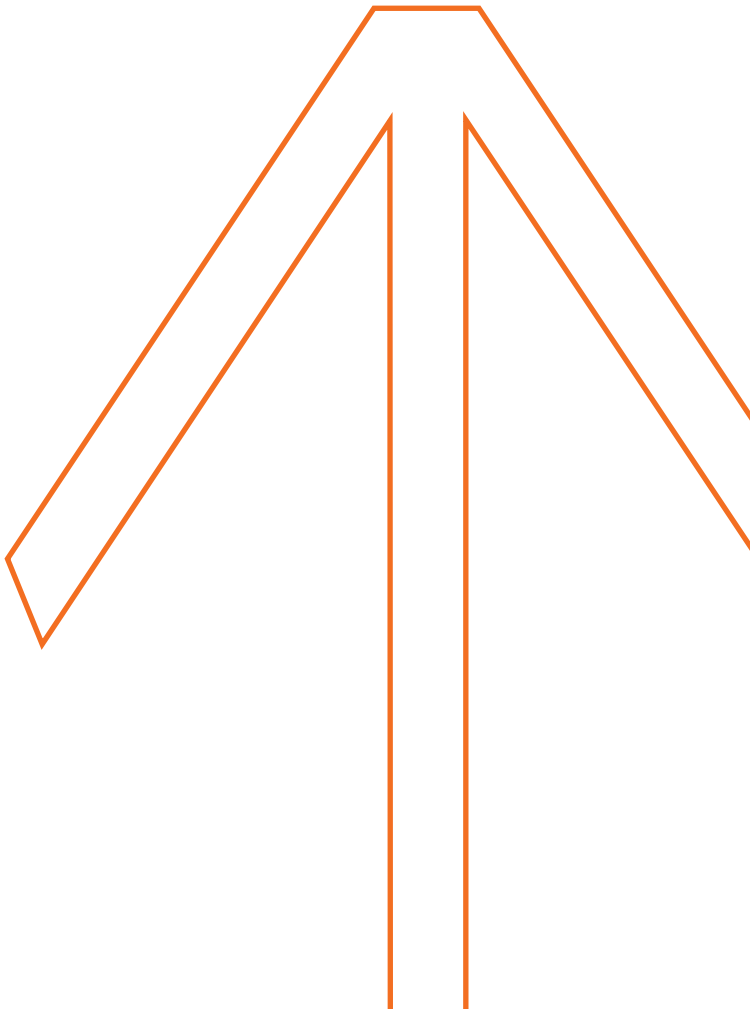
OPERATIONAL LEGAL AUSTRALIA

ESTATE PLANNING PACK

PLANNING FOR YOUR FUTURE



Call 1300 185 196 or visit
www.olegalaustralia.com.au

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We spend our entire lives working hard to provide for the people we love. We try to plan so that we can eventually retire with the comfort of financial security that allows us to enjoy our retirement. Although, do any of us really plan for life after work?

While we do our best to plan for everything else in our lives such as holidays, education for our children, mortgages and our working lives, we often forget to plan for the latter stages of our lives. An important part of this plan should include having a Will, a Power of Attorney and an Enduring Guardianship.

These documents are important because they can protect you, your assets, your investments and your loved ones into the future. No matter if you are young, old, single or partnered, have a family or are close to retirement, these documents can ensure that you are protected should anything unfortunate occur. Its never too late, or too early to start planning!

This brochure sets out these types of documents and the steps necessary to help you protect your future. Although you may not require all, the brochure explains some potential issues that we feel are important to consider when planning the future.

We offer three different types of Wills as well as Powers of Attorney and Enduring Guardian documents.

We are happy to discuss these documents with you at any time. CALL 1300 185 196

Will Options

BRONZE Handcrafted Will	**SILVER** Complex Will	**GOLD** Testamentary Trust Will
In this type of Will you can appoint an executor and an alternative executor. This package offers solid, basic estate planning advice for multiple beneficiaries, including spouse, children, grandchildren and others. We will provide advice on a number of possibilities and common traps that can arise. We will also advise you about which circumstances might give rise to you needing to change your Will and why it's important. Our Advice will also assist you to avoid intestacy (passing away without a Will), if your Will may result in a claim on your estate and if so, what steps you should take to deal with the possibility of that claim.	We provide significant advice in relation to the executors (Person responsible for carrying out your wishes after death- including professional executors), trustees, guardianship of children, complex families, children with difficult relationships. Furthermore, we offer advice in relation to the process for estate handling upon death and on the procedure for the Grant of Probate, advice on the effect of bankruptcy of beneficiaries, Capitol Gains Tax (CGT) and other taxes, challenges to Wills, family companies and business issues. General advice in relation to the possible need for financial planning advice.	Testamentary Trusts set up through your Will, explanation on how it works and the benefits it offers, unlike ordinary Will. In addition to the issues covered in all of the other options available we will undertake a comprehensive review of your needs, review current taxation, superannuation and other relevant legislation which would impact on the beneficiaries of your estate. This is because it is possible to establish trusts on your death which minimize income tax and capital gains taxes and superannuation death benefit taxes. Further strategies are considered and put in place to potentially defeat creditors claiming against your estate and your beneficiaries for the benefits you leave to those people you love. An additional advantage is the minimization of claims by former spouses in the event of marriage breakdown and the insertion of adjustment clauses in your Will to minimize potential disputes between your children. Finally, strategies can be put in place to ensure that your superannuation death benefits pass to your beneficiaries rather than in accordance with the discretion of the trustee of your superannuation fund.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

Power of Attorney Options

SILVER Power of Attorney	GOLD Power of Attorney for company directors and members of self managed superannuation funds
In this type of Power of Attorney you can appoint your partner as your attorney with the option of also appointing alternate attorneys. Advice on whether your attorney can act immediately or only when a certain event occurs e.g. the requirement that a medical certificate stating that you lack either physical or mental capacity is presented. We will also give advice on the advantages and disadvantages of enabling your attorney to make gifts to themselves, family members or any other people.	This type of Power of Attorney is given by a company to an individual to allow your attorney to continue to operate your company in the event that you lack capacity or pass away. It would enable your elected attorney to operate the company's account to continue to operate your business and pay your company's bills and wages. This type of Power of Attorney will enable your attorney to continue to deal with the company's bank, share registries and the Land Titles Office. It also includes minutes of the meeting by the company appointing the attorney. If necessary, a further Power of Attorney can be prepared which authorises your attorney to make decisions with respect to any superannuation you may hold. These powers could enable your attorney to vote at any meeting of the trustee (representative) in relation to contributions to the fund; commutation of member benefits (exchanging one type of income for another); setting up, administering and winding up any pensions or annuities; making of binding death benefit nominations; renewal of any binding death benefit nominations and amending any directions to any superannuation fund of which you are a member with respect to the distribution of your member balance in that fund. Advice is also given on who your company should appoint as attorney and whether your attorney can act immediately or only when a certain event occurs e.g. the requirement that a medical certificate stating that you lack either physical or mental capacity is presented. We will also give advice on the advantages and disadvantages of enabling your attorney to make gifts to themselves, family members or any other people.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

Enduring Guardianship

BASIC
Basic Enduring Guardians

Enduring Guardianship is someone you appoint to make lifestyle, health and medical decisions for you when you are not capable of doing this on your own. Unlike a Will or Power of Attorney, an Enduring Guardian is there to ensure you are protected if you are unable to make lifestyle and medical decisions due to illness or accident.

