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Estate planning: keeping it in the family

Many of us work long and hard with one goal in mind – to provide for our children's future.

But what if, after you passed away, your children had to wait years to benefit from your estate – or, worse still, ended up with much less than you'd planned?

Unfortunately, this happens. Not because parents don't think of their children, but because parents overlook two factors: first, how their estate plan should evolve over time and, second, how their children could be affected if their surviving parent moved on to another relationship

Planning for your children

It's difficult to imagine our partners with someone else. But it's a fact of life that some people who lose their partner earlier than expected go on to new relationships. And if your estate hasn't planned for these new relationships, your children could be forced to wait out the deaths of both their second parent and the new partner before benefiting from the family estate – or the children could lose out altogether.

Planning for estate planning

The first step in keeping your assets in the family is to plan your estate with your children in mind.

First, your accountant must clearly identify all your assets, including assets under your control, and how they relate to each other. Your accountant can capture this information on a flow chart, then add income and expenditure details, structure details and office bearers (such as trustees, guardians and appointers, company directors and secretaries). Finally, your estate-planning professional will crosscheck this information against any legal documents. Your diagram will help your adviser create a will, covering your assets, and a statement of wishes covering assets within your control, but which you don't own (such as assets owned by a discretionary trust).

Start with trusts

The next idea to look at is setting up testamentary trusts for each of your children. Inexpensive and easy to set up, testamentary trusts only come into existence upon your death.

Under a testamentary trust, if you name your partner as the income beneficiary and a child as a capital beneficiary, that child will retain the ownership of the assets (gaining control of them at a specified age or event). The trust ensures ownership ultimately rests with the child and cannot be accessed by a new partner, or their children, down the road.

What about the house?

WHAT happens to your family home upon your death depends on how the home is owned. Many couples own their home jointly: upon the death of one partner, the surviving partner automatically becomes the sole property owner.

Joint ownership does have benefits. But if you want to focus on benefiting your children, look into changing your home-ownership structure from joint ownership to tenants in common. A 'tenant in common' structure means that if one tenant (or owner) dies, the other tenant retains only their portion of the property. The deceased's portion of the property passes directly to their estate.

An example: Betty and George are married and own their home as tenants in common, each with a 50 per cent share. George passes away. Betty retains her 50 per cent, but George's 50 per cent passes directly to his estate. George's will grants his estate to his wife and children, so his children immediately receive an interest in the property. His will also grants Betty a life interest in the home, so she can live there long after George has passed away.

Superannuation

Superannuation adds another layer of complexity to estate planning. You want to ensure your children benefit from your super while not paying tax for the privilege.

The good news is, when someone passes away, their super commonly goes to a 'dependent' – usually this means their partner and any dependent children – as a tax-free benefit.

But what if your children are not dependents? And what if a good portion of your super fund consists of deducted contributions – those for which you have claimed a tax deduction? Add these two together – independent children receiving deducted contributions from super – and suddenly, the children have automatically lost 16.5 per cent of your benefit, to tax.

The fix? Planning can help reduce this effect. Speak to your professional adviser about creating a plan to minimise your deducted contributions.

Planning is key

In the end, it comes down to protecting your children's inheritance and their future. The above points can sound complicated, but the right adviser – and the right structure and documentation – can make all the difference to your kids and their financial future.

Bernard Marin is the founder of Marin Accountants