



Will ethics be the death of you?

Bryan Ashenden

Head of Financial Literacy & Advocacy, BT

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Discussion question

In your experience have you seen ethical issues arise for consideration around estate planning?



- What is estate planning?
- Ethics and estate planning
- Wills (and wills-not)
- Superannuation
- Estate planning before death

What is estate planning?



What is estate planning?

- Is it simply about:
 - Right money?
 - Right hands?
 - Right time?
- Is it simply about planning for what happens upon death of a client?

Ethics and estate planning



Code of Ethics Considerations



Goals for effective estate planning

- Simplicity
- Clarity
- Flexibility
- Practicality

Ethical considerations beyond the Code of Ethics

- Who do we work with to achieve the client's goals?
- Who is the client?
- Privacy considerations
 - Sharing information with other professionals
 - Sharing information with different generations

Wills and wills-not



Poll Question

As part of your standard fact finding process, you ask your client if they have a current will. They respond “yes” and you document this clearly in your filenotes and the SoA. Does this bring your considerations to end around their wills?

- Yes
 - No
 - Maybe
-

A poorly planned estate can arise from a range of circumstances

- the absence of a will
- a poorly drafted will
- a will that no longer reflects the wishes of the testator
- a will that is invalid due to lack of capacity, because it has been executed incorrectly or some other reason
- a plan that does not reflect the beneficiaries' circumstances, such as the need for asset protection, tax-effectiveness and receiving assets/funds promptly
- the absence of a valid binding nomination of beneficiary for superannuation death benefits
- lack of thought about the ownership and structures under which assets are owned, about potential challenges to an estate, or about the tax consequences of certain decisions
- lack of regard to the debts of the client and their related entities
- lack of thought of any social security consequences faced by beneficiaries.

A valid will is the starting point to an effective estate plan

- What is required for a will to be valid?
- Is a valid will effective?
- Does a valid will mean that estate planning considerations have been dealt to?

Wills and wills-not

- Are the following estate assets or non-estate assets?
 - A commercial property the deceased owned as joint tenants with their spouse
 - A commercial property the deceased owned 50/50 as tenants in common with their spouse
 - A non-super life insurance policy owned by the deceased
 - A loan owed to the deceased by their daughter
 - Private company shares owned by the deceased
 - A loan owed by the daughter of the deceased to a private company 100% owned by the deceased
 - Listed shares owned by a family trust
 - Superannuation account owned by the deceased
 - Investment bond where the deceased is the owner and a life insured

Powers of attorney

- What are the different types of powers of attorney?
 - Limited PoA
 - General PoA
 - Enduring PoA
- Common reasons for lack of PoAs considerations by clients

Discussion questions

When is the right time to raise the issue of PoAs with your clients?

Should you do it, or should it be left to the lawyer?

Superannuation



Superannuation

- Not an estate asset, unless
 - Valid nomination in place, followed by trustee, to pay to estate
 - Lack of valid nomination and trustee determines to pay to estate
 - Highlights importance of considering death benefit nominations for superannuation accounts, and considering impacts of insurance held within superannuation
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What is better?

- Binding death benefit nomination
 - Needs to be validly made
 - Needs to be renewed every three years
 - Governed under SIS rules (if offered by trustee)
- Non-lapsing death benefit nomination
 - Not strictly binding on trustee (as may be events that invalidate it)
 - Does not need to be renewed
 - Governed under rules of Trust Deed

Poll question

Which do you think is the better for a client's planning around their superannuation post death?

- Binding death benefit nomination
- Non-lapsing death benefit nomination
- No nomination

Estate planning before death



Estate planning before death

- Important to consider estate planning issues that may arise before death
 - Wills will not solve these issues
- Financial abuse
 - Not restricted just to the elderly
 - Do PoAs help or hinder?
 - What are your ethical considerations?



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