When appointing an Enduring Guardian you appoint someone to act as your guardian to make decisions about where you live, what health care you receive, what personal services you receive and consent to certain medical and dental treatment for you in the situation where you do not have capacity to make these decisions on your own.

We will give you advice on who is the most appropriate person to appoint in your circumstances and whether more than one person should be appointed. You will also be provided with a detailed analysis of the advanced care directions you propose to put in place. These advanced care directions may include, but are not limited to:

- What kind of care you would like to receive or refuse,
- Where you would like to be cared for if you were dying,
- Organ and/ or Body donation,
- Personal values,
- Personal, religious and spiritual care you would like to receive when you are dying.

If you appoint more than one guardian, then advice will be given on whether you should appoint them jointly or separately.

The document must be signed by you and the person or persons you appoint as your enduring guardian in the presence of a lawyer, who must sign a certificate of witness stating that they have explained the documents to the guardian or guardians you have appointed.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

Estate Planning Package

PACKAGE INCLUSIONS

- Bronze Will
- Silver Power of Attorney
- Enduring Guardianship

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

WILLS

COMMON QUESTIONS TO CONSIDER...

What type of Will do you need? We offer three types of Wills that can be prepared to suit your needs. Before deciding which type of Will suits your needs you should consider the following questions and the materials in this brochure.

Do you know what happens to your assets if you die without a valid Will?

Do you know what happens if your executor (the person you elect to manage your estate) dies before you do?

Do you anticipate that anyone may challenge your Will?

Would you like to protect your beneficiaries inheritance if their marriage fails or they are sued or become bankrupt?

Would you like to protect your beneficiaries inheritance if they are not in a position to handle money due to a medical condition, poor financial management, or have a gambling or drug addiction?

Do you want to assist you to protect vulnerable beneficiaries, provide ongoing care for disabled beneficiaries and establish special disability trusts?

Do you want your estate to be administered in a tax effective manner to minimise taxation on inheritance and maximise the benefits for beneficiaries? We can help you to ensure your beneficiaries get the most out of your gift to them.

If you have any concerns about these issues, please read and consider the following information which discusses Wills or contact us by calling 1300 185 196 or visiting www.olegalaustralia.com.au

Wills

It is unfortunately true that the two certainties in life are death and taxes. However, we can ensure that the financial assets we have built up over our life are transferred to those we desire when we pass away.

A Will is a document which sets out what you want to happen to your assets after your death. Your Will states who is to be your executor (the person you elect to manage your estate after you die). It is your executor who has the job of looking after and dividing your estate according to your wishes in your Will.

Your Will allows you to elect and name individuals who you wish to leave something. You can choose an amount, or a particular item that you would like that person, charity or organisation to have after you pass away.

For example - you may want to leave your service medals to a loved one, or the local museum or relevant State Returned Services League.

WHY HAVE A WILL?

Over our lifetime, our circumstances change, our families grow, and our pool of assets build up. You've worked hard your entire life and made decisions that are best suited to you and your family, why would that change with your Will?

Regardless if you are young or old, or your estate is large or small, you should take the opportunity to make a Will with us to ensure you can choose who you would like to receive your assets after you pass away. Your assets can include your home, property, shares, money in bank accounts, superannuation, life insurance and personal possessions such as collectable vehicles, jewellery, service medals and furniture.

Having a Will can potentially save your loved one's years of heartache, fighting and avoidable expense to gain access to your assets.

WHAT HAPPENS IF YOU DO NOT HAVE A WILL?

If you pass away without a Will (dying intestate) you will have no control over how your estate is divided and inherited. The Succession Act is the legislation that sets out a strict list of the beneficiaries of an estate when someone dies without a Will. This strict list might not be what you want and may result in your loved ones missing out on benefiting from your inheritance.

WHAT ASSETS ARE NOT INCLUDED IN YOUR WILL?

There may be a large number of assets which are possibly "non-Will" assets, which are assets that cannot be given away in your Will. These include:

- your house owned as joint tenants with your partner or another person;
- most superannuation and life insurance proceeds;
- assets held in discretionary trusts;
- life interests, pensions and annuities (incomes).

For example - if you own your house with your partner as joint tenants then on your death the house will be transferred to your partner no matter what your Will states. The only way to overcome this is to transfer the house to what is called 'tenants in common'. If you own your house with your partner as 'tenants in common', then on your death your share of the house will be transferred in accordance with your wishes - which we can set out in your Will.

Another difficult area is the question of superannuation. If the trustee of your superannuation fund will not accept, what are called "Binding Nominations" then the trustee of your superannuation fund has discretion to elect who they pay your superannuation benefits to on your death.

WHAT HAPPENS IF I DIE WHEN MY CHILDREN ARE YOUNG?

It is common to appoint a close family member or friend to be guardian of your children in the event something happens to you while your children are under 18 years of age. Although it is uncomfortable topic, it is important that you discuss this possibility with family members, or friend before you organise your Will. The appointment of a guardian in your Will is only a guide and is not binding on that person. The election of this guardian can be changed at any time you feel necessary.

It can also be a good idea to create a seperate document that sets out your wishes in relation to how you would like your children cared for. This can include schooling, or sporting activities you wish your child/ children to be a part of as they develop. Although this document is important, it does not form part of your Will.

WHAT HAPPENS IF I GET MARRIED OR DIVORCED?

If you have a Will before you are married, it will become invalid after you are married. The only exception is if your Will states that it was made in contemplation of getting married.

If you are separated but not divorced, then your Will is valid until your divorce is finalised.

If you make a Will and then subsequently become divorced, then any gift to your former spouse will fail. Furthermore, your former partner will be unable to act as an executor. Any other gifts in your Will to other people will still be valid.

It is extremely important that you renew your Will as soon as you separate from your current partner, or anytime that your living situation changes.

HOW DO I LEAVE SOMETHING TO A CHARITY OR MY CHURCH?

We recommend that you speak to a representative of the charity or church you propose to benefit from your Will and ask them if they have any documents setting out how best to ensure that any gift goes to the proper place and for the purposes you wish. It can sometimes be a good idea to have two types of organisations in mind in case one of them fails.

WHAT ABOUT MY SUPERANNUATION?

Superannuation is considered to sit outside of your estate and generally do not form part of your Will. Usually it is the trustee of your superannuation fund that decides who receives your superannuation death benefits.

Superannuation is owned by the superannuation fund trustee, who has to act according to the trust deed of the fund and the superannuation laws.

Superannuation law generally requires death benefits to be paid to those beneficiaries that the trustee considers to be most needing of it.

In a standard family situation where there is no hostility between potential dependents, this may not be an issue. However, in a blended family where the deceased may have had previous marriages with children from each marriage, this can lead to potential conflicts between beneficiaries. Also, the control of assets may be in the hands of one family, with the potential for children from the other marriage not factoring in the final distribution.

