

# Money Mechanics

Strategic Financial Advice



## Your Backup Plan Worksheet

### What is an estate plan?

Estate planning involves the organisation of a person's legal and financial affairs so that your assets are distributed to your intended beneficiaries in an orderly and tax-effective manner. A properly constructed estate plan involves the integration of all your legal and financial matters.

### Components of an Estate Plan

A properly constructed estate plan involves the following:

#### **Will:**

A will is the central part of any estate plan. It sets out how you want your assets to be distributed and can be as straightforward or comprehensive a document as necessary.

#### **Power of Attorney (Enduring):**

Your power of attorney operates in circumstances before death where you may be suffering from either a temporary or permanent legal disability and are unable to make decisions for yourself.

#### **Testamentary Trust:**

A testamentary trust can be used in conjunction with a will to provide for ongoing control of your assets after death. It may be used when there is a concern that the assets are at risk of dissipation through blending of families, divorce or legal proceedings involving your children.

#### **Superannuation:**

This does not form part of your estate but it should be considered as part of your estate plan. There will be some occasions where a superannuation death benefit should be paid to your estate and others where it is more beneficial for the superannuation to be paid directly to your nominees.

#### **Financial Goals and Insurance:**

This is included for completeness so that all matters relating to your financial affairs, including insurance, are taken into account and are not forgotten.

An illustration of a document titled "LAST WILL" in a dark red box at the top. The document has several horizontal lines representing text and a blue signature at the bottom right. The document is shown as a stack of papers with a shadow to the right, set against a blue background.

### Who is my executor?

The executor is the person who administers and carries out the terms of your will. The appointment of an executor is done as a term of your will. Your will creates a trust and your executor of the estate is the person who holds the estate in trust. That person becomes the trustee for the deceased estate trust. The executor is responsible for administering the deceased estate in the best interest of the beneficiaries of the estate.

## What does my executor do?

The executor, in effect, steps into the shoes of the deceased person and winds up the deceased person's personal affairs. Some other tasks usually performed by an executor include:

- **Locating the will**
- **Arranging the funeral**
- **Applying for probate**
- **Obtaining a death certificate**
- **Informing government agencies, utilities, financial service providers etc of the death**
- **Locating and assessing the value of all estate assets**
- **Paying debts, and funeral expenses**
- **Lodging a final tax return**
- **Transferring assets and paying stamp duty**
- **Distributing surplus assets to beneficiaries**

Think about who you would like to appoint to this role if you (or your partner) are unable to act in this role:

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## What if I die without a will?

If you die without a valid will, you die intestate. A personal representative must apply to the court for a grant of letters of administration, more usually called a grant of representation.

When there is no executor appointed, the personal representative is usually known as an administrator and will generally administer the estate according to a statutory formula. That formula is set out in the regulations and legislation for each State or Territory.

## Guardianship for Children

if relevant



You can't control what happens in your day. But you can create a contingency plan in case something were to happen to you and/or your partner. While this may not be a pleasant thought, it is worth taking some active steps to ensure that your wishes for your child are formally documented.

If there are no specific written instructions in a will and in the event of the death of both parents, any person with sufficient interest (i.e. grandparents, aunts or uncles) can apply for guardianship of your children. In such situations, the Family Court decides who should become the legal guardian based on the best interests of the child. This is not ideal as the person chosen by the Family Court may not necessarily be the person that you would choose to care for your child.

In the event of a death of one parent, the surviving parent will usually be the legal guardian of the child, unless there are circumstances to reflect that this is not in the best interest of the child. Such circumstances may include: a restraining order against the surviving parent, incidences of domestic violence perpetrated by the surviving parent or a history of drug or alcohol abuse by the surviving parent.

## How to Appoint a Guardian for a Minor Child in a Will:

You can formally appoint a guardian for your minor child in your will.

It is very important to discuss your intentions, obtain consent and discuss your expectations with the prospective guardian.

During this discussion, it's also a good idea to create the set of guidelines (values or ideals around how you want your child/ren raised etc – education religion beliefs etc).

## How to Choose a Guardian for Your Child:

Selecting a guardian for your child can be a difficult decision because no one can really compare to you as a parent. To choose the next best person to care for your child, you may wish to consider the following:

- **Similarities between your lifestyle, values and religious beliefs – do these align with yours?**
- **Who your child might already have a bond with?**
- **Whether the individual already has or is planning to have children**
- **The transition, in terms of location and lifestyle, that your child will need to make**
- **Practically, who can take on the role – physically, financially and emotionally?**

## Further Considerations

Other things to consider, beyond the selection and appointment of a guardian, are the details of how this may play out.

For example, whether your child will move in with the guardian, continue living in the family home, or in instances where the nominated guardians are the grandparents who are living in retirement villages, the prospective living arrangements for your child.

