

# ESTATE PLANNING

## Review Checklist



## LEAVE YOUR BENEFICIARIES A LEGACY, NOT A STRUGGLE.

Estate planning lets you decide your future, and that of your loved ones right now, before you don't have the chance to. If something happens to you, ensure that your assets are distributed to the beneficiaries you want, and in the most cost-effective manner.

Estate planning safeguards you from potential creditors and settles your taxes; it resolves legal issues now to prevent your beneficiaries from inheriting the drama of a lengthy and expensive negotiation that is caused by inadequate estate planning.

Estate planning is more than a Will, it's a comprehensive assessment of where you are today and to whom you'd like to inherit everything you've worked for in life; including your real estate, belongings, investments, savings and superannuation.

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## **WELCOME TO ESTATE PLANNING**

In the event of your death, your assets will be distributed amongst the beneficiaries of your estate, that is, if you plan right now. A key objective of an estate plan is minimising the impact of stamp duty, tax and administration when executing your wishes. Organising your investments, real estate and all monies is imperative to the planning of your estate, and will ensure your beneficiaries are gifted precisely what you intended.

Assets that are not protected by an estate plan run the risk of being absorbed by the commercial world. Families of the deceased have been torn apart when the division of assets are unclear, and there is not a plan in place to guarantee a beneficiary's ownership of a deceased's assets.

### **Preserving your assets**

An Estate Plan should first generate wealth and then quarantine assets to ensure that they remain available for distribution as you wish.

### **Is a Will necessary?**

Absolutely. A Will is one of the most important documents you'll ever sign. A Will is your final say in how your estate will be distributed after your passing, and it can only be contested in court.

### **Can my Will be challenged?**

A Will can be challenged for a host of reasons ranging from improper execution of the document through to complaints it did not adequately apportion your estate to potential or actual beneficiaries. For example, the partner of the deceased may contest the Will if they feel that they were awarded unfairly in proportion to what the deceased's children received.

Sound estate planning will ensure that the formalities needed to ensure the validity of the Will are satisfied and that the scope for dispute about its terms are reduced.

### **The Business of Assets**

The greatest opportunity for dispute is often found in the division of business assets such as shares in a company or a partnership. A business succession strategy, providing for management and ownership of the company, partnership or trust, is normally an indispensable element of an estate plan. Your biggest assets – financially and those involving the most people, require the highest degree of planning.

### **What happens to my superannuation and life insurance?**

Superannuation and life insurance policies can total millions, therefore like business, they are a high value class of assets that need to be carefully considered in an estate plan. The plans made for the distribution of superannuation need to be reviewed on a regular basis to ensure that they comply with the rapidly changing laws and that their tax-effective value is maximised.

### **If I can't look after my affairs, who will?**

Under the Enduring Power of Attorney (EPA) law, you are able to nominate a person or group of people who will take care of your affairs if you are incapacitated through illness, accident or old age. An EPA will specify not only the amount of power and level of responsibility each person will have, but it gives exact directions on how you'd like them to execute your estate plan.

### **How you fit in to the facilitation process?**

As facilitators we will work closely with you and your team of advisers to project manage an estate plan specifically tailored to your needs.

Your adviser will assist with the facilitation of your estate planning matters under a fee for service arrangement. Your adviser will explain how the fee structure operates.

# THE FACILITATION PROCESS – WHERE DO WE FIT IN?

## How does the facilitation process work?

We will work closely with you. To project manage an estate plan tailored specifically to your needs.

Your adviser may assist with the facilitation of your Estate Planning matters under a fee for service arrangement. Your adviser will explain how the fee structure operates.



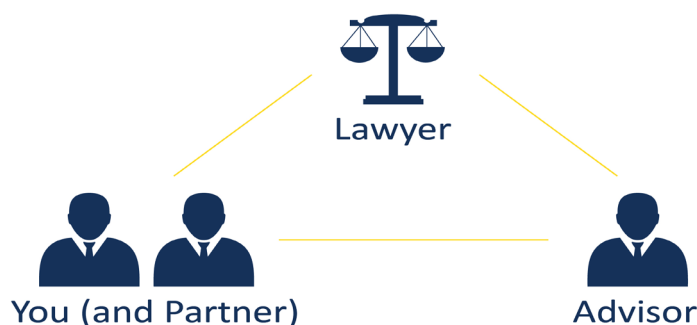
## What is the business protection and succession planning process?



## THE PROCESS:

1. Decide upon what matters are to be addressed including an evaluation of your assets, income, investments etc. List what is of value to you and what needs to be protected.
2. Complete the estate planning questionnaire from this workbook and email back to us.
3. Once the information has been reviewed, we contact you and discuss what necessary documents that will be required to begin you estate planning.
4. A meeting is then set up with the lawyer, where the lawyer thoroughly explains the Will. There you will have the opportunity to ask questions and seek advice on your estate planning legal issues.
5. Once you agree to the Will, your documents are finalised and sent to you in a confidential manner.
6. You sign the documents where indicated and return to the firm for checking and final sign-off.
7. The originals are returned to you – and the legal firm maintains a copy for you on your file; free of charge.
8. Letters are then sent to your executor, trustee and guardians explaining their duties and responsibilities. It is important that you contact these people and advise them of their appointments. You should also mention that they will receive a document outlining their duties and responsibilities, and it's important you confirm receipt of said document.

