



## How to: Estate planning made simple



### What is estate planning?

#### Estate planning is more than a will. It's a plan for:

- Who will look after you if you can't make decisions, and
- Who will receive your money, home and other belongings when you die.

A good estate plan can reduce stress for your family, lower the risk of conflict and help ensure your wishes are followed.

We're here to help you understand your super and how it fits into your broader financial life. But estate planning can be complex, especially when it involves tax, family structures and legal rules.

#### This guide is general information only

Before making decisions about your estate plan or the legacy you'd like to leave, we recommend speaking with a qualified legal practitioner and a financial adviser who can consider your personal circumstances.

#### What documents are usually in an estate plan?

- ✓ Your **will** for all your assets, except super
- ✓ **Binding death benefit nomination** for your super and any insurance you have
- ✓ **Powers of Attorney** – Enduring and Medical
- ✓ **Advance Care Directive** for your health wishes

#### Where to get help

For legal questions about wills, Powers of Attorney and estate planning, speak with a lawyer. If you don't have one, you can contact your state law institute for a referral to a lawyer who works in wills and estates.

For financial questions about how your estate plan affects your super, tax or retirement, speak with a licensed financial adviser or ask us for a referral to one of our FAAA financial planning partners.

# Getting started with estate planning

## 1 Will

A will is a legal document that says what you want to happen to your assets (your 'estate') after you die. If you die without a will (intestate), intestacy laws will be applied to decide who gets what, which might not match your wishes.

### Key things to think about when you make or update your will

**Choose an executor wisely.** This is the person (or people) who carries out your wishes after you die. An executor can also be a licensed trustee company or a public trustee.

Your executor is your legal personal representative and you can include your super and any insurance benefit in your will by nominating them in a valid binding death benefit nomination.

Your executor should be someone organised, trustworthy and willing to take on the role. Winding up an estate can take months – possibly years – so choose your executor carefully.

**List your beneficiaries.** These are the people or charities who will receive your assets. You can leave specific items (for example, jewellery, a car, family photos), a share of your total estate assets or a mix of both.

Beneficiaries of a will can be different from the people you nominate as beneficiaries of your super.

**Think about 'what if' situations.** What if a beneficiary dies before you? What if your first choice of executor can't/won't act?

**Review your will.** Whenever there's a major change in your life: new relationship, separation, new child, buying or selling property, or a big change in your assets.



### Action:

- **See an estate planning lawyer** – if your situation is even slightly complex, DIY kits can be risky. A small mistake could cause big problems later.
- **Sign and witness your will properly** – each State has strict rules about signing and witnessing. Your lawyer will guide you.
- **Store it safely** – for example, with your lawyer, trustee company, or in a fire-safe at home.
- **Tell your family and other key people where your original will is** – your executor or close family should know where to find it.

## 2 Binding death benefit nominations

Your super doesn't automatically become part of your estate when you die. Super funds must follow superannuation law and the rules in their trust deed to decide who receives your death benefit. That means your will does not automatically control your super – unless you take steps to make that happen.

### What is a binding death benefit nomination?

A binding death benefit nomination lets you tell us who you want your super to go to when you die.

With a binding nomination, we must pay your death benefit (which includes your super balance and any insurance held through your account) to the people you nominate, in the percentages you choose.

It gives you certainty about who receives your benefit.

To be valid, your nomination must:

- be made using the approved form
- be properly signed and witnessed, and
- be made in accordance with the super fund's rules.

### Who can you nominate?

In general, you can select:

- your current spouse (including same-sex, married or de facto)
- your child/children of any age (including biological and adopted)
- someone who is financially dependent on you
- someone who you are in an interdependent relationship with.

and/or:

- your legal personal representative resulting in your super being paid to your estate and distributed in accordance with your will. This may suit you if you want your super to go to someone who isn't automatically considered a dependant under super law, such as a parent, sibling or close friend.



