Compiled by Stuart Wemyss

FOR A HASSLE-FREE DEATH, do these six things...

Strange title, right? I was going to call the article "six things that can go wrong when you die" but that seemed kind of redundant. Most dentists work hard and invest to attain financial security for their family and themselves. In the event of an untimely demise, people need to make sure that their family members are adequately looked after and their wealth is preserved - as much as possible, i.e., minimize taxes and transactional costs.

This article looks at the six most common problems caused by you dying – other than the obvious! Whilst it's not a popular topic of conversation, it is something that we all must think about for our family's sake. The last thing you want to do is leave your family with pile of financial headaches.

1. LEAVING A BURDEN

If you die unexpectedly, how will your partner or remaining family members meet financial commitments such as mortgages, living expenses, children education costs and so on?

A recent internet poll of property investors revealed that over 48% did not maintain income protection or life insurance. I found this astounding given that property investors generally carry above-average levels of debt. Sometimes people respond to this point by saying that their surviving partner (family) could just sell the investment property(s) and repay the mortgage(s). Whilst this might reduce the issue of managing debt, it will cause retirement planning problems because now they will no longer have investment assets (which you would have originally purchased with the intention of funding retirement). Therefore, selling investments often isn't a smart approach.

Life insurance is often referred to as a 'scam' but truth be told, it's something most of us need. In my opinion, you are better off to have too much life insurance than not enough. We normally like to see client's have enough life insurance to cover the repayment of all mortgages, pay for 50% of living expenses (in the case where both partners are working) and pay for child education/care costs. Over time, as a client's net worth increases and their financial position become stronger, we would often deem it appropriate to adjust the level of cover down.

You can use your superannuation to pay for your life insurance premiums thereby eliminating the 'cash flow' cost of this insurance, i.e. won't reduce your personal cash flow. If you're a long way from retirement, you might actually consider your superannuation balance as a 'risk management fund' rather than a retirement strategy, i.e., a pool of money that funds your insurance cover while your insurance needs are high. To some degree, I take this approach. I'm happy to use my super to pay for as many of my insurance needs as possible.

A common apprehension when people seek out life insurance cover is that it's often sold by commission-based advisors. Therefore, people are sceptical about whether the recommended level of cover is excessive or not (as the advisor will earn more commission for the higher level of cover sold). It's also less likely that a commission-based advisor will proactively suggest you reduce your level of cover when it's appropriate to do so. If you have concerns with this, find yourself a commission-free insurance advisor. Not only will it ensure you receive unbiased advice, the annual premiums will likely be 20 to 30% lower (due to the absence of commissions).

2.VALID WILL AND LETTER OF WISHES

Everyone should have a valid will – there are no excuses. Wills cover very important issues such as what happens to your assets, who looks after your children, funeral wishes, who is responsible for carrying out the will (executor) and so on. Wills should be reviewed every three years and a new will should be drawn up if you become married or divorced.

You may also consider drafting a *letter of wishes*. A *letter of wishes* provides general guidance to executors. This might be important, for example, if your executor is not particularly financially savvy and you have a considerable investment property portfolio. In this case, you might suggest that the executor sell one property to repay debt and continue to hold all remaining

property in the testamentary trust so that the beneficiaries will enjoy a lifetime income stream (as well as still enjoying capital growth). An investment-shy executor might have instead opted to sell all property which would have never been your intention. A *letter of wishes* may also inform the executor which advisors you trust to assist with carrying out your will. Essentially, it's a handy document to have and doesn't need to be drafted by a lawyer – it's something you can update from time-to-time.

3.OWNING PROPERTY AS JOINT TENANTS

There are two ways you can own real property with another person – either as joint tenants or tenants-in-common (TIC). The difference between the two is that with TIC you can actually attribute a fixed ownership percentage to each owner whereas with joint tenants, there is no divisible ownership share.

Owning property as joint tenants can create estate planning problems. In the event of the death of a tenant, the ownership of the property passes to the remaining tenants. For example, if three friends own an investment property together and one of the friends dies, the remaining two friends will become the owners of the property. However, if the property is held as TIC, the share of the property would pass into the deceased person's estate.