## How it works





# THE OPTIONS

The following are the estate planning package options. Please tick the relevant box.

## CORE ESTATE PACKAGE

### Single/Individual

The core estate planning package is suitable for an individual who wants to pass their estate directly to their intended beneficiaries, with no testamentary trust. This is the basic package and is suitable for the scenario – no children, no business interests or unresolved property settlements from any previous relationships.

What your package includes:

- One Will with no testamentary discretionary trust
- One enduring power of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone
- Free secure storage for the signed Will for as long as you require.

### Couple (Married or De Facto)

The core estate planning package is suitable for couples who want to pass their estate directly to their intended beneficiaries, with no testamentary trust. This package assumes you do not have any children from previous relationships, children with disabilities or unresolved property settlements from any previous relationships.

What your package includes:

- Two Wills with no testamentary discretionary trust
- Two enduring power of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone
- Free secure storage for the signed Wills for as long as you require.

## Distribution of assets under your will



## SINGLE TRUST ESTATE PLANNING PACKAGE

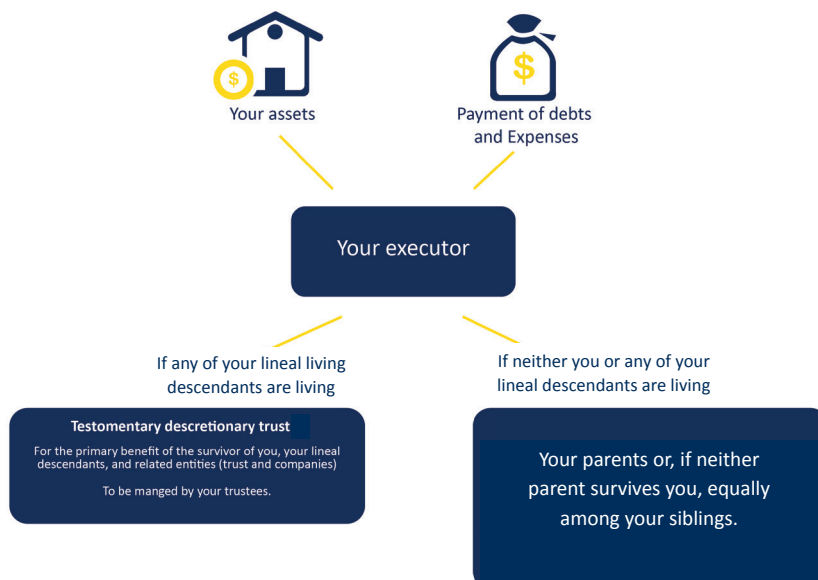
### Single/Individual □

The single trust estate planning package is suitable for individuals who want to establish a single testamentary trust to hold their assets. The package assumes that you do not have any children from previous relationships, children with disabilities or unresolved property settlements from any previous relationships.

What your package includes:

- One Will with one testamentary discretionary trust
- One enduring power of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone
- Free secure storage for the signed Will as long as you require.

### Distribution of assets under your will



## Couple (married or de facto)



The single trust estate planning package is suitable for couples who want to establish a single testamentary trust to hold their estate assets. The package assumes that you do not have any children from previous relationships, children with disabilities or unresolved property settlements from any previous relationships.

What your package includes:

- Two Wills with one testamentary discretionary trust
- Two enduring powers of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone
- Free secure storage for the signed Wills for as long as you require. Distribution of assets under your Wills for as long as you require.

