

# ESTATE PLANNING

## CLIENT INFORMATION SHEET

Client Name: .....

Date: .....

CLIENT INFORMATION			
Party A (e.g. husband)		Party B (e.g. wife)	
Title:	Mr / Mrs / Miss / Ms / Dr	Title:	Mr / Mrs / Miss / Ms / Dr
Surname:		Surname:	
Given names:		Given names:	
Alias:		Alias:	
Date of birth:		Date of birth:	
Place of birth:		Place of birth:	
Marital status:		Marital status:	
Occupation:		Occupation:	
Residential address:		Residential address:	
Postal address:		Postal address:	
Phone:	Home:	Phone:	Home:
	Work:		Work:
	Mobile:		Mobile:
Email:		Email:	

FAMILY INFORMATION			
<b>Children of this marriage</b>			
Full name	Date of birth	Address	
<b>Previous marriage (if applicable)</b>			
<b>Party A</b>		<b>Party B</b>	
How long ago since ended?		How long ago since ended?	
Duration of previous marriage?		Duration of previous marriage?	
Has the divorce been finalised?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Has the divorce been finalised?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Was there a property settlement?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Was there a property settlement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Sealed by the court?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Sealed by the court?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there any maintenance payable to the spouse or children?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Is there any maintenance payable to the spouse or children?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Children of previous marriage (if any)</b>			
Full name		Full name	

## ENDURING POWER OF ATTORNEY

### General Information

An Enduring Power of Attorney is a document that provides for a time when you may be unable to make financial decisions for yourself. You may be overseas or too sick to make a decision.

Life is unpredictable and it is better to be prepared. Once a person becomes incapacitated it is too late to grant a power of attorney. Financial decisions may be made by the Public Trustee, unless the person's family applies to the State Administrative Tribunal to be appointed to make decisions on their behalf which can be an onerous and lengthy journey.

The issues to consider when deciding who to appoint as your attorneys are:

1. You should choose someone you trust and is good at making reasoned decisions.
2. Your attorney for financial matters should be good at dealing with finances and keeping financial records.
3. People generally choose their spouse/partner first, then as alternative attorneys they appoint family members, friends or trusted advisers.

**If you have an existing EPA, then please bring it to the meeting with you.**

**It will assist if you have thought about the issues listed above and be able to provide full names, residential addresses and phone numbers for people you may consider as your attorney/s. Please record these details below.**

Party A	Party B
Attorney 1 Name:	Attorney 1 Name:
Attorney 1 Address:	Attorney 1 Address:
Attorney 2 Name:	Attorney 2 Name:
Attorney 2 Address:	Attorney 2 Address:
Attorney 3 Name:	Attorney 3 Name:
Attorney 3 Address:	Attorney 3 Address:
If you are appointing more than one attorney, how would you like them to act: <ul style="list-style-type: none"> <li><input type="checkbox"/> Successively in the order named (ie: cab rank)</li> <li><input type="checkbox"/> Jointly &amp; Severally</li> <li><input type="checkbox"/> Attorney 1 solely, then reserve attorneys:               <ul style="list-style-type: none"> <li><input type="checkbox"/> Jointly (ie: unanimously)</li> <li><input type="checkbox"/> Severally (ie: either one of them can act)</li> <li><input type="checkbox"/> As a majority (ie: 2 out of 3, etc)</li> </ul> </li> </ul>	If you are appointing more than one attorney, how would you like them to act: <ul style="list-style-type: none"> <li><input type="checkbox"/> Successively in the order named (ie: cab rank)</li> <li><input type="checkbox"/> Jointly &amp; Severally</li> <li><input type="checkbox"/> Attorney 1 solely, then reserve attorneys:               <ul style="list-style-type: none"> <li><input type="checkbox"/> Jointly (ie: unanimously)</li> <li><input type="checkbox"/> Severally (ie: either one of them can act)</li> <li><input type="checkbox"/> As a majority (ie: 2 out of 3, etc)</li> </ul> </li> </ul>

## ENDURING POWER OF GUARDIANSHIP & ADVANCE HEALTH DIRECTIVE

### General Information – Enduring Power of Guardianship

An Enduring Power of Guardianship is a document that provides for a time when you are unable to make health and lifestyle decisions for yourself.

