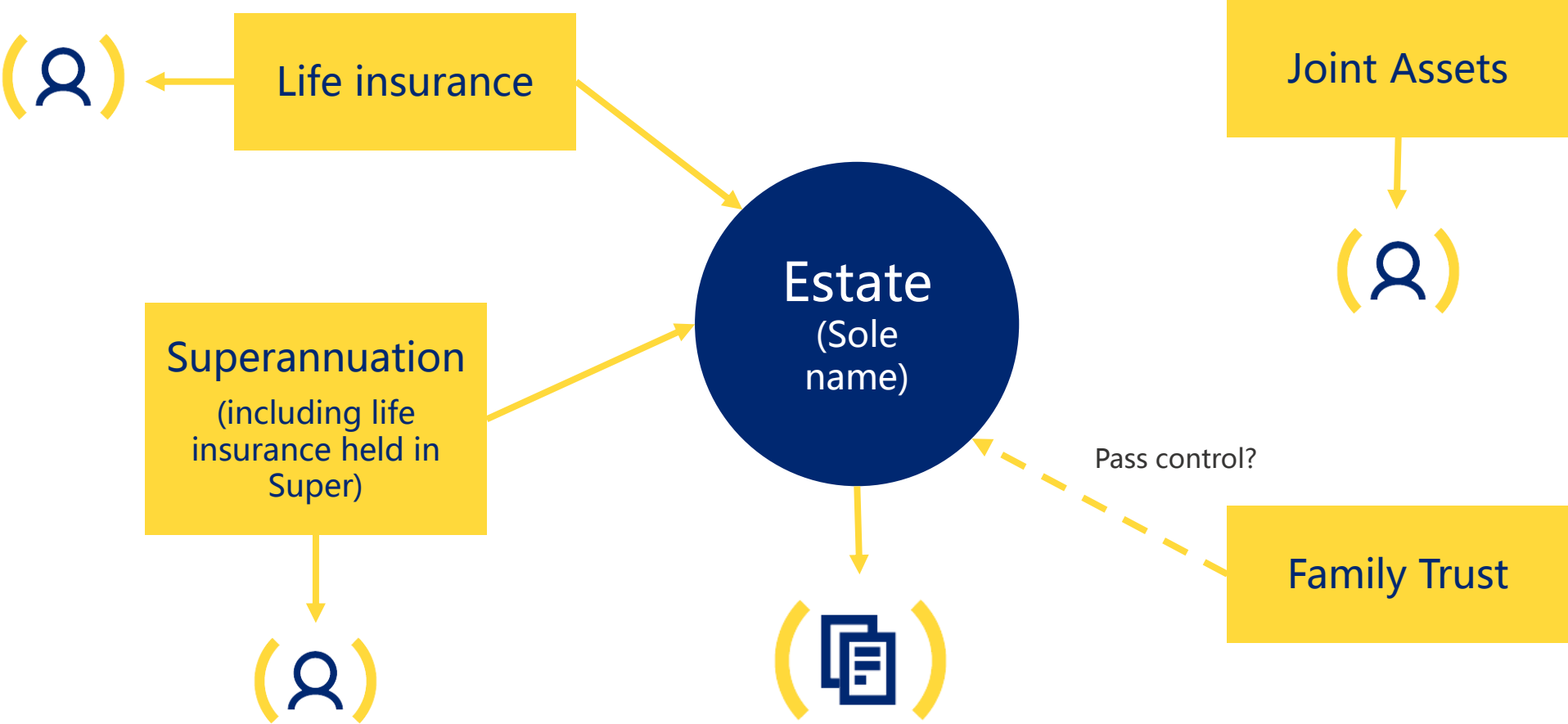
COMMON  
MISTAKE NO. 1



FAILING TO  
PLAN FOR  
NON-ESTATE  
ASSETS



# WHAT FORMS PART OF YOUR ESTATE?



# ESTATE PLANNING DOCUMENTS

- Will
- Superannuation Death Benefit Nomination
- Power of Attorney and Appointment of Enduring Guardian
- Family Trust Deed
- Superannuation Trust Deed
- Company Constitution
- Shareholders, unit holders and partnership agreements
- Binding financial agreements





## CASE STUDY- WHO'S ENTITLED TO THE SUPER?

- Megan decides to move in with her boyfriend Matthew after dating for 12 months
- After having lived together for 6 months Megan dies suddenly on holidays
- At the time of her death Megan is aged 27 years
- Megan dies without a will and owns the following assets:
  - Bank account with a balance of \$15,000.00;
  - Car;
  - Personal effects valued at \$5,000.00
- The trustee of her super fund advises that the death benefit payable is \$350,000.00 and there is no binding death benefit nomination
- Who's entitled to the superannuation death benefit?
  - Megan's estate and therefore her parents; or
  - Matthew.

# COMMON MISTAKE NO. 2



## BENEFICIARY DISTRIBUTIONS





# OUTRIGHT VS TESTAMENTARY TRUSTS

## OUTRIGHT GIFTS

Outright gifts in a will means the inheritance forms part of the beneficiary's personal assets.

## TESTAMENTARY TRUSTS

- A testamentary trust means the assets remain within a trust structure that are managed and administered by a trustee for the benefit of the beneficiary/ies
- The trustee may be a beneficiary of the trust or an independent trustee
- There are various types of testamentary trusts
- Benefits of testamentary trusts include:
  - Asset protection
  - Tax benefits and income splitting opportunities
  - Flexibility



## CASE STUDY: TESTAMENTARY TRUSTS

Adam and Hayley have three children and significant life insurance to ensure the survivor of them has adequate funds to repay debts and live comfortably.