## Distribution of assets under your will



## SINGLE TRUST ESTATE PLANNING PACKAGE

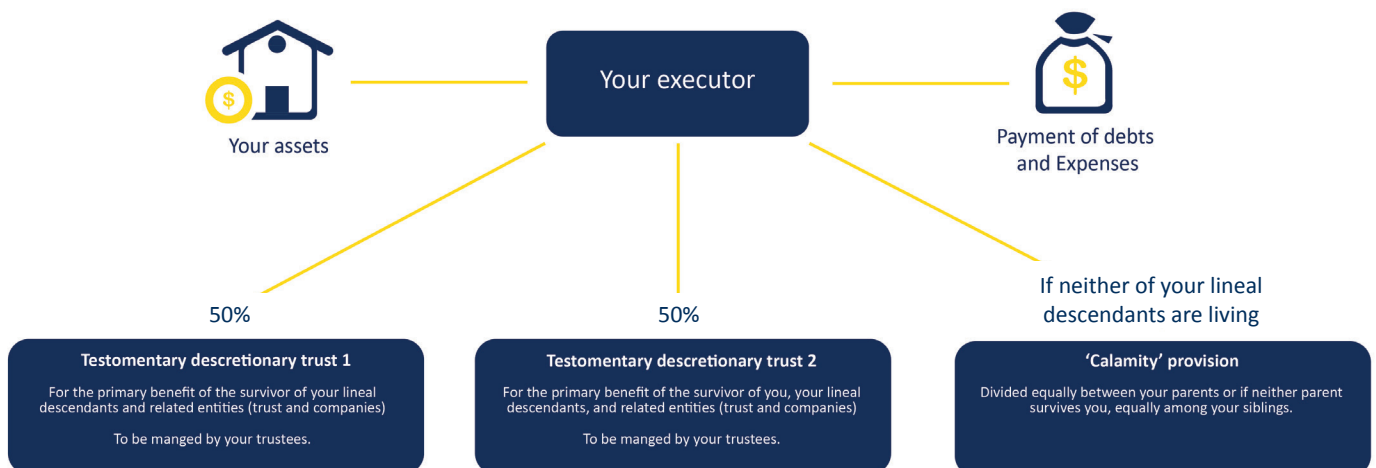
### Single/Individual □

The single trust estate planning package is suitable for individuals who want to establish a single testamentary trust to hold their assets. The package assumes that you do not have any children from previous relationships, children with disabilities or unresolved property settlements from any previous relationships.

What your package includes:

- One Will with one testamentary discretionary trust
- One enduring power of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone
- Free secure storage for the signed Will as long as you require.

### Distribution of assets under your Will (assuming two trusts to be set up)





## MULTIPLE TRUSTS ESTATE PLANNING PACKAGE

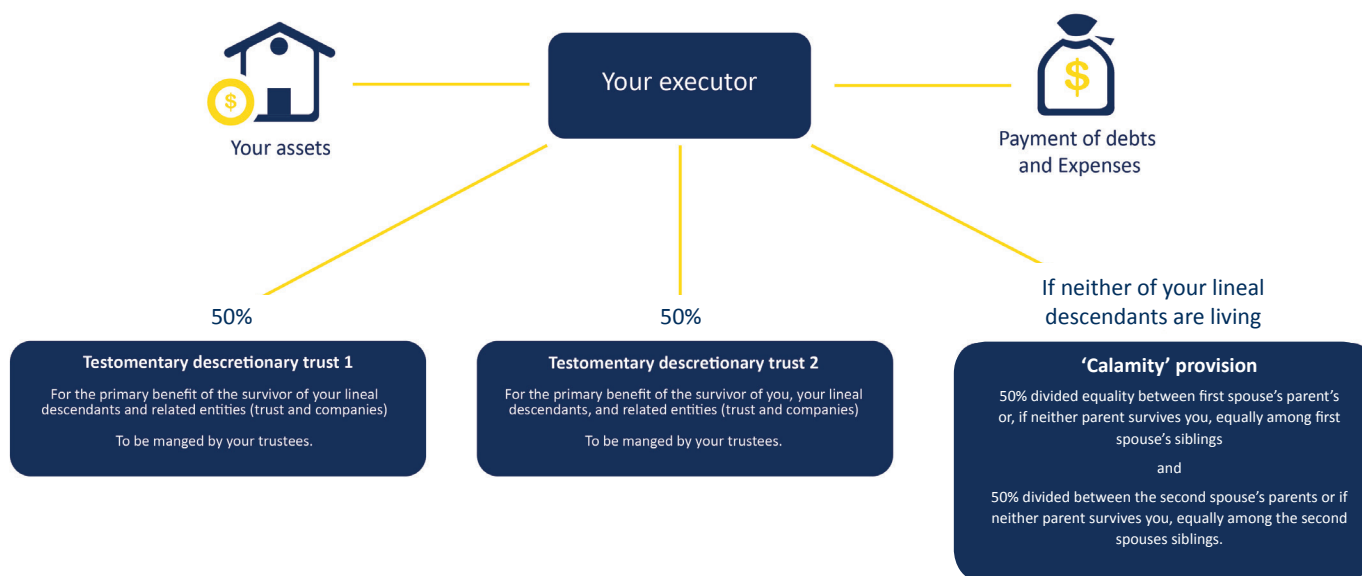
### Single/Individual

This package is suitable for individuals who want to establish multiple testamentary trusts to hold their estate assets including life insurance and superannuation. The package assumes that do not have children from any previous relationships, children with disabilities or unresolved property settlements from any previous relationships.

What your package includes:

- One Will with up to five testamentary discretionary trusts
- One enduring power of attorney
- Cover page for a letter of wishes and a template letter of wishes
- Detailed advice letter on all aspects of the documentation
- Meeting with lawyer face to face, Skype or telephone

### Distribution of assets under your Will (assuming two trusts to be set up)



# GLOSSARY

## Administration of estate

Carrying out the deceased's wishes in accordance to their Will; distributing their collection of assets.

## Attorney

A person nominated to carry out the wishes of the person appointing them (the Principle) including health and financial matters in the event the Principle is unable to do it themselves. The Attorneys (does not have to be a lawyer) is appointed in a document called an Enduring Power of Attorney.

## Business Will

An agreement between the owners of a business to safeguard its future in the event of death or permanent disability. The owners can choose to obtain insurance to fund the transfer of ownership, to ensure the family of the deceased/disabled receives their fair share of the ownership within a decent amount of time as to not suffer additional financial stress.

## Children

When referred to in a Will may include: legally adopted children and children born as a result of an artificial conception procedure defined in the Family Law Act 1975 and who are acknowledged by the Willmaker as their child. It excludes stepchildren and foster children.

## Descendant

Same meaning as "children".

## Domestic Partner

A person of the same/different gender who, whether legally married to the person or not, lives or lived with the person prior to their death, on a bona fide domestic basis as a partner.