However, by speaking with Operational Legal Australia Pty Ltd we can help you develop strategies to guard you and your loved ones against these types of situations.

CAN MY WILL BE CHALLENGED?

Always remember it is your Will and you have the right to leave your assets to the people you choose. However, it is possible that your Will might be challenged by someone if you don't leave them anything and they are someone that the law believes should have your assets.

Put simply, you should leave assets to your family except where that family member does not have needs or has done something to effectively disentitle them to your assets.

This is a very complicated area of the law and we strongly recommend that you call or visit us at Operational Legal Australia Pty Ltd, to obtain highly skilled specialist legal advice, if you are considering leaving someone out of your Will.

THE NEXT STEP

Preparing a Will or reviewing your existing Will may involve:

- reviewing the method of holding assets - possible conversions from joint ownership to sole ownership;
- reviewing superannuation nominations (however, the final beneficiaries of superannuation are a matter for the trustee of the superannuation fund and any claimants);
- reviewing life insurance policy ownership;
- considering War Service and War Widow pensions and entitlements of the Department of Veterans 'Affairs;
- considering Department of Social Security entitlements;
- considering potential capital gains tax liabilities;
- considering the financial and personal position of proposed beneficiaries.

It is extremely important that we carry out a full analysis of your position and your Will, because any failure to do so may result in severe unintended consequences. By booking in with one of our skilled professionals, we can ensure that you are aware of all your assets, including non-Will assets.

IN SUMMARY

We recommend a regular review of your Will to ensure that your final wishes are seen to. This should be done in close association with your financial advisor to ensure that your Will remains appropriate in an environment of ever changing laws and personal circumstances.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

TESTAMENTARY TRUST WILLS

COMMON QUESTIONS TO CONSIDER...

What type of Will do you need? Before deciding which type of Will suits your needs you should consider the following questions and the materials in this brochure.

Do you want your estate to be administered in a tax effective manner to minimise taxation on inheritance and maximise the benefits for your loved ones (beneficiaries)?

Do you want to transfer your superannuation entitlements to your beneficiaries not only in a tax effective way but also to ensure that the right beneficiaries actually receive your superannuation death benefits?

Would you like to protect your beneficiaries inheritance if their marriage fails or if they are sued or become bankrupt?

Would you like to protect your beneficiaries inheritance if they are not in a position to handle money due to a medical condition, poor financial management, or have a gambling or drug addiction?

Do you want to protect vulnerable beneficiaries, provide ongoing care for disabled beneficiaries and establish special disability trusts to care for your loved ones into the future?

Do you anticipate that anyone may challenge your Will?

If you have any concerns about these issues, please read and consider the following information which discusses Wills or contact us by calling 1300 185 196 or visiting www.olegalaustralia.com.au

Testamentary Trust Wills

It is unfortunately true that the two certainties in life are death and taxes. However, we can ensure that the financial assets we have built up over our life are transferred to our loved ones when we die.

WHAT IS A TESTAMENTARY TRUST WILL?

A Testamentary Trust is a trust created in your Will. It only comes into existence on your death and you can establish more than one testamentary trust on your death for the benefit of each of your beneficiaries.

WHO CONTROLS MY ASSETS IN A TESTAMENTARY TRUST?

This is your decision. When you have a Testamentary Trust, you will have the option of electing a trustee. You can elect one or more people to do this job. The amount of control they have is also your decision. You have the ability to choose whether that control is restricted or unrestricted.

WHAT DECISIONS CAN THE TRUSTEE OF THE TESTAMENTARY TRUST MAKE?

This is also your decision. The powers you give the trustee are totally up to you. It is possible to give the trustee full discretion or no discretion as to who will receive the income and/or capital of the assets in the trust. It is also possible to ensure that the trustee only distributes capital and/or income from the trust when you want the capital and/or income distributed.

WHAT HAPPENS IN PRACTICE?

On your death, the executor of your Will has the responsibility to make an application for a Grant of Probate through the Supreme Court. Once a Grant of Probate is granted, your executor will organise the payment of funeral expenses and debts. The assets which are left to beneficiaries directly are then transferred to those beneficiaries and the assets that are left on trust are transferred to the trustee of the testamentary trust, to be administered in accordance with the trusts established in your Will. Once this takes place the role of your executor is finished.

DO TESTAMENTARY TRUSTS ALLOW ME TO TRANSFER ASSETS TO MY BENEFICIARIES TO MINIMISE INCOME AND CAPITAL GAINS TAX?

The use of testamentary trusts in Wills can provide the ability to effectively split income between family members. The Income Tax Assessment Act allows the income beneficiary of a trust established in a trust to be treated like a normal taxpayer. The effect is that a child will have the same tax-free threshold as adults.

Example 1

Fred died and left all his assets to his son Jack. Jack was the sole executor of his father's Will. Jack is working and is in the top marginal tax bracket (45%). Jack is married to Anne. They have three young children Jane, Simon and Peter and Anne is not working.

Fred's assets are:

- House - $500,000
- Super - $150,000
- Other - $50,000
- **Total - $700,000**

OPTIONS AVAILABLE	TAX PAYABLE
If Jack invests the $700,000 in his own name (at 7% interest)	$22,050 plus Medicare Levy
If Jack invests the $700,000 as trustee of a testamentary trust and distributed the income equally to Anne and their children Jane, Simon and Peter	NIL

Tax saving of $22,500 plus Medicare Levy <u>EVERY YEAR.</u>

Example 2
Fred died and left all his assets to his son Jack. Jack was the sole executor of his father's Will. Fred owned an investment property which carried an unrealised capital gain of $100,000.

Jack intended to sell the investment property. Jack is working and is in the top marginal tax bracket (45%).

Jack is married to Rebecca, who is not working. They have two young children Sandy and Denise.

When should Jack sell the investment property?

OPTIONS AVAILABLE	TAX PAYABLE
If Jack sells the investment property as executor, pays the Capital Gains Tax and then distributes the proceeds of the sale to himself	$11,172
If Jack sold the investment property as a beneficiary	$23,500
If Jack sold as trustee of a testamentary trust and distributed the capital gain equally to Rebecca and Sandy and Denise	$4,735

CAN I DECIDE IN MY TESTAMENTARY TRUST WILL WHO RECEIVES MY SUPERANNUATION ENTITLEMENTS ON MY DEATH?

Superannuation is usually your second largest asset after the family home. It is separate to your estate and cannot be dealt with in your Will.

If you cannot leave your superannuation to your beneficiaries in your Will then what are your options?

If the trustee of your superannuation fund allows you to make a Binding Death Benefit Nomination, then you do have some control over who receives your superannuation benefits on your death. You can nominate who is to receive your superannuation, including your estate. The law limits who can be nominated. Binding Death Benefit Nominations are binding on the trustee of your superannuation fund and **must** be renewed every three years. If they are not renewed, then they are not binding on the trustee. This can potentially create uncertainty especially when we often forget to renew our nominations or where we lack capacity, in which case we do not have the legal capacity to renew our nominations.

However, if the trustee of your superannuation fund does not accept Binding Death Benefit Nominations then the payment of your superannuation benefits will be at the discretion of the trustee. Unfortunately, this type situation can take a long time to be resolved.