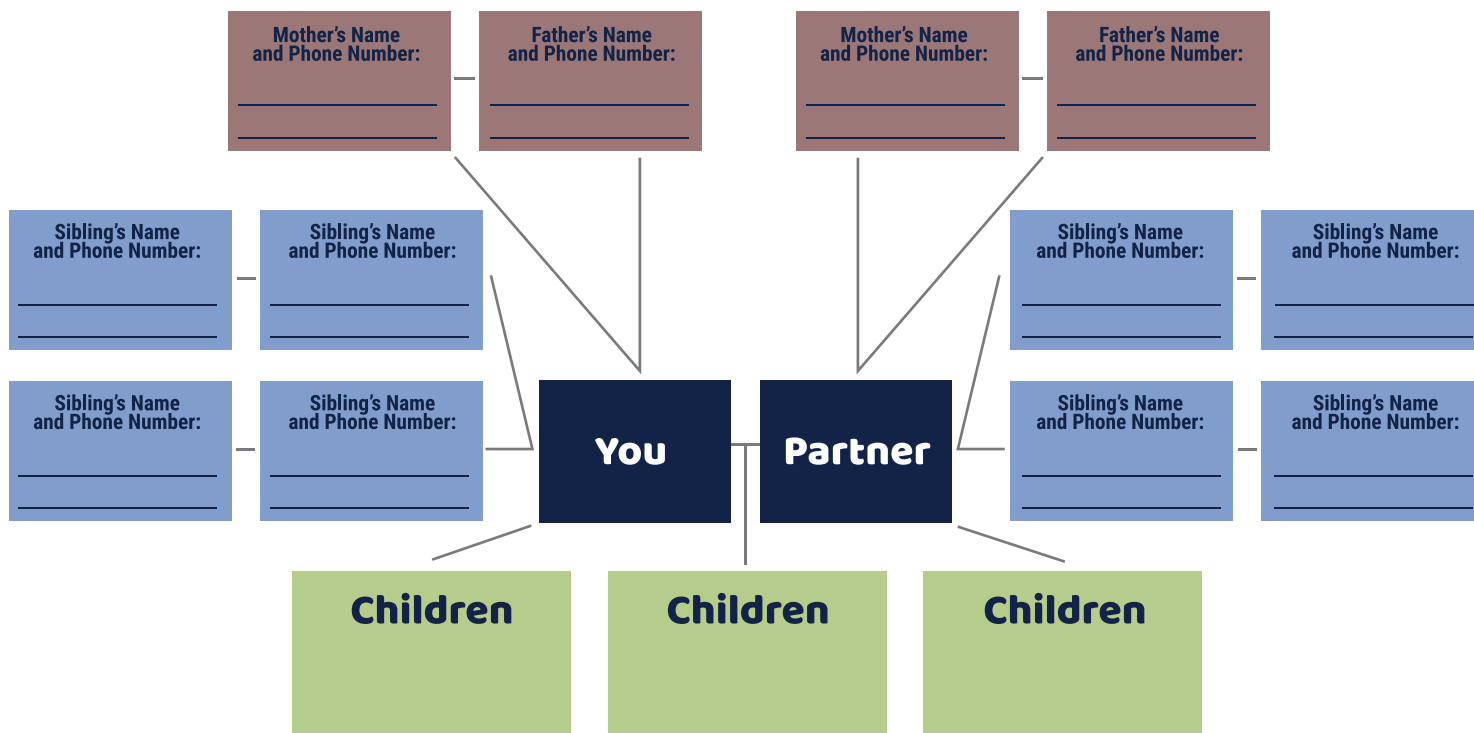
A nominated guardian should not suffer any financial burden or loss whilst acting in the role. Practice tends to be that the guardian will have access to the child's share of the estate, at the discretion of the trustee.

Therefore, it makes sense to have two different individuals acting as executor/trustee of your estate and guardian of your child respectively. The executor/trustee of your estate will be in charge of distributing the money to your child's guardian in accordance with the terms of your will. The guardian of your child will be responsible for making lifestyle decisions for your child. This seeks to avoid conflicts of interest or any potential misconduct.

You could appoint the same person to fulfil the role of guardian of your child and executor/trustee of your will if you have complete trust in them. However the nominated person should preferably possess reasonable financial acumen.

## Your Family Dynamic and History

In order to start the planning process having an idea of your family dynamic is important to ensure any risks or special needs can be managed. The following Family Tree can assist in the planning process. Consider any specific needs or challenges in family relationship and dynamic which would come up:



## A Tricky Conversation

This is often the most challenging aspect of financial planning as it involves the discussion of the worst-case scenarios. It is however important to review your wishes and put the appropriate structures and insurances in place if necessary, so you can live life without concern of what would happen if the worse happened.

**If something (death or disablement) had happened to you (or your partner and/or if relevant your child or your grandchildren) yesterday what would you want the outcome to be for you to feel as financially secure as possible?**

*Be specific and outcome based, so without me guiding you too much these are things like – e.g house is paid off and debt free or have enough funds so that we could afford a nanny / housekeeper etc, or enough so that we didn't have to work for a timeframe.*

**What is your Life Legacy? How would you like to be remembered, or are there special interests or community or professional groups that are important to you?**

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