## Enduring Power of Attorney

A legal document through which a person (the Principal) can appoint a person (the Attorney) to make a decisions about their financial affairs and/or personal/health matters. The attorney continues to have effect after the Principal loses capacity.

## Estate

The assets of a deceased person, including both real and personal property.

## Executor

The person you appoint to carry out the terms of your Will and wishes. They are your personal representative.

## Executor Duties

Duties include:

- Arrange for the Willmaker's assets to come into the control of the executor;
- Distribute the residual of the estate (the amount that remains after all the provisions in the Will have been carried out and after the payment of all expenses), to those who are entitled as beneficiaries under the Will;
- Ensure that all assets are properly secured and insured;
- Keep records of all dealings with the estate;
- Pay the debts of the deceased;
- Determine whether the deceased had any life insurance policies;
- Determine whether the deceased had any interest in businesses and appoint management to those businesses.
- Finalise taxation affairs
- Counsel all of the beneficiaries in their interests in the Will

## **Guardian**

In the event that both parents pass away, a guardian will assume full responsibility for the welfare and upbringing of their children.

## **Letter of Wishes**

A letter of wishes is intended to provide general guidance to the executor or trustee of a persons estate following their death. While the document is not legally binding, it can have strong moral sway. A letter of wishes is a very personal document and can deal with a range of issues including:

- Directions in relation to assets which the will maker may have effectively controlled during their life time, but will not form part of their estate, for example assets in family trusts, superannuation funds or offshore entities
- Personal assets, particularly those with sentimental value such as jewellery, collectables, antiques, art, other personal effects or family heirlooms
- Directions relating to assets that will not form part of the estates for example
- The names of advisers or family friends from whom assistance should be obtained in relation to financial planning, accounting services, legal advice, insurance brokerage, stockbroking, religious guidance other matters
- The charities or causes that the Willmaker would like the beneficiaries to consider
- The whereabouts of important documents such as deeds, title records and financial information
- Details and instructions on how infant children should be cared for
- Directions in relation to funeral arrangements and burial, and
- Any other matters (personal and financial) the Willmaker would like their executors or trustees to take into account

## **Probate**

The estate may divided by the Executor only once probate is given by the court finalising it as the last valid Will.

Probate may be granted in two forms; solemn form and common form:

1. Solemn form is given where there is debate and possible legal proceedings arising around the validity of the Will.
2. Common form applies where the Will's validity is not in dispute.

If the Court is not satisfied that a Willmaker is of sound mind, memory and understanding, probate will not be granted.

## **Tenants in Common**

Tenants in Common is a specific type of concurrent, or simultaneous, ownership of real property by two or more parties.

If you buy a property as a tenants in common, then make sure that you have in place a Will to deal with your share in the event that you pass, otherwise your share will not automatically go to your loved ones.

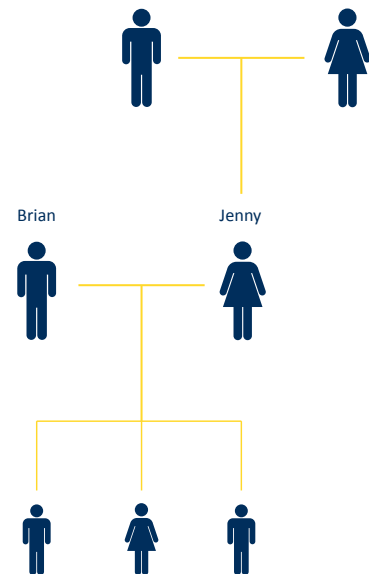
If one of the owners die, your Will decides who gets your ownership share (it will not automatically go to the other co-owners as it would if you held as joint tenants). This is popular amongst persons who don't want their property share to go to the other owners.

## **Joint Tenants**

Joint Tenancy is favoured by married and defacto couples as it deals with property owned in equal shares. If one of the owners dies, their share automatically passes to the other owners. You cannot "Will" your portion of joint tenant property to another party.

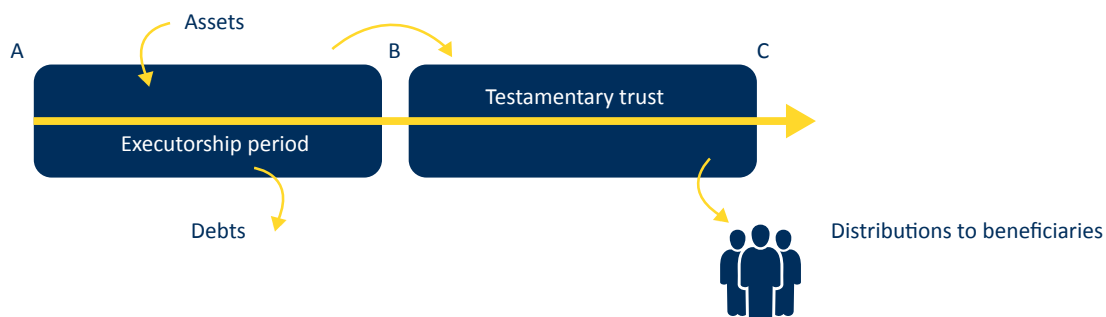
## Example

- Vivian owned and ran (via her directorship of the trading company) a design business.
- She had deliberately ensured that most of her assets were in her husbands (Stan's) name. At least this way, if the business went bad, their home and saving would be protected.
- Unfortunately, when Vivian's parents died, she received the family beach house directly into her name.
- Though the business was doing well, its future success was not guaranteed.
- To protect the beach house from any future litigation, Vivian transferred it to a trust – and paid \$280,000 stamp duty.
- This stamp duty expense (and any capital gains tax, legal and accounting fees) could have been avoided if Vivian's parents had included a TDT in their wills.