If you have a Self-Managed Superannuation Fund, then it is possible to make indefinite nominations that are binding on the trustee of your fund on your death. They do not need to be renewed and provide the greatest certainty when dealing with your superannuation entitlements.

It all depends on your specific circumstances and what nominations you have made as to whether your Will deals with your superannuation entitlements.

CAN I DO ANYTHING TO MINIMISE TAX PAYABLE ON MY SUPERANNUATION ENTITLEMENTS ON MY DEATH?

If you die with assets in superannuation, there is potential that your estate will have to pay superannuation death benefits taxes. It all depends on whether you have dependents at the time of your death. Your partner is a dependent as are any of your children who are under 18 years of age. There are others that can be considered to be dependent in certain circumstances. However, your children who do not live at home and are not financially dependent on you are not dependents. It makes a big difference to how your superannuation benefits are taxed on your death.

Example

Jane has two children Michael and Clare. Michael lives interstate with his partner and family. Clare lives at home with Jane and is at university. Jane's assets include her home valued at $600,000 and $600,000 in superannuation. Jane wants to leave her superannuation benefits to be shared equally between her two children. If Jane has $600,000 in superannuation then Clare as a dependent will receive $300,000 tax free on Jane's death as she is dependent on her mother. However, as Michael is not dependent on his mother his share of the superannuation will be taxed. In his case the superannuation death benefit tax could be as high as $49,500.

However, if Jane had an adjustment clause in her testamentary trust will then the home could be transferred to Michael tax free and the superannuation paid to Clare tax free. **In this example there is a tax saving of potentially $49,500.**

TIP: If you hold superannuation assets and have children who are potentially not dependent on you then you should immediately seek financial advice and review your Will and superannuation death benefit nominations.

WHAT TYPES OF TRUSTS CAN BE CREATED IN A TESTAMENTARY TRUST WILL?

The types of trusts that can be created are largely limited by your imagination. Examples include Life Interests, Rights of Occupation, Education Trusts, Superannuation Death Benefit Trusts, Special Disability Trusts, Capital Protected Trusts, Fixed Trusts, Beneficiary Controlled Trusts, Staggered Time Release Trusts, All Needs Protective Trusts, Inactive Trusts and non Beneficiary Controlled Trusts.

CAN I PROTECT MY BENEFICIARIES INHERITANCE IF THEY BECOME BANKRUPT?

People in certain professions such as business owners, self employed people, lawyers, doctors, accountants, engineers and company directors would prefer not to receive an inheritance in their name. One of the reasons is that if they are sued that inheritance could end up with their creditors.

Example

Jack owned a successful business. Jack recently received an inheritance of $500,000 for his late aunt. Unfortunately, an accident has occurred at work and one of Jack's employees has been badly injured. Further for some reason Jack's insurer has denied liability and Jack may have to pay the whole claim from his own assets. If that happens then Jack will lose his inheritance. If Jack's late aunt had left the inheritance to Jack in a testamentary trust, **then the inheritance would be safe.**

TIP: For asset protection reasons it would be in Jack's interests that he receive his inheritance in a testamentary trust. Perhaps he should discuss these issues with his parents or others who propose to leave him an inheritance.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

CAN I PROTECT MY BENEFICIARIES INHERITANCE IF THEIR MARRIAGE FAILS?

In many cases people are concerned that whatever they leave their children will eventually go to their son-in-law or daughter-in-law if their child's marriage fails. If your children receive a direct inheritance from you, it will form part of their asset pools. In the event your child's marriage fails, the assets including that inheritance will be available for distribution by the Family Court.

On the other hand, if your children receive their inheritance in a Testamentary Trust by way of a properly drafted Will, the inheritance may not form part of the assets of the marriage and would not form part of the assets available for distribution by the Family Court.

This approach would work to protect your beneficiaries and ensure your gifts go exactly where you want them to.

Example

David left $1,000,000 to his son Bill in a Testamentary Trust. Bill and his wife Anne separated sometime after David's death. .Their only asset was the family home, worth worth $500,000 after allowing for the mortgage debt. The Family Court took into account David's inheritance. However, as it was not considered property within the meaning of the Family Law Act and it **was not available for distribution to Anne.**

TIP: Everyone who is concerned about the stability of their marriage should think about any inheritance they may potentially receive in the future. Perhaps they should discuss these issues with their parents or others that propose to leave them an inheritance. We would be happy to facilitate this discussion.

WHO CONTROLS YOUR FAMILY COMPANY, FAMILY TRUST OR SELF MANAGED SUPERANNUATION FUND ON YOUR DEATH?

Professionals such as lawyers, doctors, accountants, company directors, engineers and people in businesses are advised by their professional advisors to place assets in Family Companies, Family Trusts and Self-Managed Superannuation Funds with a corporate trustee. These structures can offer both asset protection and tax savings.

However, on your death your Family Company, Family Trust or the corporate trustee of your Self-Managed Superannuation does not cease to operate and will continue to operate.

WHO CONTROLS THESE ENTITIES ON YOUR DEATH?

Does the Family Trust Deed, Company Constitution or trust deed for your Self-Managed Superannuation Fund pass control to the people you want to control these assets on your death? It is therefore critical that either your Will or a separate document is prepared to ensure that your assets held in these entities are controlled by the people you wish to benefit from your estate.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

Example

Steve is a successful businessman. The assets of the business are held in a family trust with a corporate trustee. Steve has effective control because he controls the trust (he is the Appointor). The trust deed says that on Steve's death the executor of his estate will be the new controller of the assets held in the trust. Steve's two sons Bruce and Peter work in the business and expect to run the business when Steve retires. Steve has appointed Bruce as the executor of his Will.

In tragic circumstances Steve and his son Bruce are killed in a car accident. The person that now controls the trust is the executor of Bruce's Will which is his wife. Now the business is controlled by Peter's deceased brother's wife. She now has the power to run the business. She can appoint who she likes as the trustee of the Family Trust and depending on who are the beneficiaries of the Family Trust could either pay all of the profits of the business to herself or even sell the business and keep the proceeds.

TIP: Review who controls your Family Company, Family Trust or Self-Managed Superannuation Fund in order to protect your loved ones and your wishes if you become incapacitated or pass away.

NEXT STEPS

Preparing a Testamentary Trust Will or reviewing your existing Testamentary Trust Will may involve:

- reviewing the method of holding assets - possible conversions from joint ownership to sole ownership;
- reviewing superannuation nominations;
- reviewing life insurance policy ownership;
- considering Department of Veterans' Affairs entitlements;
- considering Department of Social Security entitlements;
- considering potential capital gains tax liabilities;
- considering the financial and personal position of proposed beneficiaries.

Failure to undertake this analysis may result in severe unintended consequences. When preparing you Will, Operational Legal Australia solicitors will explain what a Will asset and non-Will asset is. We can also discuss how to deal with any potential non-Will assets in the most effective way.

IN SUMMARY

We recommend a regular review of your Will to ensure that your final wishes are seen to. This should be done in close consultation with your financial advisor to ensure that your Will remains appropriate in an environment of ever-changing laws and personal circumstances.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

POWER OF ATTORNEY

COMMON QUESTIONS TO CONSIDER...

