Estate Planning and Insurance Advice.

This guide is designed to help insurance advisers when assisting New Zealanders implement their insurance plans to ensure that the right money gets to the right people at the right time.

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OVERVIEW

This guide has been designed to assist Insurance Advisers when giving advice on Insurance Plans. At IDS we review insurance advice provided by hundreds of advisers each year and we see that most Insurance Plans (Statements or Records of Advice) include a section on estate planning. The most common process we see is that the advisers asks questions of the client about their current estate plans. *Do you have a Will/EPA/TRUST?* If a client answers yes to a Will or EPA then most commonly the adviser moves on, without checking any details. Not often do we see advisers asking '*What does it say*'? Which is worrying because the Will is actually the persons wishes when they die, and may contain events that need funding like the kids being appointed a guardian or division of property between family members.

We don't often see any questions about if the Will or EPA is current. There is a chance that if a will hasn't been prepared correctly, or reviewed in the last 3 Years, it may not be effective in the event.

If the client has a Trust we may see more questions about where debt is held to determine where policy proceeds need to be paid or how policies should be owned, though sometimes this is not included in the process.

Then we see in the insurance plans, or recommendations, with standard wording along the lines of; *If you don't have a Will/EPA we recommend you see your Lawyer or a Trust company, if you don't have one we can recommend one.*

Then the insurance goes in place and Estate Planning is never mentioned again…. or until claim time and by then it's too late to check if it is right.

We believe it is worth the effort for advisers to spend some time on this important area with clients. Clients want certainty from their insurance plans, and uncertain estate planning could jeopardise the outcomes for your clients.

PART 1: ESTATE PLANNING OVERVIEW

1.1 Wills

A Will is a legal record of your wishes which directly affects those close to you. It allows you to ensure your assets are distributed as you want them to be when you die. An up-to-date Will avoids uncertainty, delay and cost in the administration of the estate.

You can have a Will to:

- Ensure your personal assets go to those you choose.
- Appoint someone who will ensure the terms of your wishes are carried out.
- Make sure all your last wishes are understood, i.e. wishes for your burial for example.
- Appoint a guardian/s for your children.
- Meet other wishes such as providing for your grandchildren's education or making a charitable donation.

A Will must be made freely and without any influence from anyone else. The law recognises the rights of family, and sometimes other people close to you, to share your wealth after you die.

The laws changed in 2007 with the later 2012 amendment around how Wills can be executed and witnessed. So a will prior to that may be out of date.

If you do not family members in your Will, those people may take action to share in your estate and, if their rights are established, your Will can be varied.

If you have entered into a Property Agreement under the Property (Relationships) Act, or have agreed to include specific provisions in your Will, this may need to be reflected in your Will to prevent disputes or challenges.

If you have a partner and your relationship is short term or you have had a previous relationship, then the provisions of the Property (Relationships) Act may need to be considered when deciding your Will terms.

If you believe either of these situations could apply to you then getting your will up to date is a must.

When you make a Will it is important to update it whenever there are major changes during your lifetime. Marriage (or re-marriage) revokes a Will and therefore anyone getting married should make a new Will.

Likewise, if you have separated or divorced, or there are other special circumstances such as adopted children or children with a disability, you may need to make special provisions for them in your Will.

Regardless of major changes in your life, A review of your Will every three years is recommended.

Impact on Insurance Plans

Life Insurance provides money in the event of death. Clients may make assumptions when deciding how much insurance they need and how it is to be owned based on their current circumstances and assets not being affected by a challenge to their estate in the event of death. While cross ownership may mean insurance is paid to the current spouse or partner, the rest of the estates assets could be challenged and therefore leave the spouse/partner/family in a worse position than intended with the insurance plan. This is a risk for advisers who don't identify potential issues when offering generic advice in Insurance Plans.

1.2 Enduring Powers of Attorney

Typically prepared at the same time as a Will, an Enduring Power of Attorney (commonly known as an EPA) helps protect against unforeseen circumstances by allowing an individual or organisation, referred to as an 'attorney', to act on your behalf, if necessary.

An attorney might be needed where:

- You are overseas and need someone to buy, sell or manage assets or investment funds on your behalf; or,
- You have a debilitating illness or injury which prevents you from being able to act for yourself (where you fall into a coma or become delirious with a fever for example).

There are two types of EPA, one for Property and one for Personal Care and Welfare.

Personal Care and Welfare – the nominated person ('attorney'), usually a close friend or family member is responsible for making important decisions with regard to your care and well-being in the event you become too ill to take care of yourself. These decisions may be in the form of medical decisions, accommodation arrangements, and other personal needs.

Property – your appointed 'attorney' can manage your financial affairs to ensure your property is taken care of, your bills are paid and investments are managed. For this reason, it's imperative you have complete faith and confidence that your appointment is knowledgeable enough to act in your interests, in accordance with your wishes and without bias.

If you become ill and cannot look after your own property matters, without an EPA in place, it falls to your family to apply to the Court for an order to appoint a property manager. This process can be long, arduous and expensive.

Does an EPA affect your Will?

An EPA has no effect on your Will. However, your attorney may have to make decisions which affect property that will be dealt with in your Will. It may be useful to have the ability to make changes to your Will in case your circumstances change in ways you had not anticipated.