## Testamentary Discretionary Trust explained

A Testamentary Discretionary Trust (TDT) is a trust established in someone's Will and comes into effect only when the person dies. A Lineal Descendant TDT is a trust established in someone's Will for the benefit their lineal descendants (direct family members), and a Will can nominate more than one TDT.



## Let's assume that someone dies at point A

- The executor's job involves finding all the assets, paying out any debts and usually, at point B, distributing what's left to the beneficiaries.
- If there is a TDT, part of all of what's left remains in the estate and is distributed later – at any time between point B and point C, depending on the terms of the will. Point C can generally be up to 80 years from point A.
- A Will can establish more than one TDT

## Who controls the assets?

Whoever is named in the Will as trustee controls the TDT's assets and their role can be as flexible and fixed as desired; the trustee can be granted full discretion or no discretion as to who should receive income and capital from the TDT and when they should receive it.

The trustee is often the same person who was appointed as executor, and can also be a beneficiary. For example, a parent can establish TDT for each child's inheritance. Each adult child can be the trustee of a their own trust, and may also be an executor.

## Why are they used?

TDT can be used for a variety of purposes, including:

- To protect inheritances from a beneficiary's creditors or relationship misfortune
- To protect spendthrift beneficiaries from themselves
- To care for children and people with mental disabilities
- To minimise tax- both income tax and capital gains tax
- To avoid an unintended loss by a beneficiary of their government-sourced pension or other benefit (there is limited scope for this)

## What's the purpose of a lineal descendant TDT?

A lineal descendant TDT is established for a person's lineal descendants, that is children and grandchildren (and so on down a lineal family tree). A properly drafted lineal descendant TDT reduces the risk of family law property disputes.

### Protect inheritances from the in-laws

Many parents are concerned that the inheritance they leave to their children could end up in the hands of a former son-in-law or daughter-in-law if their child's marriage breaks down.

Generally, if a child's inheritance is intermingled with their other assets, for example, paying off a house mortgage it will therefore become matrimonial property available for distribution by the Family Court.

However, if a child's inheritance is distributed to a lineal descendant TDT under a Will, those assets can be kept apart and protected from direct distribution (even if income from the assets is reinvested within the TDT from time to time). For example, Bob inherits \$1 million in assets under the lineal descendant TDT, and shortly after, gets divorced. Bob's wife Sally does not see any part of that \$1 million, as it's protected by law as Bob's.

How successfully the assets are protected depends on how the will and lineal descendant TDT are drafted and the circumstances at the time of the relationship breakdown.

### Example

- When Mary died she left her only son Jack an inheritance of \$800,000.
- Jack had been married to Jill for 10 years at the time. They separated shortly after. Jack and Jill's matrimonial property amounted to \$1,200,000 after the mortgage was taken into account.
- In determining the property settlement, the court took into account Jack's inheritance.
- However, because of the terms of the lineal descendant TDT that held those funds, they were not able for distribution to Jill.
- Jill got \$700,000 (that is, slightly more than half the matrimonial assets) rather than the \$1,000,000 she might have otherwise received. In other words, Jill received approximately half of the matrimonial property but no part of Jack's inheritance.

## **Conclusion**

A properly drafted TDT provides a number of significant benefits for the family left behind after a person dies. Unfortunately, any 'second chance' ability to get assets into a TDT after death is quite limited – and usually very costly.

Normally, anyone who is aiming to build wealth during their lifetime, and to provide for their family f their death, should consider putting in place a TDT (or lineal descendant TDT) under their will. A properly drafted TDT can generally create a 'set and forget' structure that provides peace of mind now, while still accommodating the needs of evolving family dynamics in the future.

## **Trustee**

A trustee is someone who is given property to hold onto for the benefit of another person. A trustee can be a person or body corporate such as a company. The trustee owes several duties to the person/s they are holding the property to benefit (the beneficiaries). A trustee must not profit from their position and they must avoid all conflicts of interest. They have a duty to prudently invest and look after the property given them to care for.

## **Witness**

A person who observes the will document signatory process. This person must not be a beneficiary under the will, must be at least 18 years old and must be of sound mind. Furthermore, the witness must not be one of which would cause a conflict of interest such as being the spouse of one of the beneficiaries.



## WHAT TO DO NEXT:

1. Complete the questionnaire
2. Contact and discuss with your nominated persons (Executors, Guardians, Trustees)
3. Advise above persons to expect a kit from your adviser
4. Return the attached questionnaire to Owen Hodge Lawyers

Your advisor will be in touch with regards to the next steps.

