6 THINGS TO ADD TO YOUR "TO DO" LIST THIS CHRISTMAS ESTATE PLANNING EDITION

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It's an Australian Tradition. Come the Christmas/New Year break, the majority of us will travel in some capacity.

Whether you are driving down the road for Christmas with the family, travelling interstate, or going further abroad for a much needed overseas trip to experience NYE in New York City (we wish!) - you are travelling at what is universally known as the most hazardous time of year with the road toll at a national high. This should be a trigger for thinking about whether your current Will and Enduring Power of Attorney is up to scratch (or if you even have one at all)!

So, before you depart merrily on your way, we have set up a handy checklist for you to consider:
01. DO I HAVE A WILL IN PLACE? IF I DO, IS IT CURRENT?

Been putting it off? Use the Christmas period as your deadline to finally have it sorted (trust us, you will be relieved once you have). You want to be able to enjoy the Christmas period without being concerned about the ‘what ifs’. Similarly, if your Will was pre-kids and you now are travelling with multiple baby-seats in the car, it’s time to review your Will!

02. HAVE I APPOINTED AN APPROPRIATE GUARDIAN FOR MY CHILDREN?

Nothing quite like visiting painful Aunt Jude at Christmas to make you re-consider who you want to raise your own children if something were to happen to you. If you have Children under the age of 18, you can appoint a Guardian within your Will. You should also appoint a financially responsible person to be in control of your minor children’s finances (which may be a different person to their Guardian). If you have already named a Guardian within your Will – is this person still the best choice, or have circumstances now changed?

“My idea of Christmas, whether old-fashioned or modern, is very simple: loving others.” —Bob Hope
03. DO I NEED TO CONSIDER ASSET-PROTECTION MEASURES WITHIN MY WILL?

Foreseeing a massive family argument around the Christmas table after one too many egg-nogs?

A Testamentary Trust can provide significant asset protection, which will be important if your surviving spouse or an adult child is at significant risk of litigation or is at risk of divorce.

If you only have a ‘Standard Will’ in place, now may be the time to upgrade to a Testamentary Trust Will. Similarly, family stress over the holidays may bring to light the possibility of family contesting your Will.

Although you cannot prevent an eligible person from contesting your Will, your lawyer can discuss strategies with you to minimise the asset pool, a disgruntled beneficiary could potentially claim upon.

“One of the most glorious messes in the world is the mess created in the living room on Christmas Day. Don’t clean it up too quickly.” — Andy Rooney

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04. HAVE I SORTED MY SUPERANNUATION?

What many people do not realise is that you are not the ‘legal’ owner of your Superannuation, and accordingly it is not an asset automatically covered by your Will. There have been many horror-stories lately of Superannuation being paid to a person who is not even mentioned in the deceased’s Will.

Use the holiday break to review your Superannuation beneficiaries (remembering that a preferred nomination is only a request, not a given) and speak to your lawyer if you have any uncertainty as to who will receive your Superannuation on your death.

“Christmas is a tonic for our souls. It moves us to think of others rather than of ourselves. It directs our thoughts to giving.” —B.C. Forbes
05. DO I NEED TO ORGANISE OR REVIEW INCAPACITY DOCUMENTS?

An Enduring Power is Attorney is an essential document for all adults. Within this document, you nominate who you would like to make your personal/health and financial decisions if you ever lost capacity. Is there likely to be contention between multiple Attorneys or are they unlikely to follow your Wishes? If yes, perhaps you should consider enacting an Advance Health Directive.

06. DOES MY FAMILY KNOW MY WISHES?

If something were to happen to you over the Christmas season, would your family know your wishes? You do not have to give them specific details, though as a minimum the Executors should know their role within your Will, and where the original Will is held.

Further, would your family know where to look to gather information for all of your assets or the type of funeral you wish to have? If not, no better time than Christmas dinner to have a lovely conversation with the whole family regarding your Will – “This woodfire pizza is delicious – and that reminds me – when I die I’d like to be cremated”.

“At Christmas, all roads lead home.”
—Marjorie Holmes
This is a busy time of year for lawyers, so don’t leave it until the week before Christmas to organise your appointment!

Now you can see that Christmas and Estate Planning go together like Lions Christmas Cake and brandy-flavoured custard, let our team at Briese Lawyers assist you with preparing or reviewing your Will, Testamentary Trust Will, Enduring Powers of Attorney or Advance Health Directive.

After all, Estate Planning doesn’t have to be morbid – Bah Humbug!

From our family to yours,
we wish you a safe and happy holiday season!

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