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Dangers of a Do It Yourself (DIY) Will

A Will is one of the most important documents an individual will make in their lifetime. Despite this, many choose to create homemade Wills or use a 'DIY Will' kit in order to save money.

However, a DIY Will can end up costing an individual a lot more money than it is worth because the Will is not drafted or executed properly.

Below we have covered a couple of issues that can arise if a Will is not properly drafted. As with many other areas of estate planning, drafting a Will requires the input of a professional to limit any potential disputes arising.

Will not properly executed

DIY Wills are often not properly drafted and/or witnessed. Mistakes such as failing to sign the document or misspelling names can also create havoc. These errors can increase the costs of obtaining probate, or it can lead to the Will being invalid.

Estate not disposed of properly

Care needs to be taken in drafting a Will to ensure that the individual's estate is disposed of properly. This can be a difficult step even when concerning a simple estate. A common error with DIY Wills is that they will refer to assets which the deceased no longer owns, or which do not form part of the deceased estate such as superannuation, trust assets and property owned jointly with another individual. Another common error is where the residuary estate has not been effectively disposed of which leads to a partial intestacy.

Terms of Will uncertain

It is important that the terms of a Will are certain to avoid the need to apply for declarations from the Supreme Court. Inadequately describing either the beneficiaries or the gifts to them can lead to confusion and additional costs. DIY Wills can often include gifts that contain unusual or uncertain considerations, which are often against public policy or difficult to interpret.

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Holiday home: good or bad investment?

Purchasing your own holiday house or apartment can be a handy investment. A home away from home might be the perfect place for a family holiday or a last-minute weekend getaway for you and your partner.

However, there are many important financial factors to consider before investing in a holiday home.

Location is key. If you plan to rent out your property as a way to produce income from your investment, then you will need to make sure you purchase a property in a location that attracts holidaymakers. A holiday house near the beach or surrounded by countryside will attract a higher demand than a property in suburbia. It is important to consider how much you are willing to pay for this investment and whether that fits in with the reality of current market prices.

What if you can not find an appropriate tenant? It is important to remember that you will still need to cover the usual expenditure that comes with owning a property, such as a mortgage, rates, insurance and maintenance fees, regardless if you have a tenant or not. To prepare for this risk, you will need to ensure that you will be financially able to cover these costs should the situation ever arise.

You may need to rent out the property right at the time you want to use it. It is a conundrum. Many individuals buy a holiday home intending to use it in the peak holiday months. However, this is usually the time when demand for your property will be at its highest.

Sharing economy activities such as Airbnb may be a better option for some individuals. If you are not ready to commit to a long-term investment such as buying a holiday house, you might consider joining the sharing economy. It provides a way to rent out your property (or part of your property) for a period of time, providing income.

SMSF returns due date approaching

The Tax Office is reminding individuals with self-managed super funds (SMSF) to prepare their 2016-2017 SMSF annual returns by no later than Monday 2 July 2018.

Earlier in the year, the ATO advised they were officially extending the due date to 30 June 2018. However, as this date falls on a Saturday, individuals with SMSFs have until the following Monday to lodge their annual returns without incurring any penalty.

This change will also apply to individuals reporting the 30 June 2017 value of any retirement phase income stream, using the transfer balance account report (TBAR).

Individuals who meet the relevant criteria are reminded that this will be the last chance to opt for transitional capital gains tax (CGT) relief. This will provide short-term relief to trustees of SMSFs who alter their asset allocations to meet the transfer balance cap and transition-to-retirement income stream (TRIS) reforms.

Investing in cryptocurrencies

Bitcoin and other cryptocurrencies have become increasingly popular over the past few years. As many keen investors jump on board, the ATO is reminding investors to be aware of the tax consequences.

Cryptocurrencies are classified as capital gains tax (CGT) assets, therefore, upon their disposal they may be subject to capital gains tax (CGT). For example, when you sell, trade or exchange your cryptocurrency, convert it to a fiat currency like Australian dollars, or use it to obtain goods or services.