# ESTATE PLANNING QUESTIONNAIRE

## 1. PERSONAL

### a) Your details:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Marriage: // Date of Birth: //

Place of Birth: \_\_\_\_\_

Driver's Licence No.: (If you are a new client of Owen Hodge Lawyers) \_\_\_\_\_

Description of Occupation for Will: (e.g. Company Director, Doctor, Home Duties) \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

Telephone: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Mob) \_\_\_\_\_

Email: \_\_\_\_\_

Fax: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

Citizenship: (If not Australian) \_\_\_\_\_ Domicile: (If not Australian) \_\_\_\_\_

### b) Your current spouse/partner/de-facto details:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Marriage: // Date of Birth: //

Place of Birth: \_\_\_\_\_

Driver's Licence No.: (If you are a new client of Owen Hodge Lawyers) \_\_\_\_\_

Description of Occupation for Will: (e.g. Company Director, Doctor, Home Duties) \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

Telephone: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Mob) \_\_\_\_\_

Email: \_\_\_\_\_

Fax: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

Citizenship: (If not Australian) \_\_\_\_\_ Domicile: (If not Australian) \_\_\_\_\_

**Note: If there has been any previous marriage/s or long term relationship/s the section above should be completed for each partner.**

## 2. YOUR FAMILY

### a) Children of your current relationship:

#### Child 1

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: / /  No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

#### Child 2

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: / /  No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

#### Child 3

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: / /  No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

#### Child 4

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: / /  No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_  
Postcode: \_\_\_\_\_

## b) Your children from a previous relationship

### Child 1

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### Child 2

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### Child 3

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### Child 4

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**c) Your spouse/partner's children from a previous relationship**

**Child 1**

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**Child 2**

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**Child 3**

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**Child 4**

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Maiden Name/Alias: \_\_\_\_\_

Marital Status: Single  Engaged  Married  De-Facto  Separated  Divorced  Widowed

Date of Birth: // No. of children of this child: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**d) Particulars of separation or divorce (if applicable):**

Have you previously been divorced or ended a de facto relationship? Yes  No   
If yes, has the separation of property been settled with a Court Order? Yes  No   
Does a Binding Financial Agreement exist? Yes  No   
If YES, please provide us with a copy: \_\_\_\_\_  
\_\_\_\_\_

Has your spouse/partner previously been divorced or ended a de facto relationship? Yes  No   
If yes, has the separation of property been settled with a Court Order? Yes  No   
Does a Binding Financial Agreement exist? Yes  No   
If YES, please provide us with a copy: \_\_\_\_\_  
\_\_\_\_\_

**3. YOUR INSTRUCTIONS**

**a) Power of attorney**

A Power of Attorney appoints a person as your attorney to deal with your legal and financial matters whilst you are alive. The choice of attorney should be someone that you trust as they will be able to deal with all of your legal and financial matters on your behalf.

If you do not already have an existing Power of Attorney then please complete the details below:

**Who do you want to appoint as your Attorney?**

Surname: \_\_\_\_\_  
Given Names: (Include middle name) \_\_\_\_\_  
Any Alias: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Residential Address: \_\_\_\_\_  
\_\_\_\_\_ Postcode: \_\_\_\_\_

**If you want to appoint more than one Attorney, please advise details of the second Attorney:**

Surname: \_\_\_\_\_  
Given Names: (Include middle name) \_\_\_\_\_  
Any Alias: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Residential Address: \_\_\_\_\_  
\_\_\_\_\_ Postcode: \_\_\_\_\_

**Do you want to appoint a substitute Attorney? If so complete details below:**

Surname: \_\_\_\_\_  
Given Names: (Include middle name) \_\_\_\_\_  
Any Alias: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Residential Address: \_\_\_\_\_  
\_\_\_\_\_ Postcode: \_\_\_\_\_



## b) Enduring guardian

The enduring guardian appointment appoints a person(s) as your guardian to deal with your health care and lifestyle decisions which may need to be made if you lose the mental capacity to make the decisions yourself. Health care and lifestyle decisions mean where you are to live and the giving and, in certain defined circumstances, the withholding of consent to medical treatment. More information can be found in our Enduring Guardianship Appointments Fact sheet which can be found in this Information Kit.

If you do not already have an existing Appointment of Enduring Guardian then please complete the details below:

### Who do you want to appoint as your Enduring Guardian?

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### If you want to appoint more than one Enduring Guardian, please advise details of the second Enduring Guardian:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### Do you want to appoint a substitute Enduring Guardian(s)? If so complete details below:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

**c) Your will**

If you intend to make any specific gifts of money, real estate, jewellery and special items, please provide a full description of the intended gifts as well as the full names and the relationships to you of the persons receiving them.

**Special gifts of money**

Full Name of beneficiary	Address	Relationship to You	Amount

**Specific gifts of assets**

Full Name of beneficiary	Address	Relationship to You	Items

Note: Should there not be enough space to cover all items above, please furnish on a separate list.

**Specific gifts of real estate**

Full Name of beneficiary	Address	Relationship to You	Property Address and Title particulars

If there is a mortgage over the property is the beneficiary to take the gift

Free of the mortgage  Subject to the mortgage

If any beneficiary is under 18 years, please state at what age you wish them to inherit.