The general rule is: if you own property together with anyone other than perhaps your spouse or de facto, it is nearly always best to own that property as TIC (not joint tenants) so that your estate will benefit from your share of ownership. This would be a common issue where siblings own property together. Consider the situation where a brother and sister inherit a property together (joint ownership), brother dies, property is therefore solely owned by sister, sister gets a divorce and property is subject to a marital separation. In this case, due to the ownership structure, the property is exposed to the perils of a relationship breakdown. If you have 'family' assets (that you want retained in your blood family and pass down to successive generations), make sure you take appropriate actions to protect these assets.

4.CONTROL OF TRUSTS

If you have a family trust, the assets of the trust will not form part of your estate as no one really owns the assets until the trustee elects to distribute them. Instead, it is the control of that trust that must be addressed (transferred) in your will. The controlling position within a trust is held by the Appointer. The Appointer has the power to hire and fire the Trustee (the Trustee operates the trust on a day-to-day basis in accordance with the rules of the trust – contained in the trust deed). Normally, the trust deed allows the Appointer to nominate a new Appointer in their will. If you hold the position of the Appointer, this is exactly what you will need to do.

Be careful if any loans existing between you and the trust as these will need to be addressed in your will (as these will be personal assets and/or liabilities).

5.INVESTMENTS HELD IN YOUR PERSONAL NAME

The problem with assets owned in your personal name is that often it's very difficult to allocate equal or specific values to beneficiaries without first liquidating them (selling the assets for cash). Consider the example where you have two children and you buy two investment properties for $400,000 each with the view that each child can have a property each upon your death. The problem is by the time you die, the properties might be worth significantly different amounts.

Often the best solution is to insert a testamentary trust into your will and ask that all assets owned in your personal name are transferred into the testamentary trust upon death. A testamentary trust is similar to a discretionary trust except that it's not created until the testator dies. A testamentary trust will have specified beneficiaries (as specified in your will). The benefit of a testamentary trust is that it gives the executor of your will more options. For example, returning to the example in the above paragraph, if both properties were transferred into a testamentary trust the executor/trustee might elect to sell one property and retain one. This would allow them to distribute some cash initially to beneficiaries (from the sale). The beneficiaries would also share the rental income derived by the remaining property.

A testamentary trust is a valuable planning tool to have in your will – particularly if you own assets in your personal name.

6.SUPER CAN GO ANYWHERE

The trustee of your super fund can pay your super to whoever it deems appropriate (according to the super fund's rules) and the trustee does not have to follow your will. To address this risk, many super funds allow you to complete a binding or non-binding death benefit nomination form which essentially provides instructions to the super fund in regards to where they should pay your superannuation benefits. For most funds, these nominations need to be updated every three years.

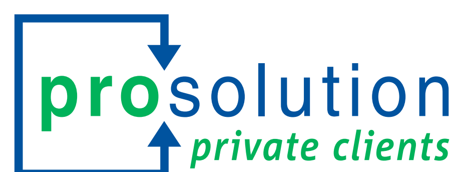
Therefore, there are two pieces of advice. Firstly, contact your super fund and ensure that they have a valid nomination form on file – we find many clients don't. Secondly, consider nominating a financial dependant, i.e., your spouse/de facto or children instead of your 'personal legal representative' which is often suggested. The benefit of this is that superannuation death benefits received by financial dependants are often received tax-free.

IN CONCLUSION: DON'T ALLOW THE 'URGENT' TO GET IN THE WAY OF THE 'IMPORTANT'

Hopefully, making sure that our estate plan is correctly in place isn't urgent for most of us – fingers crossed! However, it is very important. Unfortunately, we all lead busy lives and often attend to the 'urgent' tasks at the expense of the important ones. Don't let this be the case in your situation. Make sure you speak with your financial advisor or estate planning lawyer to ensure that all your estate planning issues are correctly addressed.

Estate planning is an important subset of financial planning. Given many property investors do not have a financial planning relationship, we often notice that they are wildly underprepared in this regard. How many of the six things above apply to you?

Estate plans should be reviewed regularly – at least every two to three years and certainly if a major change occurs in your life. I hope this article has gone some way, once again, in demonstrating the value of intelligent financial advice.



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