#### Action:

**Choose who should receive your super with a binding death benefit nomination** – it only takes minutes to complete and protects your loved ones from uncertainty while helping your super fund pay your benefit quickly.

Visit [cbussuper.com.au/binding](https://cbussuper.com.au/binding) to download the form and complete your nomination today.



#### Tip

**If you nominate someone like a brother, sister, mother or father,** they must be able to show that they were financially dependent on you, or in an interdependency relationship with you, at the time of your death.



#### Good to know:

Review your nomination regularly, especially if your circumstances change (such as marriage, divorce, new children, etc). You can update or cancel your nomination at any time.

**Not all nominations are the same.** Learn more about the different types of nominations and how death benefits may be paid at [cbussuper.com.au/beneficiaries](https://cbussuper.com.au/beneficiaries)



## 3 Powers of Attorney

A Power of Attorney (POA) lets you choose someone you trust to make decisions for you whilst you're still alive. The decisions can be financial, medical and lifestyle. There are different types of POAs, and their names may vary from state to state, but the underlying concept is the same.

### Types of Powers of Attorney

**Enduring Power of Attorney** (financial and sometimes personal decisions):

- Lets your chosen person or trustee company manage money, financial assets and property (pay bills, sell property, manage your super, speak to Centrelink, etc)
- Is enduring, meaning it continues to operate if you lose capacity.

**Medical or personal decisions.** Depending on your state, medical and lifestyle decisions might be covered by:

- Appointment of a Medical Decision Maker (Vic)
- Enduring Guardian (NSW, Tas in part, WA for guardianship)
- Advance Health Directive (Qld, WA).



#### Action:

When setting up your POAs, pick someone who is:

- Trustworthy and able to say 'no' when needed
- Good with money and paperwork (especially for a financial POA), and
- Calm under pressure and understands your values (for medical/personal decisions).

Because the rules governing POAs vary from state to state, consider appointing joint or alternate attorneys depending on the state you live in.

If mobility issues make it difficult to manage your super, you can nominate an attorney to access your account and authorise them to make changes on your behalf. Visit [cbussuper.com.au/forms](https://cbussuper.com.au/forms) to download and complete a *Power of Attorney* form.

#### Good to know:

An attorney may also be a licensed trustee company or public trustee.

## What is legal capacity?

Capacity refers to a person's mental and legal ability to make their own decisions. To create a valid Power of Attorney, you must understand the nature and effect of the POA.



## 4 Advance Care Directive (living wills)

In some Australian states, you can make an Advance Care Directive where you write down what kind of medical care and end-of-life treatment you would, or would not want in the future, if you can't speak for yourself. There may be different names, depending on which state you live in, for example – Advance Care Directive, Advance Health Directive, Health Direction.

### What can you put in an Advance Care Directive?

#### You can record:

- What matters to you most (values and goals)
- The types of treatment you would accept or refuse, such as:
  - a) Life support or resuscitation in certain situations
  - b) Tube feeding or fluids
  - c) Pain relief, even if it shortens life
- Where you would prefer to be cared for if possible (for example, home or hospice).

#### Tip

Each state and territory has different rules for Advance Care Directives. If you move to another state, your document might not be valid there. It's a good idea to check with a local lawyer to make sure it still works.

#### Action:

How this works in action:

- Your Advance Care Directive guides your medical decision maker or doctors when you can't decide or communicate
- Your directive may be legally binding if it's prepared correctly, and
- It's important to share copies with your GP, medical decision-maker and family.

# Your estate vs your super – what's the difference?

**This can be one of the most confusing parts of estate planning, but it's relatively simple:**

Your estate is made up of the assets that are in your sole name. Your estate can be distributed under a will or by intestacy laws if you don't have a will.

Your estate can include:

- Money in bank accounts in your name
- Your share of property held solely in your name
- Personal items (car, furniture, jewellery, art)
- Shares and managed funds held in your name
- Some life insurance policies (depending on ownership and beneficiary nominations).