Age: \_\_\_\_\_

## Appointment of executor

The Executor should be a person with time to handle your estate after your death and also someone with business acumen. Usually 2 are selected either to act together or one to be the substitute for the other in the event the first is unable to act. Spouses, siblings, close friends or professionals are the general choice. Please provide full names (including middle name) and addresses of the persons selected.

### Who do you want to appoint as your Executor?

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### If you want to appoint more than one Executor, please advise details of the second Executor:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Are the Executors to act jointly or jointly & severally? \_\_\_\_\_

### Do you want to appoint a substitute Executor(s)? If so, complete details below:

(Not required if you have nominated two or more Joint Executors above)

Substitute Executor #1 Surname (If required): \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Substitute Executor #2 Surname (If required): \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

## Appointment of guardian

The Appointment of a Guardian is a very important decision as the guardian will be responsible for the care of your children under 18 were both of you to pass away prematurely. Often the guardians are different to the executors. Please think about who you might want to act in this role. If you choose a married couple select one party rather than both in the event there is a divorce. Full names and addresses are required.

### Who do you want to appoint as the Guardian of your minor children?

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### If you want to appoint more than one Guardian, please advise details of the second Guardian:

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Are the Executors to act jointly or jointly & severally? \_\_\_\_\_

### Do you want to appoint a substitute Guardian(s)? If so, complete details below:

(Not required if you have nominated two or more Joint Executors above)

Substitute Executor #1 Surname (If required): \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Substitute Executor #2 Surname (If required): \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

## Appointment of trustees

If you are including a Testamentary Trust in your Will, then when the administration of the estate is complete, the executors pass the assets to the trustees of the testamentary trusts (generally, there is one trust for each of your children). Some of your children may be minors and others may not yet be financially mature which is why you need to select trustees to manage the trusts on their behalf. These can be the same people as the executors. The trusts are long term and in time the trustees will change with the likelihood that your children will ultimately control their own trusts when old enough. Please think about who you want to be trustees and provide their full names and addresses below.

Explanatory material is available on the Owen Hodge Lawyers web site providing further information as to how Testamentary Trusts work.

### Who do you want to appoint as the Trustee(s) of the Testamentary Trusts?

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

### Appointment of appointors

To ensure the trustees of the Testamentary Trusts are acting properly in their administration, a person known as an Appointor is chosen. That role is not active but the person is the ultimate controller of the Testamentary Trusts as he/she has the power to remove the trustee and appoint another person. You will also need to consider who should be Appointor after the death of the original Appointor. Please provide the full name and address of the Appointor and Substitute Appointor.

#### Who do you want to appoint as the Trustee(s) of the Testamentary Trusts?

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

#### Who do you want to appoint as the substitute Appointor(s) of the Testamentary Trusts?

Substitute Appointor #1 Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Substitute Appointor #2 Surname: \_\_\_\_\_

Given Names: (Include middle name) \_\_\_\_\_

Any Alias: \_\_\_\_\_

Occupation: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_



**Your funeral or burial arrangements**

If you want to specify funeral instructions in your Will, please complete the details below:

Burial: Yes  No       Cremation: Yes  No

Prepaid Funeral: Yes  No

If yes, supply details: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

## 4. YOUR ASSETS

### a) Your real estate

Main residence property address: \_\_\_\_\_

Registered owner(s): \_\_\_\_\_  
(include name of Trust or Superannuation Fund if applicable)

Joint Tenants: Yes  No       Tenants in Common: Yes  No

With Whom: \_\_\_\_\_

Value of property: \$ \_\_\_\_\_ Value of mortgage: \$ \_\_\_\_\_

Title deeds held by: \_\_\_\_\_

Please provide a copy of the Certificate of title or let us have instructions to obtain copies from the Land and Property Management Authority.

Property Address: \_\_\_\_\_

Registered Owner(s): \_\_\_\_\_  
(include name of Trust or Superannuation Fund if applicable)

Joint Tenants: Yes  No       Tenants in Common: Yes  No

With Whom: \_\_\_\_\_

Value of property: \$ \_\_\_\_\_ Value of mortgage: \$ \_\_\_\_\_

Title deeds held by: \_\_\_\_\_

Please provide a copy of the Certificate of title or let us have instructions to obtain copies from the Land and Property Management Authority.

Property Address: \_\_\_\_\_

Registered Owner(s): \_\_\_\_\_  
(include name of Trust or Superannuation Fund if applicable)

Joint Tenants: Yes  No       Tenants in Common: Yes  No

With Whom: \_\_\_\_\_

Value of property: \$ \_\_\_\_\_ Value of mortgage: \$ \_\_\_\_\_

Title deeds held by: \_\_\_\_\_

Please provide a copy of the Certificate of title or let us have instructions to obtain copies from the Land and Property Management Authority.