Are you concerned about what happens if you have an accident and cannot manage your financial affairs?

Does your partner often deploy with the Defence Force, leaving you to manage financial affairs?

Are you concerned about what happens if you have dementia and cannot manage your financial affairs?

Who do you trust to make financial decisions for you?

What is a Power of Attorney?

What powers can I give to my Attorney?

Can I cancel my Power of Attorney?

If you have any concerns about these issues, please read and consider the following information which discusses Wills or contact us by calling 1300 185 196 or visiting www.olegalaustralia.com.au

Power of Attorney

Sometimes we are left in the position where we are not available to make our own financial decisions. This can occur if loved ones are overseas for some time or are simply too busy to manage our financial affairs. However, in some circumstances we cannot make our own financial decisions even if we wanted to. This is usually due to an accident or medical condition, such as dementia. In order to provide for these possibilities, you should arrange a Power of Attorney for peace of mind. This document will enable an elected person, or persons to assist in making significant financial decisions if you become incapacitated.

We all try to plan out work life, our children and eventually retirement as best we can, but we can do more to protect ourselves should the worst occur. A Power of Attorney document is important because it helps us plan for our future. It can assist you and your loved ones in cases where you may have an accident, have a medical issue, or grow towards retirement.

With an aging population, the impacts of age-related health issues such as dementia are becoming increasingly prevalent. These age-related illnesses can create situations whereby we are unable to make our own financial decisions.

We all know the benefits of having a Will to ensure our intentions as to what will happen with our assets after we die. However, it is also important to consider a Power of Attorney to ensure that we have someone who can give instructions for us, if we are involved in an accident or suffer from a medical condition which affects our ability to do so ourselves.

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a legal document that allows you to appoint a person to act for you to do certain financial things on your behalf. Usually your attorney can open and close bank accounts, withdraw and deposit funds to your account, pay all of your bills for you from your account, arrange to insure your personal assets, deal with Centrelink on your behalf and buy, sell, mortgage or lease your house.

Making someone your attorney means that you can still operate your bank account, make investments and do anything else you wish to do financially.

WHO SHOULD I APPOINT?

This is probably the most important decision you need to make. It should be someone that you trust absolutely. The attorney you select is really a trustee for your finances. Therefore they should therefore be someone that you trust totally.

TYPES OF POWERS OF ATTORNEY

1. **General Power of Attorney** – this type only operates until you die, or if you cancel the appointment, or if you suffer loss of capacity. As most people want their attorney to act in their interests in the event that they suffer loss of capacity it is usually rare to request a general Power of Attorney.
2. **Enduring Power of Attorney** – this type of Power of Attorney is far more common and operates after you suffer a loss of capacity.

ADVANTAGES OF A POWER OF ATTORNEY?

The appointment of an attorney has the advantage of ensuring that someone who you trust can act in your interests. If you have not appointed an attorney, it can give rise to family disagreements about financial decisions for you. Furthermore, if fail to appoint an Attorney your affairs will be frozen, and it will be necessary for someone to apply to the NSW Civil and Administrative Tribunal for a Financial Management Order. This process can be stressful and slow for your family and loved ones. The making of Financial Management Orders means that all, or part of your financial affairs will be subject to management under the NSW Trustee and Guardian Act.

An example of where conflict may arise would be where some family members are more concerned about their potential inheritance, rather than spending money on a more comfortable lifestyle for you.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

If there are disagreements about the management of your affairs, then a family member or another person interested in your wellbeing may seek appropriate orders from the NSW Civil and Administrative Tribunal or the Supreme Court. By having an appropriate Power of Attorney in place, you can avoid such dilemmas.

When considering whether or not a financial management order shall be made, the NSW Civil and Administrative Tribunal must have regard as to your capability to manage your own affairs and is satisfied that:

1. you are not capable of managing your affairs; and
2. there is a need for another person to manage your affairs, and
3. it is in your best interests that the order be made.

If the NSW Civil and Administrative Tribunal does make a financial management order, the Tribunal may either appoint a suitable person to handle your financial affairs or alternatively appoint the Protective Commissioner to handle your financial affairs.

If you do not have an elected Power of Attorney, there is potential that the NSW Civil and Administrative Tribunal may or may not appoint a person that you would have preferred to act as your attorney.

HOW MANY ATTORNEYS CAN YOU APPOINT?

You can appoint as many Attorneys as you wish. If you appoint more than one attorney, they are appointed to act either jointly, severally or jointly and severally.

Joint attorneys must all act together and cannot act separately. If you make a joint appointment, you should be aware that a joint appointment will terminate if the appointment of one of the attorneys is cancelled or any one of the attorneys disclaims, dies, becomes bankrupt or physically or mentally incapable of acting as an attorney.

To protect you in the event that one of the Attorneys is cancelled, we will ensure that your Power of Attorney document provides new appointments of the other Attorney/s, which will take effect from when the appointment of one of them ends.

Joint and several attorneys can all act together, but can also act separately if they wish. In this case, if one of the attorneys is temporarily unavailable, disclaims, dies, becomes bankrupt or becomes physically or mentally incapable of acting as an attorney then the Power of Attorney will not be terminated.

It is therefore usual to appoint your attorneys to act jointly and severally.

WHEN DOES THE POWER OF ATTORNEY OPERATE?

You have several choices. A General Power of Attorney can operate:

1. Immediately;
2. When your Attorney accepts your appointment;
3. During a set period (elected by you);
4. When your Attorney considers you require assistance; or
5. Other circumstances which you will need to discuss with your lawyer.

However, in the case of an Enduring Power of Attorney it will not operate until your Attorney has accepted the appointment by signing the power of attorney.

If you do not wish your attorney to exercise the power immediately you can ask your lawyer not to release the power of attorney to your Attorney until requested to do so or you lose capacity.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

WHAT POWERS MAY BE EXERCISED BY AN ATTORNEY?

The Powers of Attorney Act sets out the powers that can be exercised by an attorney. Your Attorney has the power to act at a time authorised by you, or when they accept the position of Attorney. They can also have the power to act if you lose mental capacity, or at some other time you state in your Power of Attorney.

You are entitled to restrict the powers given to your attorney.

For example - you might state that your attorney's powers are restricted to the sale of your house and the distribution of the sale proceeds of your house.

However generally, your attorney is authorised to do anything you are lawfully authorised to do. In effect this means that your attorney must exercise their powers to protect and benefit your interests.

The powers and responsibilities that you normally give to your attorney include:

1. protect your interests by keeping their and your assets separate,
2. maintain adequate accounting records of your dealings with your assets,
3. avoid any conflict between their duty to you and their own interest,
4. obey your instructions while you have capacity, and
5. not make gifts or provide a benefit to themselves or someone else unless specifically stated by your Power of Attorney.

If the Power of Attorney states that gifts may be made, they must be reasonable in the circumstances given the amount of your assets. There may be circumstances where you wish to authorise your Attorney to use funds to give reasonable gifts such as are given seasonally or occasionally to close friends or relatives, and to make donations of a nature that you would normally make. You might also consider it reasonable to give benefits to your Attorney, or other persons, for reasonable living expenses and medical expenses.

Please also remember that an Attorney has no power to make decisions in relation to your personal affairs. This would require an Enduring Guardian.