## **Assets that are not covered in your will:**

- Superannuation – unless the trustee pays it to your estate or legal personal representative
- Jointly owned property – passes automatically to the surviving owner
- Family trusts – controlled by the trust deed and the trustee
- Company assets – owned by the company, not you personally.



**Your estate is made up of the assets you own outside super, plus your super**

### **Assets outside super**

e.g. your home, car, shares or property



**Forms part of your estate via a will**

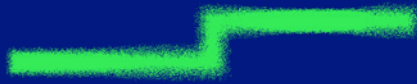


### **Your super**

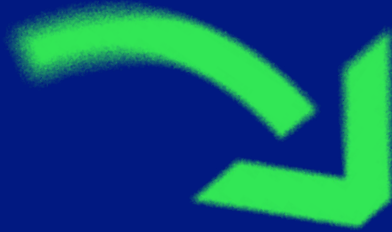


**Your super fund can pay your death benefit to your estate either in line with a valid binding death benefit nomination or, if there isn't one, at the trustee's discretion.**

# **Estate planning in action**



## **Case studies**



# Estate planning in action

## No will, no super death benefit nomination



Lena was a single mum with two adult children, Ava and Josh. She always said, “Of course everything will go to the kids,” but she never got around to making a will. She also didn’t complete a binding death benefit nomination for her super.

When she died suddenly, under CBUS’ trust deed rules, her super was paid equally to Ava and Josh.

The remainder of her estate (including her house, bank account and car) had to go through an intestacy process, which took time and legal support.

**Ava and Josh both loved their mum, but they had very different ideas about what was ‘fair’. Old arguments resurfaced. It took more than a year to finalise everything.**

### ⊗ Trap

Assuming it will ‘just go to the kids’ can lead to delay, extra cost and conflict.

### ☑ Tip

Even a simple will and a valid binding death benefit nomination can make things much easier and faster for those left behind.

# Enduring Power of Attorney in practice – keeping the bills paid and the lights on

Hassan lived alone and was proud of managing his own money. After a stroke, he spent several months in hospital and rehab and couldn't handle paperwork or remember passwords.

Luckily, a few years earlier he had set up an Enduring Power of Attorney for finances, appointing his daughter Samira, as both an attorney and a medical decision-maker.

When the stroke happened, Samira was able to:

- Talk to his bank and super fund
- Arrange payment of rates, utilities and rent on his storage unit
- Claim income protection and lodge medical forms, and
- Keep track of his bills so he didn't fall behind.