**Note: Repeat this page for any additional real estate you own**

## b) Your superannuation

Fund: \_\_\_\_\_

Policy Holder \_\_\_\_\_

Nominated beneficiary: \_\_\_\_\_ Binding  Non Binding

Self Managed: Yes  No

Please provide a copy of the superannuation deed and any written nominations made

Fund: \_\_\_\_\_

Policy Holder \_\_\_\_\_

Nominated beneficiary: \_\_\_\_\_ Binding  Non Binding

Self Managed: Yes  No

Please provide a copy of the superannuation deed and any written nominations made

## b) Your superannuation

Policy No.: \_\_\_\_\_ Company \_\_\_\_\_

Life insured \_\_\_\_\_ Assured/Owner \_\_\_\_\_

Nominated beneficiary: \_\_\_\_\_

Please provide copies of life insurance schedules

Policy No.: \_\_\_\_\_ Company \_\_\_\_\_

Life insured \_\_\_\_\_ Assured/Owner \_\_\_\_\_

Nominated beneficiary: \_\_\_\_\_

Please provide copies of life insurance schedules

## b) Your superannuation

	Estimated or known Value
Furniture:	\$
Jewellery:	\$
Special Art and Antiques:	\$
Accrued wages/annual leave/long service leave:	\$
Taxation credits:	\$
Motor vehicles/boats/caravans/aircraft/etc:	\$
Bank Accounts:	\$
Cash Management Funds:	\$
Public Listed Shares:	\$
Private Company Shares:	\$
Shares in Partnerships:	\$
Overseas Assets:	\$
Interests in deceased estates or settlements:	\$
Other Assets:	\$

### e) Your liabilities

	Estimated or known Value
Mortgage over real estate:	\$
Personal loans:	\$
Bank overdrafts:	\$
Other:	\$

### f) Your family trusts

Trust name: \_\_\_\_\_

Trustee: (Include ACN if company) \_\_\_\_\_

Settlor: \_\_\_\_\_

Date of Trust Deed: \_\_\_\_\_

Estimated Value of Trust Assets: \_\_\_\_\_

Are any loans owed to you by the Trust? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Trust by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Trust name: \_\_\_\_\_

Trustee: (Include ACN if company) \_\_\_\_\_

Settlor: \_\_\_\_\_

Date of Trust Deed: \_\_\_\_\_

Estimated Value of Trust Assets: \_\_\_\_\_

Are any loans owed to you by the Trust? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Trust by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Trust name: \_\_\_\_\_

Trustee: (Include ACN if company) \_\_\_\_\_

Settlor: \_\_\_\_\_

Date of Trust Deed: \_\_\_\_\_

Estimated Value of Trust Assets: \_\_\_\_\_

Are any loans owed to you by the Trust? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Trust by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Trust name: \_\_\_\_\_

Trustee: (Include ACN if company) \_\_\_\_\_

Settlor: \_\_\_\_\_

Date of Trust Deed: \_\_\_\_\_

Estimated Value of Trust Assets: \_\_\_\_\_

Are any loans owed to you by the Trust? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Trust by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

**g) Your private companies**

Company Name: \_\_\_\_\_

Company ACN: \_\_\_\_\_ Company ABN: \_\_\_\_\_

Directors: \_\_\_\_\_

Secretary: \_\_\_\_\_

Shareholders: \_\_\_\_\_

Is this Company a Trustee? Yes  No  If Yes, specify name of Trust: \_\_\_\_\_

Are any loans owed to you by the company? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Company by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

**g) Your private companies**

Company Name: \_\_\_\_\_

Company ACN: \_\_\_\_\_ Company ABN: \_\_\_\_\_

Directors: \_\_\_\_\_

Secretary: \_\_\_\_\_

Shareholders: \_\_\_\_\_

Is this Company a Trustee? Yes  No  If Yes, specify name of Trust: \_\_\_\_\_

Are any loans owed to you by the company? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Company by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

**g) Your private companies**

Company Name: \_\_\_\_\_

Company ACN: \_\_\_\_\_ Company ABN: \_\_\_\_\_

Directors: \_\_\_\_\_

Secretary: \_\_\_\_\_

Shareholders: \_\_\_\_\_

Is this Company a Trustee? Yes  No  If Yes, specify name of Trust: \_\_\_\_\_

Are any loans owed to you by the company? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Company by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

**g) Your private companies**

Company Name: \_\_\_\_\_

Company ACN: \_\_\_\_\_ Company ABN: \_\_\_\_\_

Directors: \_\_\_\_\_

Secretary: \_\_\_\_\_

Shareholders: \_\_\_\_\_

Is this Company a Trustee? Yes  No  If Yes, specify name of Trust: \_\_\_\_\_

Are any loans owed to you by the company? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

Are any loans owed to the Company by you? Yes  No  If Yes, specify amount owing: \$ \_\_\_\_\_

## 5. IMPORTANT DECLARATION

I **DECLARE** that these instructions to you for preparation of my Will:

Please tick appropriate box

Are only for the purpose of preparing a draft which I may change or alter upon receipt.

OR

Should revoke any former Will and take effect as my Will if I die before signing my formal Will

Note: If you choose the second option please sign and date below and have two people witness your signature. Witnesses must be over 18 years of age and must not be a beneficiary named in the Will or the spouse of a beneficiary named in the Will.

Dated:

\_\_\_\_\_  
Willmaker's Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print name of Witness in full

\_\_\_\_\_

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print name of Witness in full

\_\_\_\_\_

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

Please return the completed checklist to:

Owen Hodge Lawyers  
Level 3, 171 Clarence Street SYDNEY NSW 2000  
ohl@owenhodge.com.au

If you have any questions about this checklist, please call 1800 770 780.



