

Passing on your wealth to your loved ones



Whilst no one likes talking about death, it's especially important for you as an Australian expatriate to have arrangements in place to protect your family. Taking out life insurance is one part of the financial planning process.

You will also want to ensure that you are able to pass on your assets to your chosen beneficiaries according to your wishes as quickly as possible and without compromising the quality of your life in later years.

As an expatriate you may have acquired assets in different countries with different laws on how they can be passed on in the event of death. Unless you have made the appropriate arrangements, which will be explained in more detail later, this can lead to significant delays in the transfer of your wealth to your family dependents and beneficiaries.

This guide is intended to provide you with information designed to assist with your succession planning on becoming an Australian resident. We do not give legal, taxation or investment advice and you should always speak with your financial adviser before making any decisions.

Essential considerations

It's important that you consider the following questions in order to make life as simple as possible for your loved ones at what will already be a difficult time:

- Do you have professionally drafted Wills in place in the countries where your investments are based, and are they up to date?
- Will your executors need to obtain Probate in the countries where your investments are based?
- Are there any steps you can take to avoid the need for Probate?

With the help of a local lawyer and a qualified financial adviser you can put steps in place to ensure that these questions are answered in line with your individual circumstances.

This should leave you free to enjoy life, secure in the knowledge that your financial planning has been taken care of.

When considering the principles involved with succession planning in Australia, the Australian legal system gives you freedom to leave your estate to whoever you wish. It also provides protection for your dependants if they feel inadequate provision has been made for them. As the legal system is made up of both federal law and state law, you should check for local differences across states when dealing with estate administration and making provision for your family on death.

Having up to date and professionally drafted Wills in place

A Will can be the most effective way for you to pass on your estate in accordance with your wishes and to avoid family disputes. You can also appoint in your Will the people, known as executors, who will administer and distribute your estate. Laws of intestacy will apply if you do not have a valid will in place. In Australia specific estate administration legislation is in place, meaning that a surviving spouse or domestic partner along with any children will receive prescribed shares of your assets.

If you have returned to live in Australia, as well as having a Will written in Australia it may also be advisable for you to have separate Wills for investments, life insurance policies and property which are held in other countries. Considerations that need to be made in executing a valid Will abroad can be complex and may vary from country to country.

Where you need two or more Wills to deal with assets held in different countries, care needs to be taken to ensure that they are not at odds with each other and that they do not contain any clauses which may revoke your Australian Will. This could potentially cause delays and disputes.

Assets may be owned jointly with your spouse on a joint tenancy basis. This is typically how your Australian home will be owned and means that when the first of you dies the survivor continues with the rights of ownership and enjoyment. However, on their death the home will become an asset to pass on to your beneficiaries and to ensure your wishes are met it is important to write a Will.

Executors may need to obtain Probate in the countries where your investments are based

Presuming you have a valid Will, then on your death your executors will apply to the Probate registry of the relevant court for a Grant of Probate. This legal documentation is confirmation that your executors have the power to distribute your assets. Before doing this, the executors are responsible for ensuring funeral and legal expenses along with any tax and other debts are paid.

It is important to review your Will periodically because changes in your personal circumstances may make it inadequate or may revoke it. For instance, you may have had another child or purchased a property. You should check the relevant state law for the impact of marriage and divorce on the Will's validity, as these can vary state by state.

If you haven't left a valid Will, or there are no executors alive or prepared to act, then your beneficiaries may have to apply to the relevant court in the country where the asset is based for letters of administration.

Steps you can take to avoid the need for Probate

01 Whilst you should have a Will in place for the general administration of your various assets and responsibilities towards dependent children, there may be specific investments which can be held subject to other arrangements and therefore not delayed by the requirement for Probate. These include joint tenancy, beneficiary nominations and trusts.

