

LEGAL MATTERS

Cassab & Associates Solicitors E-Newsletter

Issue #4 - April '16



Why wait to plan your estate!?

Estate planning is often postponed by many—sometimes intentionally, but mostly because it's hard to know what is required or where to even start! Our newsletter this month looks at the role of three essential ingredients which should form part of estate planning:

1. Appoint a power of attorney

A power of attorney (PoA) is a legal document which appoints a person of your choice to manage your financial and legal affairs on your behalf. An *ordinary* PoA does not require incapacity for its operation—it can be used, for example, if you need someone to manage your finances while you are overseas. An *enduring* PoA remains in operation if you lose the capacity to decide for yourself and allows your appointed attorney to manage your affairs, in accordance with your pre-determined instructions.

2. Appoint an enduring guardian

An enduring guardian is a person that you give power to, to make

decisions on your behalf, in the case that you lose the mental capacity to make them yourself. Enduring guardians can only make decisions in relation to lifestyle, health, accommodation and services. They cannot make any decisions about your finances or assets. Enduring guardianships are revokable so long as you still have full mental capacity.

3. Prepare a will

A will is a legal document that specifies how you want your estate to be distributed when you die. In a will, you appoint someone you trust to administer of all your property, finances and personal belongings to the persons you specify. It is recommended that everybody over 18 years prepares a will, updating it every three years or whenever there are major changes in your life (such as marriage, divorce and changes in family relationships or property holdings).

At Cassab's, we are happy to help you out with all three areas! We encourage you to come and talk to us about it!

FAQs:

What happens if I die without a will?

- If you die without a will, your estate and assets will be distributed according to a pre-determined formula under the Succession Act 2006. Without a will, you cannot be sure that your estate will go to the people you want it to go to. Keep in mind, a will is also where you can nominate guardianship of any minor children.

What if I don't appoint a power of attorney?

- Not having an enduring PoA becomes an issue if you lose mental capacity to make financial decisions.
- In this case, an application to the NSW Civil and Administrative Tribunal or Supreme Court may be required to appoint you a financial manager.
- This will often be a lengthy and costly process so by appointing a PoA you can save your family the unnecessary burden.

What if I don't appoint an enduring guardianship?

- If you do not appoint an enduring guardianship, medical decisions are decided under the operation of a hierarchy under the Guardianship Act 1987. If there is no guardian, the decision is made by a spouse, person who cares for you or close relative. If none of these people are willing to make the decision on your behalf, a medical practitioner is appointed to make the decision.
- Why leave such a big responsibility to a stranger when a loved one, who knows you best, can make them instead?

What is meant by mental capacity?

- Mental capacity is the ability to understand and consider all relevant information in order to make appropriate decisions.
- Capacity can be impeded by disability, mental illness or brain injury.
- Assessment of mental capacity can be made by a health professional.
- Mental capacity is required in order to make a will, appoint a power of attorney and appoint an enduring guardianship.

What if I have more questions???

Estate Planning is very important. This newsletter is only a very brief outline of the essential tools which should be part of all estate planning. More questions? Our door is always open and we welcome your calls. More information can also be found on this government [website!](#)

Inspiration for the month:

Never put off until tomorrow, that which can be done today!

⇒ Email: info@cassablegal.com.au

⇒ **Subscribe | Unsubscribe**

⇒ Find us on social media!

⇒ Visit our [Website](#) to catch up on [previous](#) e-newsletters!



Our door is always open to talk about these issues!

Come and visit, give us a call or send us an email We love hearing from you!

Suite 302/398 Chapel Road, Bankstown, NSW 2200

**Phone: 9793 2700
Fax: 9793 2900**