

To	Participant
From	View University
Subject	Overview – Introductory Estate Planning Course

Set out below is a summary of the 3 key topics addressed in this course.

1 Personally owned assets

- 1.1 At least in theory, personally owned assets are the easiest category of wealth to define and regulate as part of an estate planning exercise.
- 1.2 Certainly, personally owned assets are the only class of assets that are automatically and always dealt with under a will on death.
- 1.3 This said, there are a number of potential areas that you need to be aware of to avoid mistakes occurring.
- 1.4 Some of the areas include:
 - (a) Whether there are any debts in relation to the assets, whether it be due to an external third party financier or loans between family members.
 - (b) If there are debts in relation to assets, whether those debts are secured via, for example, a mortgage.
 - (c) Whether there are any particular rules regulating the way in which the asset must be dealt with on death. One increasingly common example in this regard relates to digital assets – often the hosting platform will have rules regulating who and how those assets can be dealt with on death.
 - (d) There are also particular rules across a range of other personal assets however including the way in which an ownership interest in a retirement home can be dealt with.
 - (e) It is also very important to remember that many personally owned assets will in fact be owned with one or more other people, particularly a spouse, which then leads into the next key concept that we are going to talk about, namely tenancy arrangements.

2 Tenancy

- 2.1 When assets are owned personally, there are two key ownership structures that you need to be aware of:
 - (a) owning an asset jointly with someone as joint tenants; and
 - (b) owning an asset jointly with someone as tenants in common.
- 2.2 Under both ownership structures, it is possible to have many more than 2 owners, although most commonly there are only two owners of a jointly owned asset, normally spouses to a relationship.

- 2.3 Where an asset is owned as joint tenants, the arrangement is around the concept of a right of survivorship. In other words, whoever of the owners is the last to die will be entitled to the entire asset. Conceptually, it is akin to each registered owner being entitled to 100% of the asset, so long as they do outlive all other owners.
- 2.4 In contrast, when an asset is owned jointly as tenants in common, each owner has a discrete percentage interest in the underlying asset, which they are entitled to unilaterally transfer under their estate plan.
- 2.5 While most home ownership in Australia between couples will be structured as a joint tenant arrangement, this is not necessarily the most appropriate approach in any particular situation, and a key starting point for any jointly owned asset is to determine whether it is owned as joint tenants or tenants in common, and whichever ownership structure in place, whether that is in fact appropriate.

3 Superannuation

- 3.1 For many people, superannuation will be one of the largest, if not the largest, single asset class in their estate.
- 3.2 Critically however, superannuation entitlements do not necessarily fall within the parameters of assets that are regulated by a will.
- 3.3 Instead, regardless of whether a person is a member of a self-managed super fund superannuation fund or an industry fund, the superannuation savings become payable as a death benefit on death and the trustee of the superannuation fund must either determine how to distribute those assets, or alternatively follow a validly implemented binding death benefit nomination.
- 3.4 There are a series of complex rules both under the superannuation law and the tax law as to how superannuation death benefits can be paid and the taxation consequences of doing so.
- 3.5 Subject to specifically considering the relevant legislation in this regard, it is generally the case that superannuation benefits can only be paid to the legal personal representative of a deceased member, which will normally result in the assets being distributed in accordance with their will, or alternatively, for the assets to be distributed directly to a category of person defined as a dependant.
- 3.6 Again, there are very specific rules around who in fact is a dependant of a deceased member. Normally, the range of people will only be direct family members such as a spouse or a child.
- 3.7 While a binding nomination may be appropriate in some estate plans, specialist advice should generally be obtained, as particularly in recent times, there has been numerous court cases where the inappropriate attempted use of a binding nomination has caused significant financial detriment to an estate following a member's death.