
Welcome to our latest e-newsletter.

Did you know that your superannuation balance doesn't automatically form part of your estate when you die? In this issue we look at a recent case that highlighted just how important it is to take account of this when doing your estate planning to ensure that your wishes are carried out. Plus we look at some expense claims the Tax Office will be targeting this year, and congratulate Kathy Allen on being appointed inaugural Chair of the Pelvic Pain Foundation of Australia.

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Superannuation and your estate - a closer look



If something were to happen to you, who gets your superannuation?

It seems like a question with a pretty simple answer doesn't it? If you have a Will, then it goes to whoever you specify, right?

It might surprise you to know that your superannuation is treated differently when it comes to your estate. If you don't specifically attend to making your wishes explicit with respect to your super balance (and reviewing those wishes every few years), you may not get the outcome you intended and your loved ones could be left in the cold.

The fact is that life is complicated. As your personal and financial affairs become more complex, so too your estate planning strategies must adjust to make sure you have accounted for every possibility and to ensure that your wishes are carried out.

This was highlighted in a case last year, *Ioppolo & Hestford v Conti [2013] WASC 389*. The facts of the case are worth going over because, aside from being an interesting example of the 'messiness' of life, they demonstrate how a simple oversight can have significant ramifications for the beneficiaries of an estate.

Francesca was married to Augusto, and together they were trustees of a self-managed superannuation fund. Francesca passed away, and had children from a previous relationship who she provided for under the terms of her Will. Included in those terms was that in the event of her death, her children should get the balance of her superannuation (which totalled over \$600,000). Further, the Will explicitly stated that none of her superannuation should go to Augusto.

Unfortunately however, there was no **binding death benefit nomination** within the superannuation fund. A binding death benefit nomination ensures that regardless of the actions of the trustee(s) of the fund, the wishes of the member are carried out upon his or her death.

Shortly after Francesca's death, Augusto resigned as trustee of the fund and appointed a company - Augusto Investments Pty. Ltd. - as his replacement. This was done so that no other trustees needed to be appointed along with Augusto. A corporate trustee can hold that position on its own. But guess who had sole control of Augusto Investments?

The new trustee then resolved that the death benefit in its entirety should pass to Augusto and that nothing should go to the children. Understandably, the children (who were also the executors of Francesca's estate) challenged this; however the court upheld the actions of the trustee and struck down the terms of the Will with respect to Francesca's super balance.

Although this may seem unfair, the outcome reinforced a long-standing precedent. Superannuation doesn't automatically form part of the assets of your estate. It is treated separately, and the way that you want it to be passed on needs to be explicitly detailed in your superannuation arrangements. Without this, it is entirely at the Trustee's discretion.

The nomination itself must be drawn up in accordance with the super fund deed in order for it to be valid, and it must usually be renewed every three years to remain in effect.

In addition to these specific requirements though, it's obvious from the facts of this case that any time your life circumstances change, a review of your estate planning is prudent.

For example, a binding death benefit nomination may not always provide the best possible outcome. If you have a stable, trusting relationship with those who would administer your estate, a binding nomination may end up being a little too rigid and not allow your executor and beneficiaries to distribute your superannuation in the most flexible way given their circumstances at the time of your death. In this case, a non-binding nomination may work better, particularly in cases where you have only ever been married to one person and all your children are from that relationship.

The point is that while the process of estate planning will be different for everyone, it is nevertheless something that must be undertaken by anyone with even a small level of wealth. In our many years of consulting, we find that when asked, business owners are very concerned about ensuring that their legacy is not compromised, but in practice it still tends to fall down the list of priorities very easily and often goes unattended to.

Estate planning is an indispensable pillar of any robust wealth creation strategy. If the goal of being in business is about building a long-term future, then estate planning deserves as much attention as those strategies we consider mission critical - managing costs, determining where we invest, what insurance cover we take out and so on. A simple Will is rarely enough to account for the complexities of life, and sadly the courts are continually kept busy with examples of why this is so.



Tax Office targeting certain work related expenses

The Tax Office has announced that they will be paying special attention to a number of different work-related expenses claims this year.

As a general rule, the Tax Office always undertakes extensive data analysis to look for expense claims that may be dubious. However they also focus on certain specific claim types each year.

This year they will be targeting claims relating to:

- overnight travel
- transporting bulky tools and equipment
- the use of computers, phones and other electronic devices

It's a timely reminder that whenever you



Kathy Allen appointed inaugural Chair of the Pelvic Pain Foundation of Australia

We congratulate Dewings director Kathy Allen on her recent appointment as the inaugural Chair of the Pelvic Pain Foundation of Australia Ltd.

This foundation is a not for profit health promotion charity established to alleviate the suffering of people with pelvic pain through awareness, education, research and improved access to treatment and services.

It arose out of the passion of Dr Susan Evans, a Gynaecologist and Pelvic Pain Specialist, to assist those who suffer this terrible condition. Pelvic pain affects 1 in 5 women - and particularly teenage girls - and 1 in 12 men at some time in their life,

make a claim for a work-related expense, the claim must relate to your work and if necessary, be apportioned appropriately between business and private use. In addition, you must have records to substantiate it.

It's also worth noting that sometimes you may be the target of an audit purely because you fit into one of the Tax Office's particular focus categories. Even if you are confident that your claim will hold up, the Tax Office doesn't pay costs! You must still bear the expense of any accounting fees associated with the investigation. This is where audit insurance becomes important, particularly if you are in a high risk category.

If you'd like to discuss the options we provide for audit insurance, please contact us.

yet it's a condition that is rarely discussed. Susan saw that there was a dire lack of services, education and research for this serious issue. So she set out to establish the foundation, putting together a multi-disciplinary board. Education events and research have already begun and the feedback has been great.

The foundation is registered as a Health Promotion Charity by the ACNC and has received tax deductible status. Further details can be found at www.pelvicpain.org.au

We again congratulate Kathy, and commend her for giving her time to this voluntary position.

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For further advice or information please contact us. Whilst this newsletter is issued as a guide, no responsibility is accepted by Dewings for loss by any person acting or refraining from acting on the material provided. The information enclosed should not be substituted for professional advice.

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