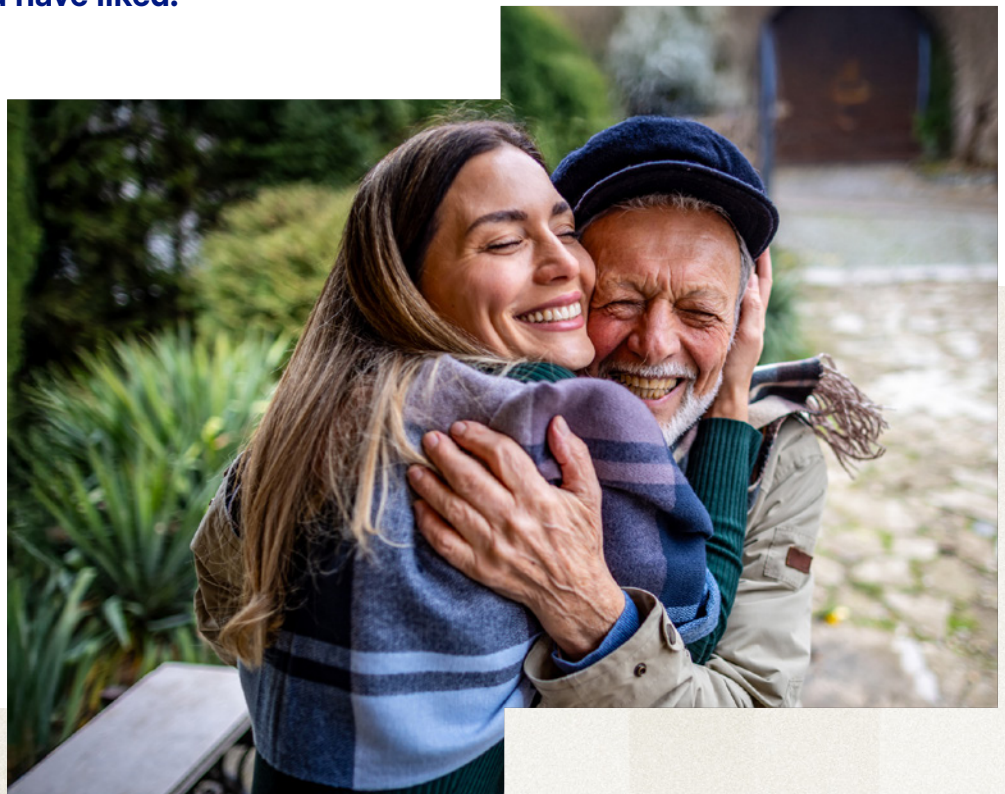
Hassan's medical decisions were made in line with his legally documented medical wishes, which gave the whole family confidence he was being treated as he would have liked.

## ⊗ Trap

Accidents and illness can happen quickly. Without a Power of Attorney, family may have to apply to a tribunal or court to manage your money, which can take time and add stress.

## ☑ Tip

Choose your attorneys while you're well. Talk to them about your values and how you'd like them to use that power if it's ever needed.



## Choosing the right executor – the emotional choice vs a safe pair of hands



**Mia chose her eldest son, Ethan, as her executor because he was the eldest and she assumed he was the best person to manage her affairs.**

Ethan loved his mum but he:

- Lived overseas
- Hated paperwork, and
- Didn't get along with his younger sister, Zoe.

After Mia died, Ethan struggled with:

- Dealing with banks and the share registry in another time zone
- Arranging the sale of her house from overseas, and
- Communicating with Zoe when they disagreed about selling family items.

**Eventually, a solicitor was brought in to handle most of the work, but the situation led to a permanent breakdown in the siblings' relationship.**

### **Trap**

Choosing an executor based on birth order or emotion, without thinking about the practicalities, can be risky.

### **Tip**

Choose an executor who is:

- Organised and good with paperwork
- Likely to outlive you
- Able to stay neutral and communicate with the family equally.

## Blended families and super – when intentions and paperwork don't match



Paul had two teenage children from his first marriage and a new partner, Kim. He told everyone, “I want Kim to be secure in the home, and the rest to go to the kids.” But he never updated his will after his divorce, and made a non-binding death benefit nomination, naming his new partner, Kim.

Because Paul had his super with CBUS:

- His non-binding nomination meant the trustee had to decide who to pay the superannuation to.
- Had he made a binding nomination to Kim, the trustee would have automatically followed that nomination.
- His new partner Kim and the children ended up in a long dispute over both the estate and super.

### ⊗ Trap

Not doing a binding death benefit nomination when life changes (divorce, new partner, new child) can lead to delays in paying out the super.

### ☑ Tip

Review your estate plan whenever big life events happen. Your documents should reflect your current life, not your life from 10 years ago



**No one felt like Paul's wishes had been followed, even though he had spoken about it many times.**



## A simple, step-by-step estate plan



- ✓ List what you own and owe
- ✓ Think about who you want your assets to go to
- ✓ Set up or update your binding death benefit nomination
- ✓ Make or update your Will
- ✓ Put Powers of Attorney in place in relation to your finances
- ✓ Appoint a lifestyle/medical attorney or guardian
- ✓ Talk to your family about your decisions
- ✓ Review your estate plan every few years or after big life changes



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