

Six common estate planning errors

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A generation ago, estate planning consisted of a simple 'his and hers' will. It was 'everything to each other and then to the children'. But times have changed, such as:

- We are generally much wealthier
- Our financial worlds are increasingly complex with SMSFs, family and testamentary trusts, Powers of Attorney and company structures
- We live longer
- We divorce and re-partner more frequently
- The prices of property and schooling have exploded
- We often have dual incomes and we build wealth separately.

Some common questions we are asked

But it's not just demographics, longevity and housing that has changed. At Stanford Brown, in our experience working over many years with affluent families, we have seen a significant shift in the philosophy of wealth transfer.

"How will our plans impact the lives and aspirations of our children and grandchildren?", ask our clients, echoing Warren Buffet's now-famous insight that he wished to leave his children enough money so that they would feel they could do anything, but not so much that they could do nothing.

"Will our plans help to preserve family bonds when we're gone," they ask, *"or will it all end up in the courts?"* Ultimately, they wonder, *"how can our plans contribute to the long-term benefit of our family and the legacy we wish to leave?"*

Here, we highlight six of the more common mistakes when couples, particularly those from blended families, make plans to pass on their wealth.

Six potential mistakes in wealth transfer planning

1. Don't expect a perfect solution

One of the most confronting realisations when succession planning for a blended family is that you will rarely get what you want. State-based family provision legislation, and the added reach of notional estate provisions in NSW, require that you look after certain family members more than you may wish.

If an eligible family member makes a claim, the courts can intrude into your private arrangements and substitute their decision for yours. Yes, you could move to Queensland to avoid the NSW laws, as one lawyer quipped, but a pragmatic approach is essential.

2. Don't assume you have to die first

Many believe the greatest gift they can give their children is their grandchildren's education. They don't wait until they die to give this gift.

We encourage our clients to think first about the purpose of their life savings. They should provide not only food and shelter, but pleasure and fulfilment too. Many have created wealth well beyond their own personal needs and choose to help their children when it is most needed or make a philanthropic gift or teaching a child the responsibilities of being a steward of family wealth.

Of course, we often see that living longer brings an increased likelihood that you won't always be able to make decisions for yourself. Do you want to take the risk that you and only you can keep your world spinning on its axis? We have helped too many widows and widowers facing the unravelling of complex structures that their partner managed.

3. Don't rush the selection of your succession planning team

You need the right people at the wheel of your estate planning. You can scour the map, indicate the destination and mark out the best route, but what about the roadworks, the other drivers, the inclement weather? You cannot predict or control those factors. You have to trust in the wisdom and skills of the people you have appointed to act for you after you die or can no longer make your own decisions. And there are many appointments to make – Executors, Trustees, Guardians, Attorneys and Beneficiaries to name but a few.

Who will make health, lifestyle and medical decisions for you if you cannot? What about financial decisions? After your death, who will carry out the terms of your will? Wills are complex and your Executor can be sued if they do a poor job. If you set up a trust in your will, known as a testamentary trust, who will manage it and who will make sure they are doing a good job?

These are hard decisions. How do your family dynamics play out? If you appoint multiple people to a role, can they have competing interests and still work together productively? If in doubt, do you consider adding in an independent tie breaker? But what about those extra costs!

4. Don't assume everyone wants an equal slice of the pie

We have found it far more common than you might think for couples to have their first frank discussion about wealth transfer with us and their lawyer. That's when it clicks that they don't agree on how to transfer ownership and control and they have different expectations of how the other will provide for them. *"You might re-marry if I die? Really? I didn't expect to hear that!"*

Not all will-makers choose to leave the home to their partner or to treat all their children equally. Beneficiaries will have different needs and expectations. You may not know if you don't ask. They may surprise you and open up alternative strategies to explore, like selling the family home or giving different gifts at different times. You may wish to leave your children an equal share, but your investment banker daughter may have different cash flow needs to your teacher son.

Whilst it's a deeply personal decision, we are seeing a growing trend for couples to tell their children about their estate plans and involve them earlier in philanthropy or family trusts.

5. Don't tie your beneficiaries together in financial knots

Adult children with parents still together are more likely to receive their inheritance from their longer-living parent, while adult children in blended families are more likely to receive a portion of their inheritance earlier.

However, we have seen examples where the will-maker tried to share the assets. The partner is allowed to live in the home and spend the income of the trust, but ultimate ownership passes to the will-maker's children after the partner dies. It can work, but the beneficiaries can also feel that it is ruling from the grave and it can damage family relationships.

Would each party have accepted a different arrangement that gave them potentially less money, but sooner and with fewer restrictions? Not everything in estate planning is about maximising the after-tax dollars. Freedom from the control of one's parents can also be highly prized!

6. Don't assume your family will never be blended

It's understandable that the main sticking point in your estate planning as a parent is guardianship of your young children in the event of both parents' early deaths. But it's mercifully rare for both parents to die simultaneously. Far more likely is that you will divorce and re-partner.

In our experience, couples, both old and young, are increasingly acknowledging this prospect and planning for the protection of their wealth, even if their marriage is great and they are healthy. We urge our dual income professional clients who have built assets before marriage and who are well insured not to skimp on their estate planning.

If you do not have a testamentary trust, ask your estate planning lawyer why it's not right for you. Spoiler alert: it's appropriate far more often than you would think. Your beneficiaries can choose not to go ahead with the trust, but they cannot wind back the clock and get one if you didn't ask the right question.

Kirsten Lynn is an ex-lawyer and now financial adviser at [Stanford Brown \(https://stanfordbrown.com.au/\)](https://stanfordbrown.com.au/). She specialises in working with families, particularly blended families, on planning to protect and pass on their wealth. This article is general information and does not consider the circumstances of any individual. The article is taken from a two-part series, 'How To Leave Wealth To Your Kids Without Ruining Them' and 'How To Leave Wealth To Your Blended Family Without Ruining Them'.