When you are unable to make and/or communicate health and lifestyle decisions for yourself, it is important to know who will be making those decisions on your behalf. Once a person becomes incapacitated it is too late to grant a power of guardianship. Without an enduring power of guardianship, your health and lifestyle decisions default to your next of kin (e.g. spouse, adult children, parents, siblings, etc). If the default position is not satisfactory for your circumstances (e.g. estranged spouse, child, different life values), then it is important to prepare an enduring power of guardianship so you have control over who makes health decisions on your behalf.

The issues to consider when deciding who to appoint as your enduring guardians are:

1. You should choose someone you trust and is good at making reasoned decisions.
2. Your enduring guardian should know you well and have an appreciation of how you would want to live if you became incapacitated.
3. People generally choose their spouse/partner first, then as alternative attorneys they appoint family members and/or friends.

**If you have an existing EPG, then please bring it to the meeting with you.**

**It will assist if you have thought about the issues listed above and be able to provide full names, residential addresses and phone numbers for people you may consider as your guardian/s. Please record these details below.**

Party A	Party B
Guardian 1 Name:	Guardian 1 Name:
Guardian 1 Address:	Guardian 1 Address:
Guardian 2 Name:	Guardian 2 Name:
Guardian 2 Address:	Guardian 2 Address:
Guardian 3 Name:	Guardian 3 Name:
Guardian 3 Address:	Guardian 3 Address:

### General information – Advance Health Directive

An Advance Health Directive is a document that gives you the opportunity to plan for particular health and medical treatments that you do, or do not, want if you are ever in a situation where you are unable to communicate your wishes. "Medical Treatments" include medical, surgical and dental treatments. It also includes pain relief, palliative care and life-sustaining measures.

We can discuss the Advance Health Directive in more detail at our meeting.

WILL - GENERAL NOTES	
<b>Issues you may need to consider when reviewing or creating a will:</b>	
1.	If you have an existing will, bring it to the initial meeting.
2.	Have you recently been married or divorced or are you getting married or divorced in the near future?
3.	Do you have any specific funeral wishes you would like to include in your will (eg: where your ashes are scattered)?
	<input type="checkbox"/> Buried <input type="checkbox"/> Cremated <input type="checkbox"/> Buried <input type="checkbox"/> Cremated
	Specific wishes? _____
	Organ Donation? <input type="checkbox"/> Yes <input type="checkbox"/> No                      Organ Donation? <input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The full names of who you might want to appoint as your executor(s) and reserve executor(s).
	Executor 1: _____
	Executor 2: _____
	Executor 3: _____
	If you are appointing more than one executor, how would you like them to act: <input type="checkbox"/> Successively in the order named (ie: cab rank) <input type="checkbox"/> Executor 1 solely, then reserve executor(s): <input type="checkbox"/> Jointly <input type="checkbox"/> Successively in the order named
5.	The full names of who you might want to appoint as the guardian of your minor children and reserve guardian?
	Guardian 1: _____
	Guardian 2: _____
6.	Details of any specific gifts you would like to make (eg: jewellery, artwork, antiques, cash, etc)
	_____
	<input type="checkbox"/> If you are making any specific gifts, does the gift apply even if your spouse is still living?
7.	Does anyone owe you money that should be repaid to your estate before distributing to the beneficiaries?
	<input type="checkbox"/> Call in <input type="checkbox"/> Forgive <input type="checkbox"/> Call in <input type="checkbox"/> Forgive
8.	Who would you like to benefit from your estate? You may gift your estate absolutely or via a testamentary discretionary trust/s (TDT). We can discuss this further when we meet.
	1 <sup>st</sup> gift: _____ <input type="checkbox"/> Absolute gift <input type="checkbox"/> Via one or more TDTs <ul style="list-style-type: none"> <li>▪ Who will control the TDTs?</li> <li>▪ At what age will children (if applicable) take control (18/21/25/other)?</li> <li>▪ Can the primary beneficiary opt out of the TDT?</li> </ul>
	2 <sup>nd</sup> gift: _____ <input type="checkbox"/> Absolute gift <input type="checkbox"/> Via one or more TDTs <ul style="list-style-type: none"> <li>▪ Who will control the TDTs?</li> <li>▪ At what age will children (if applicable) take control (18/21/25/other)?</li> </ul>
	3 <sup>rd</sup> gift: _____