Your EPA property attorney is able to ask the Family Court for approval to make changes to your Will or to make a new Will for you, unless you specify otherwise in your EPA.

Impacts on Insurance Plans

Insurance Plans often include benefits that will pay out for illness or injury. If the policy owner/insured would make the decisions on what to do with those monies, who will do this if they are unable to? When planning those needs it would pay to find out who you or the insurance company would be working with for IP or MRI benefits in the event the owner/insured is unable to make those decisions.

1.3 Trusts

Trusts come in many shapes and sizes. They are an invaluable and efficient structure to separate and protect your assets.

A Trust can:

- Protect your assets;
- Protect your personal lifestyle from the risks associated with business;
- Provide for your dependents such as children and grandchildren (e.g. for their education, or if they have physical or other disabilities);
- Ensure continuity of family ownership;
- Protect assets you bring into a marriage or relationship;
- Protect and grow your investment assets and enable these to be passed onto your loved ones; and,
- Limit claims being made against assets after death. Reducing the reliance on a Will or EPA.

Trusts need not be complex, they can be straight forward and easily understood. A Family Trust can help to safeguard your family assets. Since the ownership of the assets shifts to the Trustees, your assets will be less readily available for distribution to unintended or undesirable beneficiaries, such as your child's former spouse.

Key Steps in Establishing a Trust

• Why you need a Trust;

• What property will go into the Trust;

• Who will benefit from the Trust;

• Who the trustees will be;

• The terms of the Trust; and,

• A name for the Trust.

Once set up it is important to ensure.

- Accurate records are kept;
- All tax and other legal requirements are met;
- Trust documents are kept safe; and,
- You keep up to date on any law changes that could affect your Trust.
- Transfer of ownership of assets to Trustees

Impact on Insurance Plans

If the Trust owns assets, such as the family home, then debts and mortgages that need to be repaid in an insurable event may require the trust to own the insurance policies. Also if when planning for an insurable event a client is relying on assets in the trust, then you need to make sure that all the trustees are agreed on how those assets might be used. If the client knows what they want to happen to assets like the family home or life insurance monies, then a trust could provide more certainty in that event.

PART 2: INSURANCE ADVISERS GIVING ESTATE PLANNING ADVICE

As an Insurance Adviser you have two choices on how you can handle Estate Planning issues when giving advice on Insurance Plans.

- Ignore Estate Planning and don't include any questions or advice in your plans.
- Ask relevant questions to identify potential issues and advise the clients take action.

2.1 No Advice on Estate Planning

Depending on the type of insurance planning you do this is an option. It removes the risk that you raised the issue and provided some generic information, but provided no personalised advice on the risks the client faced and didn't follow up issues to see if the client sought or implemented any advice on Estate Planning.

The downside of this option is that later on the client does get advice from another adviser, solicitor or trust company and then they recommend a review of the insurance and send them elsewhere.

To implement this option, we recommend removing any mention of Estate Planning from your process and marketing material and you may add a risk or assumption to your plan saying that Estate Planning is out of scope for your insurance advice service.

2.2 Identify Potential Estate Planning Issues and Recommend Action.

This option is what most advisers appear to be doing now, but they are missing a couple of key steps;

- Identification of client issues and impacts in insurable events.
- No follow through on ensuring the clients took action.

When you are insurance planning, especially life insurance, you are working with the client to determine how much money they need in that event and where it goes. It makes sense then to ask what are the clients current plans in that event. How will asset ownership change? What happens to the kids? Who does your estate have to provide for?

So potential issues are;

- Could anyone challenge your estate? Family members, Former Partners, Children, Business Partners?
- Do your family know your plans? Have you promised anyone anything?
- Has your relationship status changed since writing your Will?
- Have you discussed your insurance needs with the executor or beneficiaries?
- When was it last reviewed?
- Could your business debts flow through to the estate?
- If we pay the mortgage off with your life insurance who gets the house?

For clients who have the potential for family circumstances, former relationships or business arrangements, these could be issues in the event they die. If they are unable to give you definitive answers about current estate plans and they want to ensure their family gets the house and the insurance moneys, then they have some options to choose from.

We suggest you add to the insurance plan a time bound recommendation based on the issues you identified. For example;

***Next steps in the process**: once you decide on your insurance plan; We will get the applications to the insurers and start the underwriting process, which can take up to 6 weeks, while that is happening we recommend you get the Estate Planning sorted to match the desired outcomes outlined in your Insurance Plan. Your options are;*

- *You can make a time to see your lawyer and get advice.*
- *Contact a Trust Company and get advice.*
- *DIY – There are a number of simple DIY solutions if you know what you want.*

*Below are some options that we recommend; (*ADD IN REFERALS)

Which one will you do and when will you do it?

Once you have it sorted please let us know so we can include it in our records and ensure we have the policy ownership structured to match your plans. We will follow you up when the policy is issued to ensure it gets done.

The key is to not let the client just float off without taking action. Providing insurance money in an event can sometimes increase the chances of a family member or business associate or creditor challenging the estate even if the insurance is paid elsewhere.

To find out more on how to identify Estate Planning issues and what to look for with clients;

- Complete a course on Estate Planning
- Talk to a legal firm or professional trust company.
- Have you sorted your own estate plans?

The goal of insurance planning is to ensure the right money gets to the right place at the right time!