If you acquire cryptocurrency as an investment, you will not be entitled to the personal use asset exemption. However, if you held the cryptocurrency for 12 months or more, you may be entitled to the CGT discount.

SMSFs

When an SMSF invests in a cryptocurrency, it must follow the same regulatory requirements that apply to investments in other assets. For example, super laws pertaining valuation, ownership and separation of assets, related party transactions, pension or benefit payments, sole-purpose test and voluntary disclosures apply to all cryptocurrency transactions.

An investment within a SMSF must:

- Be allowed under the trust deed
- Comply with SISA and SISR regulatory requirements
- Exist in accordance with the investment strategy of the fund
- Record keeping

It is essential to keep records of cryptocurrency transactions such as acquiring and disposing of a cryptocurrency, the date of transactions, the value of the cryptocurrency in Australian dollars at the time of the transaction, and what the transaction was for and who the other party was (even if it is their cryptocurrency address).

Who can challenge your Will?

It is a common misbelief that a Will is executed in a way the Testator originally plans it. When preparing your Will, it is important first to understand how another individual can challenge these intentions.

Your family members have the right to challenge your Will under the Family Provisions legislation. Only eligible persons can make a valid Family Provision claim generally within 12 months of the Will coming into effect, and the eligibility criteria differs slightly between each state and territory.

The Will may be contested by an eligible family member if they feel your Will is unfair. Specifically, they have the option to argue that they have not received a fair amount from your estate and deserve a larger portion to be considered 'adequately looked after'.

Disputes from your family may arise in circumstances where a family member is partially or fully dependant on you, your Will is not clear in its intentions, or they can prove you were not of sound mind when preparing your Will.

Specifically, claims of undue influence can arise. Undue influence refers to a circumstance where the Will in question is not an accurate testament to your true intentions for your estate because you have been coerced or influenced by another person to favour them over others in your Will.

To prevent a Will from being contested:

- carefully word your Will, making sure it is clear and unambiguous;
- review your Will regularly to represent any changes within the family;
- include a clause on why dependants have been excluded;
- adequately provide for each eligible family member to minimise the likelihood of future claims and your estate being eroded by legal bills.

Planning for retirement

Planning for a successful retirement is not a straightforward task. Thinking about your future and long-term financial plan amid an ever-changing economic environment can be quite daunting.

But a lack of preparation can see you and your loved ones suffer come retirement. Having a retirement plan can help to overcome the issues and risks you may face in your later years.

Although, there is no 'perfect' time to retire; planning ahead will provide you with more options to set a course that is right for you.

Weighing up the risks

There are various risks involved in retiring. One of those is outliving your savings. With better health outcomes, people are living longer. On the other side of the coin, there is also the possibility of developing an illness or injury, which may result in significant medical costs or entering aged care accommodation earlier than expected. Additionally, external risks such as inflation, changes to tax policy or pension payments can negatively impact on your retirement plan.

Many of these risks cannot be prevented, however, you can plan to manage these, should they occur. For example, you may choose to work part-time as you transition to retirement to bolster your savings. To combat inflation, you could choose a protected retirement income option for a fixed time for account-based pensions. Reviewing your investments and diversification is also critical in ensuring your investments are aligned with your current age, risk and circumstances.

Working out your goals

Retirement means different things to different people. Some people dream of taking extended vacations, while others are happy to just meet their basic living costs. Consideration of your lifestyle and plans for inheritance may significantly influence when and how you spend your retirement. Setting goals before retirement help you to better plan your finances and prepare for unexpected costs.

Planning your finances

Planning is impossible if you do not know your net worth. If you have not done so already, you need to start by working out how much money you have now and how much you might have in the future. Start by calculating the worth of your assets, such as your house, savings, shares, etc., the amount of super you have and plan on accumulating, and if you are eligible to apply for the Age Pension. Work out what sources of income you would rely on during retirement with consideration of your future needs.