WHAT DECISIONS CAN YOUR ATTORNEY NOT MAKE?

Your Attorney cannot:

1. Make a will for you,
2. Vote for you,
3. Consent to marriage,
4. Manage your personal and lifestyle affairs, or
5. consent to medical treatment.

CAN I CANCEL THE POWER OF ATTORNEY?

Yes, you can cancel your Power of Attorney at any time. However, it must be in writing. You must advise your Attorney in writing that the Power of Attorney has been cancelled. If your Power of Attorney has been registered it is advisable to register a form cancelling or revoking your Power of Attorney. In order to do this, you must have the legal capacity at that time to cancel the appointment of your attorney.

DO I NEED TO REGISTER MY POWER OF ATTORNEY?

It is only necessary to register a Power of Attorney at Land and Property Information NSW if it is to be used to sign a legal document affecting land. To save costs it may be wise to only register your Power of Attorney if it becomes necessary to sell, lease or mortgage your property.

RELATIONSHIP BETWEEN POWER OF ATTORNEY AND ENDURING GUARDIAN

An Enduring Guardianship allows you to appoint one or more people to be your guardian in the event that you suffer from a disability, or are incapable of managing your own personal affairs. The Guardian can consent to medical and dental treatment, decide where you live and decide what personal and health care services you will receive. You can also include in the Appointment of the Guardian directions as to end of life matters.

On the other hand, a Power of Attorney relates to your financial affairs rather than your personal care. An Enduring guardianship will only be effective if there is a need and you become incapable of managing your person. It will only operate after you suffer loss of capacity. This means that it will operate, for example, in the case that you suffer from dementia or are in a coma after an accident.

By appointing an attorney, you will minimise stress, and the need of your family or carer to make an Application for a financial management order. Nonetheless, a Power of Attorney does not preclude an application by a person genuinely concerned for your financial welfare for a financial management order.

Although your Attorney and Guardian carry out different functions and aspects of your welfare, their relationship will be intimately linked because any lifestyle decisions made by your Guardian will affect your financial situations and vice versa. Therefore, we recommend that you consider the compatibility of your Attorney and your proposed Guardian before making these appointments.

NEXT STEPS

The appointment of an Attorney requires the preparation of a legal document by your lawyer. It must be signed by you and the people you are appointing as your attorney. The Powers of Attorney Act requires that your signature must be witnessed by a lawyer or clerk of the court.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

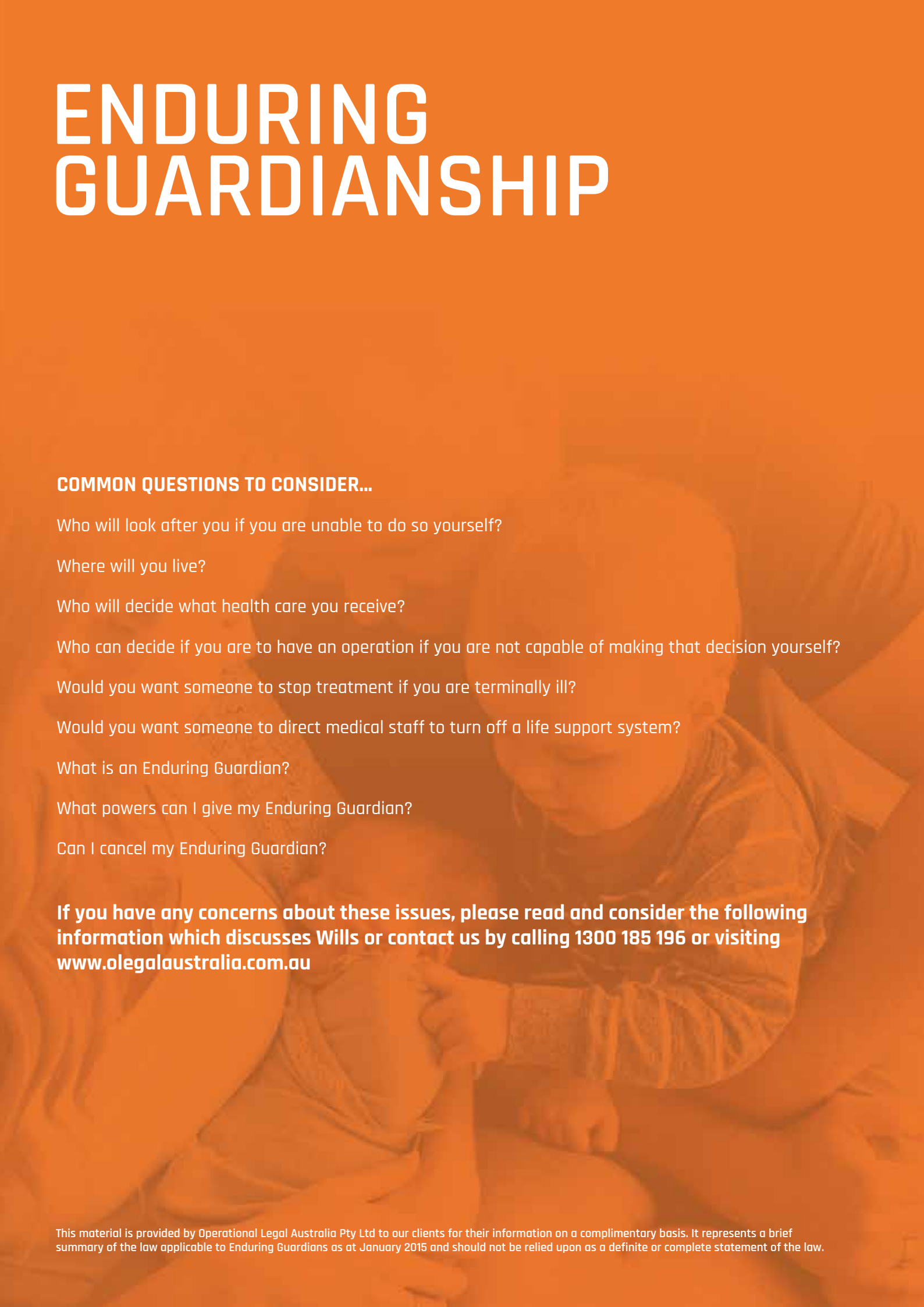
Case Study 1

Bill and Jane have retired and own their home. Unfortunately, Bill has dementia and Jane cannot look after him anymore. Bill will need to move to a nursing home. The nursing home requires payment of a large sum of money before Bill can move in. Jane decides to sell their home however, she discovers that she is unable to sell the home because Bill does not have the legal capacity to sign the Contract for Sale. Jane's only option is to make application to the NSW Civil and Administrative Tribunal for a financial management order so that she can sign the legal documents on behalf of her husband. **By having a Power of Attorney, Jane would have saved time, expense and stress.**

Case Study 2

Steve has recently been involved in a car accident. He will recover but will likely be in hospital for many months. Steve has bills to pay while he is in hospital. Fortunately, Steve had income protection insurance so he can survive financially whilst he is in hospital. **Steve has also organised his sister to be a Power of Attorney for him, so she is able to organise his financial affairs whilst he is in hospital.**

ENDURING GUARDIANSHIP



COMMON QUESTIONS TO CONSIDER...