02 Where assets are owned on a joint tenancy basis, the survivor continues to enjoy the full rights of ownership.

03 With international life protection, savings and lump sum investment products you have the option to appoint beneficiaries to receive the death benefit without the life insurance company requiring a Grant of Probate. Your written nomination is a contractual expression of wishes stating who should receive the benefits on your death.

04 Using trusts is another way to avoid Probate delays and to protect the interests of your beneficiaries whilst safeguarding your assets. You can create trusts during your lifetime or they can be formed on your death by provisions in your will. This latter option, however, does not achieve the objective of passing assets to dependents without Probate delays on your death.

Superannuation Funds

One of your primary investments may be your superannuation fund. This will not be subject to Probate delays, leaving the trustees to arrange distribution on your death.

Not only does a superannuation fund provide a tax efficient vehicle to save for retirement, it is also an effective way of transferring wealth on your death.

Under current legislation your superannuation benefits don't automatically form part of your estate so can be distributed separately from the other assets in your Will. Your superannuation fund trustee can distribute the funds at its discretion, including directly to dependants or to your estate. This trustee discretion may have negative consequences so some superannuation fund members choose to lodge a binding death agreement which restricts who the trustees can pay benefit to.

Leaving discretion to the fund trustee could create family conflicts if they don't follow what you might have wanted to happen, and in certain circumstances payments can create tax liabilities which could have been avoided.

Typically you may nominate your spouse and financially dependent children to receive the benefits which can be paid as a lump sum or a pension, but pensions to children must cease when they reach age 25, at which time any remaining balance must be paid as a lump sum.

For those closest to you such as your spouse and dependent children under 25, the receipt of any death benefit paid as a lump sum will generally be tax free. Death benefits paid to these people as a pension, which includes both a new pension commencing as a result of your death and the continuation of a pension that you have been receiving at the time of death, are also tax free if you were over the age of 60, at the time of death.

If you intend for others to benefit you should take advice on their eligibility to do so and the accompanying tax implications. It is possible the rules governing the binding death agreement may restrict beneficiaries to your family members. One option is therefore to nominate your executors on behalf of your estate and explain in your Will how the money received by the estate from the superannuation fund is to be applied. This should mean the executors will need to wait for the Probate process to be completed before they can make any distributions.

If you do choose to implement a binding death benefit nomination, you will need to ensure that it is regularly reviewed and updated. This is because a nomination is typically not binding on the superannuation fund trustee if it was last confirmed or amended more than three years ago.

Family trusts

Discretionary trusts can be created in your lifetime in order to manage wealth and pass on assets to your beneficiaries in an efficient manner. A family trust is one where you make an election to the Australian Tax Office defining the family group who will benefit and, provided no-one else receives payment, this arrangement can be very tax efficient.

Whilst you may intend for your children to benefit, now might not be the appropriate time to gift them assets outright. By using a trust you will control the transfer of assets and will protect your accumulated wealth should any family member find themselves in financial difficulty. You may want someone to benefit but are concerned that they may not manage the inheritance sensibly. Rather than receiving funds outright in one go, the trust can make periodic distributions at the trustees' discretion thereby retaining control in line with the terms of the trust.

Assets in the trust are segregated from the rest of your estate so that on your death Probate is not required before they can be distributed, providing a mechanism for passing wealth to future generations without delay.

The trustees have discretion to pay out income to any of the family group defined in the election in a tax efficient manner. As with all financial planning, it is important to ensure that available allowances and reliefs are utilised, as is the case with a family trust. The trustees should be able to pay income to the beneficiaries to make the most of each family member's available tax free threshold.

Achieving your objectives

In this guide we have summarised some important points for you to consider when thinking about passing on your wealth to your family or other chosen beneficiaries. For example, we have covered the benefits of having up-to-date Wills in place and of using beneficiary nominations and trusts in conjunction with financial products such as pension plans and international life insurance policies. Estate planning is a complex matter and to enable you to achieve your objectives we recommend that you obtain independent advice on how best to proceed.

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