There are three main options for using your super: leaving your money in super, investing in a retirement income stream or withdrawing it as cash (all at once or in stages). Those with a self-managed super fund (SMSF) can choose an account-based income stream, annuity or hybrid guaranteed retirement investment. Each option has its own benefits and consequences, so working with your financial planner to discover the best option for you is recommended.

Record keeping for CGT purposes

Selling your family home is usually exempt from capital gains tax (CGT). However, depending on your circumstances, such as renovations to your home, using it for business or Airbnb, your entitlement to a full exemption may vary.

The following records must be kept as they form part of the cost base (used to work out if a capital gain or loss occurs):

- A copy of the purchase contract and all receipts for expenses relating to the purchase.
- All records relating to the CGT event and all relevant expenses.
- Records of your costs of owning the property (interest, rates, land taxes, insurance premiums, the costs of repairs).
- Records of capital expenditure on improvements such as extensions, additions, or improvements including initial repairs and maintaining the title or right to the title during your period of ownership.

For homes used as a main residence, the following records are necessary:

Your home

If you use your home to produce income (running a business or renting a room such as Airbnb) you will need to keep records of different costs depending on when you acquired your home.

For homes acquired on or after September 1985, you should keep records of expenses during the income-producing period, and on the proportion of the property used to produce income.

If you started using your home to produce income for the first time after 20 August 1996 - you generally need to know your home's market value at the time you first used it to produce income.

An inherited home

Inheriting a home which was the main residence of the person who left it to you means any capital gain on its subsequent disposal (selling of the home) may be exempt. Until you are sure of the circumstances, it is advisable to keep records of the relevant costs incurred by you and the previous owner, or their trustee or executor.

Records do not need to be kept of the previous owner's costs if you inherited the dwelling after 20 August 1996, the dwelling was their main residence just before they passed away, and they were not using the dwelling to produce income at the time of their death.

In these circumstances, you will be considered to have acquired the dwelling at its market value at the date of death. If you have not obtained a copy of the valuation report from the executor or trustee, you will need to get your own valuation.

Records held by your former spouse

Following a relationship or marriage breakdown, it is common for one person to receive the main home. If you receive the main property, ensure you obtain records from your former spouse that show how and when the property was acquired and its cost base when it was transferred to you.

Those who receive the transfer of a property that was their former spouse's home after 12 December 2006 must obtain a copy of records that show the extent (if any) to which it was used for income producing purposes and the number of days (if any) it was their main residence during the time frame of ownership.

Federal Budget 2018 recap: superannuation changes

Although this year's Federal Budget had no significant changes to superannuation, it did propose a few new measures to provide more freedom and flexibility to Australians.

Retirees exempt from work test

An exemption from the work test will be established to allow retired Australians aged between 65-74 who have total super balances below $300,000 in their first year that they do not meet the work test criteria, to make voluntary payments into their superannuation funds. This will benefit couples where one member has a balance over $1.6m while the other member has a low balance and does not satisfy the work test.

Avoiding unintentional cap breaches

From 1 July 2018, individuals whose income exceeds $263,157 and have multiple employers will be able to nominate that their wages from certain employers are not subject to the Superannuation Guarantee (SG). This will assist in avoiding unintentional breaches to the $25,000 annual concessional contributions cap due to multiple compulsory SG contributions.

Member limit increase

Self-managed super funds and small APRA funds will have the opportunity to increase the maximum number of allowable members from four to six as of 1 July 2019.

Three-yearly audits for compliant SMSFs

As of 1 July 2019, the annual audit for self-managed super funds (SMSF) is proposed to change to every three years for funds with a history of proper record-keeping and compliance. The Government's aim is to reduce the red tape for SMSF trustees who have a history of three consecutive years of clear audit reports and have promptly lodged their fund's annual returns.