Who will look after you if you are unable to do so yourself?

Where will you live?

Who will decide what health care you receive?

Who can decide if you are to have an operation if you are not capable of making that decision yourself?

Would you want someone to stop treatment if you are terminally ill?

Would you want someone to direct medical staff to turn off a life support system?

What is an Enduring Guardian?

What powers can I give my Enduring Guardian?

Can I cancel my Enduring Guardian?

If you have any concerns about these issues, please read and consider the following information which discusses Wills or contact us by calling 1300 185 196 or visiting www.olegalaustralia.com.au

Enduring Guardianship

Unfortunately, sometimes we are left in the position where we cannot make our own lifestyle decisions. This is usually due to an accident or if we suffer from a medical condition such as dementia or Alzheimer's.

If you ever find yourself in this position, there will be significant decisions that will need to be made for you. These decisions are generally made by our family or friends. However, family members who would usually be there to help may have died, or there may be conflict amongst other family members concerning what they feel are your best interests.

It is these unfortunate circumstances that the appointment of an enduring guardian should be considered, to afford you comfort and protection.

We all try to plan out work life, our children and eventually retirement as best we can, but we can do more to protect ourselves should the worst occur. Regardless if you are young or old, it is becoming increasingly important to plan for the situation where we might be unable to make our own decisions.

Having both a Will and a Power of Attorney ensures that our assets go where we want and that someone can manage our financial affairs if we are unable. However, these documents do not consider giving someone the ability to make lifestyle, health and care decisions for you if the worst happens.

An Enduring Guardianship document will allow you to elect one or more people to make lifestyle and health care decisions for you if cannot make those decisions for yourself in the future. Our advice will assist you with choosing the most appropriate person to be appointed, along with a detailed analysis of the advanced care directions you propose to put in place. These advanced care directions may include, but are not limited to:

- What kind of care you would like to receive or refuse,
- Where you would like to be cared for if you were dying,
- Organ and/ or Body donation,
- Personal values,
- Personal, religious and spiritual care you would like to receive when you are dying.

If you appoint more than one Guardian, then advice will be given on whether you should appoint them jointly or separately.

The document must be signed by you and the person or persons you appoint as your Enduring Guardian in the presence of a lawyer. The lawyer must sign a certificate of witness stating that they have explained the documents to the Guardian or Guardians you have appointed.

WHAT IS AN ENDURING GUARDIAN?

Enduring Guardianship is a document that allows you to appoint someone to make lifestyle, health and medical decisions for you when you are not capable of doing this on your own. Unlike a Will or Power of Attorney (which deal with your estate and financial decisions), an Enduring Guardianship is there to ensure you are protected if you are unable to make lifestyle and medical decisions due to illness or accident.

An Enduring Guardianship will only become effective if you become incapable of making those decisions for yourself.

ADVANTAGES OF AN ENDURING GUARDIAN?

The appointment of an Enduring Guardian has the advantage of ensuring that someone who you trust can act in your best interests if the need ever arises. If you have not appointed an Enduring Guardian there can potentially be family disagreements about lifestyle decisions are best for you.

An example of where conflict may arise would be where some family members are more concerned about their potential inheritance, rather than spending money on a more comfortable lifestyle for you.

Another example would be where there is a dispute over what type of medical treatment you receive. It may be that some members of your family want to start or continue with some form of treatment which impacts on your quality of life, whereas other family members believe that you should be made as comfortable as possible. This is especially relevant in palliative care situations.

WHAT IF THERE ARE DISPUTES CONCERNING LIFESTYLE DECISIONS?

If there are disagreements, then a family member or another person interested in your wellbeing may seek appropriate orders from the NSW Civil and Administrative Tribunal. By having an Enduring Guardianship in place, the stress and time delays of seeking orders from the NSW Civil and Administrative Tribunal can be avoided.

When considering whether or not a Guardianship order shall be made, the NSW Civil and Administrative Tribunal must have regard to whether or not there is a need and as to:

1. the views (if any) of:
    (a) you; and
    (b) your spouse, if any, if the relationship between you and your spouse is close and continuing, and
    (c) the person, if any, who has care of you.
2. the importance of preserving your existing family relationships;
3. the importance of preserving your particular cultural and linguistic environments; and
4. the practicability of services being provided to you without the need for the making of such an order.

If the NSW Civil and Administrative Tribunal decides that a guardianship order ought to be made, then in appointing the proposed guardian, the Tribunal is required to consider the following factors:

1. If the personality of the proposed Guardian is generally compatible with you;
2. If there is no undue conflict between the interests (particularly, the financial interests) of the proposed Guardian and you, and;
3. If the proposed Guardian is both willing and able to exercise the functions conferred or imposed by the proposed Guardianship order.

Potentially the NSW Civil and Administrative Tribunal may or may not appoint a person that you would have preferred to act as your Guardian.

WHAT MEDICAL AND DENTAL TREATMENT CAN BE AUTHORISED?

It is a requirement of the Guardianship Act that medical and dental practitioners must get consent from a "person responsible" before commencing treatments on a patient that is incapable of giving his or her consent. There is a hierarchy of who is a "person responsible". That hierarchy is as follows:

1. your Guardian provided that you have appointed your Guardian to exercise the function of giving consent to the carrying out of medical or dental treatment,
2. your spouse or de facto spouse where the relationship is close and continuous,
3. your carer,
4. a close friend or relative.

What this means is that, if you do not have an Enduring Guardianship, then your spouse is the person responsible for consenting to your medical and dental treatment. If your spouse predeceases (passes away first) you or is unwilling or unable to make such decisions, then following the above hierarchy list, it will a carer and if there is no such carer, then the relative or a close friend to you. Your individual circumstances may show that it is extremely beneficial to appoint someone as your Enduring Guardian.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

WHAT FUNCTIONS MAY BE EXERCISED BY AN ENDURING GUARDIAN?

The Guardianship Act sets out the functions that can be exercised by a Guardian. These include:

1. to decide where you live,
2. to decide what health care you receive,
3. to decide what other kinds of personal service you receive,
4. to consent to the carrying out of certain medical or dental treatment on you.

You can give your Enduring Guardian as many or as few functions as you choose. This decision is totally up to you. If any of the following circumstances arise you also might consider giving your Enduring Guardian directions as to how they are to make decisions concerning you, if you are:

1. in the terminal phase of an incurable or irreversible illness;
2. permanently unconscious (in a coma);
3. in a persistent vegetative state; or
4. so seriously ill that I am unlikely to recover to the extent that I can live without the use of life-sustaining measures,

For example, you could direct your Enduring Guardian to refuse medical treatment on your behalf even if that treatment is necessary to prolong your life and the refusal of treatment will lead to your death.

If your health situation is as outlined in points 1 to 4 above, then you also might want to direct your Guardian to exercise his or her functions subject to the following directions:

> **You do not wish the provision to you of life sustaining measures, being medical treatment that supplants or maintains the operation of your vital bodily functions that are likely to be incapable of independent operation including, but not limited to, life support, assisted ventilation, artificial nutrition, artificial hydration and cardiopulmonary resuscitation**

If you are ever under any type of care, you also might consider authorising your Enduring Guardian to obtain and be included in any information and documentation in relation to your care concerning:

1. any treatment or care given or proposed to be given to you;
2. the results of any tests on you; or
3. your whereabouts in any health care facility, hospital, aged care facility or nursing home.