## YOUR ASSETS

### General Information

Your will only deals with the assets held in your name when you die. When giving instructions for your will it is important to understand how your assets will be dealt with after you die. The following are different structures for holding assets and how they are dealt with on death.

### Asset Structures

<i>Solely owned</i>	Assets you own solely in your own name will be distributed in accordance with the directions your will.
<i>Joint Tenants</i>	This is where a person owns an asset jointly with one or more other people. When one joint owner dies his or her share in that asset passes automatically to the surviving joint owner.
<i>Tenants in common</i>	One asset may be owned by several people as tenants in common. This means that each person owns a fraction or share in that asset. The share in the asset is held separately to the owners and there is no obligation to return that share to the other owners on death. Each owner can gift their share in the asset in their wills.
<i>Partnership</i>	Businesses are often run as partnerships. There are quite complex arrangements that have developed over time regarding entitlement of partners to partnership assets. When a partner dies, if there is a partnership agreement, the agreement will state how the partnership assets are to be dealt with. If there is no partnership agreement then legislation provides that on the death of a partner the partnership must be dissolved and the assets divided among the surviving partners and the deceased partner's estate.
<i>Company</i>	Assets owned by a company will remain in the company on the death of a shareholder or director of the company. The company is not dissolved on the death of a shareholder. The shareholder's shares in the company will be dealt with by his or her will.
<i>Trust</i>	All assets owned within a trust will remain owned by the trust on the death of a trustee. The assets within a trust are not dealt with by your wills. The important estate planning issue regarding trusts is who will take control of the trust on the death of the person controlling the trust. The positions of control in a trust are generally the trustee and appointor.
<i>Superannuation</i>	<p>The benefit payable on the death of a member may be paid directly to a spouse, children or dependant. It can be paid to a person's estate to be distributed in accordance with a will, but this often does not happen.</p> <p>The trustee of your superannuation fund will have discretion who to pay the death benefit to. The trustee's discretion can be avoided by signing a binding nomination that gives the trustee a direction who to pay the death benefit to.</p>

**It is important we have an accurate list of your assets to ensure your estate plan deals with your assets (estate and non-estate assets) as you wish. Please complete the attached table and bring it to the initial meeting.**

### DRAFT ASSET TABLE

ASSETS & LIABILITIES				
Owner of asset	Description	Approximate value	Associated debt (if any)	Beneficiary/Comments
<b>Jointly with another person</b>	<i>(eg. property, household contents, bank accounts, motor vehicles, shares)</i>	<i>eg. \$500,000</i>	<i>eg. \$120,000 mortgage</i>	
<b>Solely owned</b>	<i>(eg. property, household contents, bank accounts, motor vehicles, shares)</i>			
<b>Superannuation:</b>	<i>(eg. The AB Superannuation Fund or QSuper)</i>	<i>eg. \$800,000 + \$200,000 death benefit</i>		<i>(eg. Binding nomination in place)</i>

ASSETS & LIABILITIES				
<b>Trust:</b>	<i>(eg. The AB Family Trust)</i>	<i>eg. \$1,000,000</i>	<i>eg. \$350,000</i>	<i>Do you have a copy of the trust deed?</i>
<b>Company:</b>	<i>(eg. AB Investments Pty Ltd)</i>			<i>Do you have a copy of the constitution?</i>
<b>Other:</b>	<i>(eg. life insurance, rights in action, etc)</i>			<i>(eg. for life insurance – to be paid to the estate/in accordance with the policy)</i>
<b>Digital assets:</b>	<i>(eg. social media accounts, YouTube, Bitcoin, blogs, online shopping, lottery, pictures, videos, art, game characters)</i>	<b>Login</b>	<b>Password</b>	<b>Details/directions/instructions</b>