They have nominated each other as the beneficiary of the life insurance proceeds.

Adam dies and his will simply states that Hayley is the beneficiary of his estate.

All assets Adam owns passes to Hayley and the life insurance proceeds are distributed directly to Hayley.



# CASE STUDY: TESTAMENTARY TRUSTS

- Adam could have set up a will containing a testamentary trust for the benefit of Hayley and their children
- A discretionary testamentary trust for Hayley and their children means that Hayley could have split the income earned from her inheritance amongst her minor children and saved approximately \$54,600 to \$60,000 in tax
- A discretionary testamentary trust could also provide asset protection for Hayley in the event of bankruptcy or a future marriage breakdown

WHAT COULD  
ADAM HAVE DONE  
DIFFERENTLY?

COMMON  
MISTAKE NO. 3



OUTDATED  
PLANS

# OUTDATED WILLS AND ESTATE PLANS

## WHEN WAS YOUR ESTATE PLAN LAST REVIEWED?

- Marriage
- Buying a house or change in asset structure
- Birth of children or grandchildren
- Divorce
- Death of someone close
- Other traumatic event
- Inheritance
- Career change/promotion
- About to retire





# CASE STUDY: OUTDATED WILL AND POWER OF ATTORNEY

- Noah has been separated from his wife Justine for 8 years and they have two children together, Hugh and Oliver.
- Noah and Justine have not divorced.
- Noah is in a de facto relationship with Heather and they have a child together, Georgina.
- Noah made a will and power of attorney shortly after he and Justine were married. He appointed her as the executor of his estate and left his entire estate to her. He also appointed her as his attorney in the event of incapacity.
- Noah had an accident and is put on life support for a number of months before he dies.
- His will and power of attorney were not revoked or amended to reflect his current circumstances. Justine had the power to manage his financial affairs whilst he was incapacitated and on his death, his entire estate went to Justine.
- Heather makes a family provision claim in the estate and the estate becomes subject to costly litigation and delays.



COMMON  
MISTAKE NO. 4



APPOINTING  
THE WRONG  
EXECUTOR



# APPOINTING THE WRONG EXECUTOR

- An Executor is appointed in a Will to:
  - manage the estate after death
  - distribute the estate assets in accordance with the Will maker's wishes.
- An estate takes approximately 12 months to administer, or longer where the estate is subject to a dispute.
- Facts and figures are the easy part – it's often the emotional and personal side of an estate that can be the most difficult to manage.
- The first instinct is to appoint a trusted friend or a family member.
- If a friend is appointed who is roughly the same age as the Will maker, will the friend be able to act or even be alive to do so?
- Does the appointed executor have the necessary time and acumen to manage the administration of the estate?
- Sole / co- / alternate executors

COMMON  
MISTAKE NO. 5



DIY WILLS



# DO-IT-YOURSELF WILLS

DIY will kits may seem like a quick-and-easy option, but the reality is that they:

- are extremely basic and often not comprehensive
- are prone to making mistakes
- can result in costly litigation
- fail to properly benefit the intended beneficiaries

Most common DIY will cases arise as a consequence of:

- the construction of the will, which affect the entitlements of beneficiaries and appointments of executors
- failure by the will maker to understand legal concepts applicable to wills and estate administration
- incorrect execution
- failure to adequately deal with non-estate assets.

# CASE STUDY: PETER BROCK'S ESTATE

Peter Brock died on 8 September 2006. Following his death, his estate was involved in lengthy and costly litigation to determine which of his three wills was valid:

- **1984 Will.** Prepared by a solicitor and made Beverly Brock, their two children and Beverly's son from a previous relationship the principal beneficiaries of his estate.
- **2003 Will.** A DIY will which revoked the 1984 will, appointed executors but left sections blank as to the distribution of his assets. The will was signed by Peter in the presence of Beverly as well as his personal assistant, although the personal assistant was the only witness to sign the document.
- **2006 Will.** A DIY will which contained provisions dictated by Peter to his personal assistant. The main beneficiary was his fiancé, Julie Bamford. The document was not signed by Peter nor witnessed.

## THE DECISION

The Court held that the 2003 will was valid and therefore revoked the 1984 will. The Court was not satisfied that Peter intended the 2006 will to be his last will.

However, as the beneficiary details were left blank in the 2003 will, the estate passed on intestacy to Peter's two children. Julie did not satisfy the definition of de facto spouse and as Beverly and Peter were never married, she also did not fit the definition of a spouse.

## THE OUTCOME

Julie Bamford made a claim for provision in the estate and the matter was settled. Peter Brock's children stated they would include their step brother in the distribution of the estate.

( 25 )





**“I would hope people  
out there take care of their  
affairs and sign their wills  
and get all the details done.”**

Beverly Brock

<https://www.smh.com.au/national/children-win-court-tussle-over-brocks-estate-20071025-gdrfaj.html>





# ESTATE PLANNING PROCESS



# ESTATE PLANNING PROCESS AND COSTS

- The process commences with an initial meeting between the client and the estate planning solicitor to develop the basis of the estate planning strategy
- Documents are prepared and drafts provided for review
- Another meeting is scheduled to sign the documents
- Well-established process and experienced team
- Estate Planning fixed fee solution
- Contact Paul Rapley to arrange a meeting for NSW and ACT:

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T: 02 9458 5513

- Contact Rachael Brown to arrange a meeting for VIC, TAS, SA and WA:

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T: 03 8623 5220

- Contact Shanene Romano to arrange a meeting for QLD and NT:

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# QUESTIONS



# DISCLAIMER


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# Thank you



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