WHAT TREATMENT CAN YOUR ENDURING GUARDIAN NOT CONSENT TO?

Even if you have elected an Enduring Guardian, there are still certain treatments that are not able to be consented to by your Enduring Guardian. These treatments require consent by the NSW Civil and Administrative Tribunal and can include:

1. treatment that is intended, or is reasonably likely, to have the effect of rendering permanent infertility;
2. the person on whom it is carried out;
3. any new treatment that has not yet gained the support of a substantial number of medical practitioners or dentists specialising in the area of practice concerned;
4. any treatment that is carried out for the purpose of terminating pregnancy;
5. any treatment in the nature of a vasectomy or tubal occlusion;
6. any treatment that involves the use of an aversive stimulus, whether mechanical, chemical, physical or otherwise;
7. any treatment that involves the administration of a drug of addiction (other than in association with the treatment of cancer or palliative care of a terminally ill patient) over a period or periods totalling more than 10 days in any period of 30 days.

NOTE: Please also remember that an Enduring Guardian has no power to make decisions in relation to your financial affairs. This would require a Power of Attorney.

Your Enduring Guardian cannot:

1. Make a will for you,
2. Vote for you,
3. Consent to marriage,
4. Manage your financial affairs,
5. Consent to certain medical treatment.

CAN I CANCEL THE APPOINTMENT OF MY ENDURING GUARDIAN?

Yes, you can do this at any time, but it must be in writing using the form required by the Guardianship Regulations. You must sign that form in the presence of a lawyer or a clerk of the local court. In order to cancel the appointment of an Enduring Guardian, you must have legal capacity at that time. The outgoing Enduring Guardian must also be provided with a copy of the revocation. Similar to your Will, if you marry, divorce or remarry, then any appointment of Enduring Guardian is automatically cancelled.

It is a good idea to contact us to have any appointments of Enduring Guardian reviewed on a regular basis, in order to ensure that you are happy with who you have elected to be your Enduring Guarding. By regular review, we can assist you in ensuring that your interests are protected into the future.

RELATIONSHIP BETWEEN ENDURING GUARDIAN AND ENDURING POWER OF ATTORNEY

A Power of Attorney is a legal document in which you appoint a person to act for you to do certain financial things on your behalf. It usually allows your attorney to open and close bank accounts, withdraw and deposit funds to your account, pay all your bills for you from your account, arrange to insure your personal assets, deal with Centrelink on your behalf and buy, sell, mortgage and lease your house.

A Power of Attorney also usually operates even after you suffer loss of capacity. This means that it will continue to operate in the case that you suffer from and accident, or medical condition such as dementia and are unable to make such decisions.

This is a very important and necessary aspect of your Power of Attorney, otherwise an application may need to be made to the NSW Civil and Administrative Tribunal for the appointment of a person to handle your financial affairs.

The making of financial management orders means that all or part of your estate will be subject to management under the NSW Trustee and Guardian Act. If this occurs, then any of the Attorney's power's over that part of your estate, subject to financial management order is then suspended.

However, by appointing an enduring guardian you will minimise the need of your family or carer to make an Application for a guardianship order (and hence potentially a financial management order). Nonetheless, an Enduring Guardianship does not preclude an application by a person genuinely concerned for you to make an Application for a guardinship order or a financial management order.

Although your Attorney and your guardian both carry out different functions and aspects of your welfare, their relationship will be intimately linked because any lifestyle decisions made by your guardian will affect your financial situations and vice versa. Therefore, it may be prudent to consider the compatibility of your attorney and your proposed guardian before making an appointment.

THE NEXT STEP

The appointment of enduring guardian requires the preparation of a legal document by your lawyer. It must be signed by you and the people you are appointing as your enduring guardian. The Guardianship Act requires that the signatures of the people signing the document must be witnessed by a lawyer or clerk of the court.

If you have any concerns about these issues, call **1300 185 196** or visit **www.olegalaustralia.com.au**

Case Study 1
Bill is recently divorced and has two adult children. He has appointed his sister his Enduring Guardian. Bill has recently suffered a stroke and cannot speak. Bill's daughter believed he should live with her. Bill's son believed he should be moved to a nursing home. The result was that Bill's sister made the decision in consultation with Bill's carers and eventually the two children accepted the decision. The existence of the Enduring Guardian solved a potential family dispute at a time when Bill certainly had enough difficulties in his life without his family fighting over what each child believes is best for him.

Case Study 2
Steve was diagnosed with cancer some months ago. He has received both radiation and chemotherapy treatment without success. Steve was very sick during the treatment. Steve's doctor believes that they should try another course of chemotherapy. Steve's wife Sue is distraught. She believes that another course of chemotherapy will not work and Steve will only suffer. After much heartache Sue believes that Steve should be made as comfortable as possible until he dies rather than starting another form of treatment. As Steve has appointed Sue his Enduring Guardian Sue has the power to request that Steve receives no further chemotherapy.

Case Study 3
Brian has appointed his brother Graham his Enduring Guardian. Graham believes that Brian's health has deteriorated to the stage where he cannot make decisions for himself. He approaches his brother Brian who disagrees. Graham makes an application to the NSW Civil and Administrative Tribunal for an order that his appointment as an Enduring Guardian take effect immediately. After considering all information provided by Brian, Graham and Brian's service providers the NSW Civil and Administrative Tribunal makes an order that the appointment of Graham as Enduring Guardian take effect.

Case Study 4
Jane has recently been diagnosed with early stages of dementia. She immediately appoints her husband her Enduring Guardian as she understands that her husband will be in a position to make decisions concerning where she lives and what health care she receives when she loses capacity to make these decisions. Jane also appreciates that her husband might not outlive her and also appoints her niece to be her Enduring Guardian.

Case Study 5
Joe wants his wife Sylvia to make decisions about where he should live if he cannot make those decisions. Joe also wants to appoint his sister-in-law Gabrielle to make decisions concerning the medical treatment he will receive because she is a nurse and has a greater understanding of medical issues than his wife Sylvia. Joe will achieve this outcome by completing two separate Enduring Guardians setting out the separate functions of Sylvia and Gabrielle on separate forms.

Case Study 6
Steve has appointed his friend Jacqueline his Enduring Guardian. Steve is involved in a serious motor accident and is in a coma. Jacqueline can now make lifestyle decisions for Steve. Sometime later Steve fully recovers and can make his own decisions. At this time the appointment of Jacqueline would no longer operate because Steve has fully recovered.

Case Study 7
Anne appointed her two daughters her Enduring Guardians some ten years ago. Approximately four years ago Anne was diagnosed with dementia. One daughter now believes Anne cannot make her own decisions however the other sister believes that her mother should still make her own decisions. The two sisters agree to seek advice from a doctor who assesses Anne and concludes that she is still capable of making decisions for herself. Both sisters are happy with this independent assessment.

OPERATIONAL LEGAL AUSTRALIA

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