***It will assist if you bring copies of any relevant documents to the initial meeting – e.g. trust deeds, company constitutions etc.***

## TESTAMENTARY DISCRETIONARY TRUST – OVERVIEW

### BACKGROUND

Generally when a person dies, the executor:

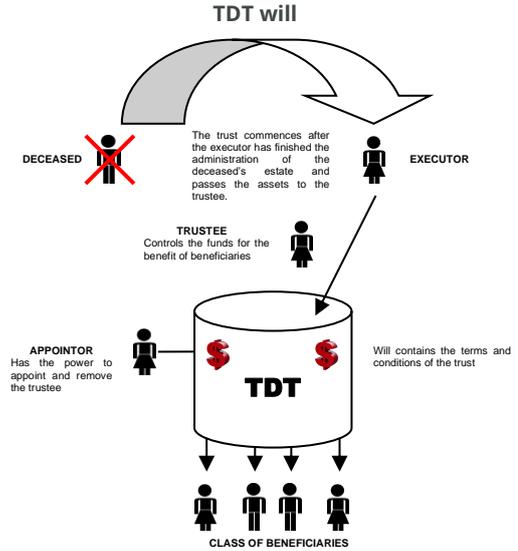
1. Collects the deceased's estate assets;
2. Pays the debts of the estate; and
3. Distributes the estate in accordance with the deceased's will or the rules of intestacy (where there is no will).

A testamentary discretionary trust (TDT) is a gifting option.

An estate can pass directly to a beneficiary or to a trust/TDT for a class of beneficiaries.

The TDT is created by the will. The will contains all of the terms and conditions of the trust.

The TDT commences after the death of the testator (the person who made the will) when the executor completes the estate administration and passes the estate assets to the nominated trustee (ie: controller) of the TDT.



### MAIN BENEFITS OF A TDT

#### Asset Protection

The assets held in the trust are generally protected from the personal liabilities of a trust beneficiary. For example, if a beneficiary has a personal debt then assets of the trust cannot be accessed to pay the debt.

The situation may be different where a beneficiary is involved in Family Court proceedings, as the Family Court has extremely wide powers to make orders concerning assets (including trust assets).

#### Tax Planning

A TDT can provide tax savings because the trustee has discretion to distribute income to beneficiaries on lower tax rates, reducing the overall tax payable.

It has the extra advantage that children (provided they come within the class of beneficiaries and are under 18) are treated like adults for tax purposes (compared with child beneficiaries of family discretionary trusts).

#### Opportunity to provide for beneficiaries with special needs

A beneficiary may not be capable of managing his or her inheritance because of special needs. For example, where a beneficiary has a disability, is a spendthrift or has a drug, gambling or other addiction.

The trustee can make distributions and manage the funds on the beneficiary's behalf.

#### Flexibility/Control

Over time the needs of the beneficiaries may change. The flexibility of the TDT allows the trustee to make distributions in a way that suits the circumstances prevailing at the time.

### DISADVANTAGES OF A TDT

#### Flexibility/Control

The main disadvantage is that the beneficiary does not have direct control of the inheritance they receive. Even where a beneficiary is a trustee they must deal with the assets within the trust and not as their own asset. Some beneficiaries would prefer to have direct control of the assets.

#### Complexity

The goal of some clients with their estate planning is to keep it as simple as possible. Some people perceive the inclusion of a TDT in a will as a complicating factor.

#### Discretion of the trustee

The discretion of the trustee to make distributions may be seen to be too vague and uncertain.

#### Set up costs

It costs more to prepare a will including a TDT.

#### Ongoing Costs

When the testator dies and the TDT is established it is necessary to prepare and lodge returns to account for the entity each year. This incurs ongoing administration and accounting fees.

### CONTACT US

Please contact us if you need any further information or advice.

**Evelyn Abadines**, Principal  
 (08) 6557 8988 | 0490 084 440  
 evelyn.abadines@abssuccessionlawyers.com.au