

Keep your ex off your beloved assets

This is a very interesting article written by David Koch that appeared in the Sun Herald sometime ago. It is an important and still relevant reminder that you need to seek professional legal advice concerning your assets, especially if there has been a separation of change in your family situation. If you think you might be affected please phone me to discuss your situation and ensuring your legal affairs are in order.

Look after your estate and leave everyone happy when you go.

PROTECTING what we have can be just as important as building our wealth. But most of us make the mistake of constantly looking forward rather than safeguarding our base.

To put that right we need proper estate planning.

While estate planning is important for all Australians, it is critical (and a lot more complicated) for those in a second marriage. With the current divorce rate at about 50 per cent of all marriages, there are a lot of relationships complicated by children from past marriages, as well as those from the current relationship and different assets brought in by each partner.

Often it's the children from first marriages who feel the most vulnerable that their inheritance will be threatened by stepbrothers and stepsisters.

If there's one certainty in life, it's that we don't like to talk about death and taxes. But if you die without an appropriate will, you could leave your loved ones grieving over both.

Remember, your wedding revokes any will made before marriage, but divorce doesn't.

The worst case scenario is not having a will and dying "intestate". Your spouse's entitlement depends on state laws, but generally the spouse receives a flat amount, household contents and half the balance of the estate, if there is one surviving child, or a third if there are two or more.

The risk is that it could mean selling the family home for your spouse to be able to divide the money, which could trigger capital gains tax. It also leaves your estate open to others to stake a claim on it, such as your ex-spouse.

The other risk is that if you don't have a surviving spouse, children or next of kin, you'll be making your state premier a very happy man as the money will go into state coffers.

With a straight, simple will you could be putting your spouse's pension at risk when they take their inheritance into account.

Many people are getting legal advice and having their assets put into a trust so they aren't actually owned by a spouse, or children (depending on who you appoint as trustee); they only "control" the assets. If you appoint your spouse as trustee, they have more flexibility about how much money is paid out as income to themselves, or the kids, which opens up income-splitting opportunities and ways to cut their tax bill.

A trust is also a way of protecting your assets from litigation after your death, whether the claim is against your estate or your beneficiaries. And all small businesses fall into this category.

These trusts are also being used for estate planning by couples in a second marriage. The trust can isolate assets at the creation of the new relationship and then define who gets what from both marriages. They provide a clear guideline for beneficiaries and hopefully reduce arguments.

In fact, the Family Court and Family Law approve of trusts in estate planning.

But trusts can be costly to operate. The general rule of thumb is you need at least \$500,000 of assets to make it worthwhile.

Looking at how assets are structured can help estate planning. For example, a jointly owned property with the first spouse means the surviving partner gets it on death. But if the property is owned under a tenants-in-common structure, the survivor only gets half.

A prenuptial with a second spouse sounds a good idea but they are subject to different state laws and haven't been tested through the courts. So get good legal advice.

As your super grows in size, another important step is to make sure you have nominated the beneficiaries of your fund.

Another important consideration when you write a will is who you want to use as an executor. It can be more of a curse than a favour you're asking for. There's a lot they'll need to know and do, so by getting yourself organised, you'll make it easier.

One of the benefits of going through estate planning is that you're taking a grand view of your assets and liabilities. You'll probably realise they're not in the best shape (whose are?) and this could be the spark to get you moving in the right direction. It will also mean the legacy you leave your loved ones is an inheritance, not a tax bill and heartache.

There are "free will" kits around, but you should still talk to a solicitor for three good reasons:

1. Terminology. What you might think is clear and simple can be interpreted differently by a court. Do the "contents of my house" include the car in the garage, your shares or the golf clubs you lent out?
2. There's no such thing as a free will. There are trustees who will prepare one for you, but some of them charge up to 3.5 per cent of your estate to act as executor, and that's quite a cut.
3. Testamentary trusts can be a tax-effective way to protect your assets and your beneficiaries.