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Blended Families and Estate Planning

WHEN LOVE GETS COMPLICATED, SO DOES YOUR WILL

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BY WEALTH ADVISER

Here is a scenario that plays out far more often than most people realise. A man remarries after a divorce. He and his new wife buy a home together as joint tenants, the way most couples do. He updates his will to leave everything to his wife, trusting that she will look after his children from his first marriage when the time comes. He dies. His wife inherits the house automatically through the right of survivorship, and the rest of his estate flows to her under the will. A few years later, she remarries – or simply updates her own will to favour her own children. His children receive nothing.

He did not intend to disinherit his children. But that is exactly what happened. This kind of accidental disinheritance is one of the most common outcomes in blended family estate planning, and it happens because well-meaning people apply traditional thinking to non-traditional family structures.

BEFORE YOU GET STARTED

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Australia's family landscape reflects this reality. According to the 2021 Census, 12 per cent of couple families with dependent children were step or blended families – roughly 280,000 households navigating these dynamics. That figure does not capture couples who came together after their children had left home, or de facto partners with adult children from prior relationships. The planning challenges extend well beyond the census definition.

The good news is that careful planning can protect everyone. But it requires thinking differently about how your estate fits together – and being willing to have some conversations that may feel uncomfortable.

The Core Challenge: Competing Obligations

In a first-marriage family, the interests of the surviving spouse and the children are generally aligned. Leaving everything to your partner works because whatever remains will eventually pass to the children you share.

In a blended family, this alignment breaks down. You have obligations to your current partner – someone you have built a life with, who may depend on you financially – and obligations to your children from a previous relationship, who may feel anxious about being overlooked. You may also have stepchildren you consider your own, even if the law does not automatically treat them as beneficiaries.

Blended families generally need wills that provide for the surviving partner and ring-fence assets for children from the previous relationship simultaneously. Several strategies can help.

These obligations conflict not because anyone is acting in bad faith, but because the surviving partner's future is uncertain. They might remarry, face a property settlement under the Family Law Act, or make different decisions about their own will once you are no longer there. Your children have no legal guarantee that a good relationship with your current partner today will translate into an inheritance tomorrow.

Property Ownership: The Trap Most Couples Walk Into

For many Australian couples, the family home is their single largest asset. How that property is owned can determine whether your estate plan works – or fails completely.

Most couples hold property as joint tenants. When one owner dies, their share passes automatically to the surviving joint tenant, regardless of what the will says. For a first marriage, this is usually fine. In a blended family, it can produce the accidental disinheritance scenario described above. Your will might say your children should receive your share of the home. It does not matter. Joint tenancy overrides the will.

The alternative is tenancy in common, where each owner holds a defined share – typically 50 per cent – that they can deal with independently. As a tenant in common, you can leave your share to whomever you choose. You can direct it into a testamentary trust, grant your partner a right to live in the property for their lifetime or until they remarry, and then have your share pass to your children.

Converting from joint tenancy to tenancy in common – known as severing the joint tenancy – is usually straightforward, though the process varies by state and territory. It typically involves lodging a form with the relevant land titles office and generally does not attract stamp duty where ownership proportions remain unchanged. In most jurisdictions it can be done unilaterally, though having a transparent conversation about the change is almost always the better approach. If you are purchasing a new property with a partner and either of you has children from a previous relationship, consider tenancy in common from the outset.

A related strategy is including a right of occupation or life interest in your will. This allows your surviving partner to continue living in the property – providing housing security – while ensuring your share ultimately passes to your children. The terms can specify that the right ends if your partner remarries, moves into care, or sells the property.

Wills: Why the Standard Approach Falls Short

A simple will – one that leaves everything to your spouse, or if your spouse does not survive you, to your children – is designed for a family where the spouse and the children are the same unit. In a blended family, that single pathway creates exactly the vulnerability already described.

Blended families generally need wills that provide for the surviving partner and ring-fence assets for children from the previous relationship simultaneously. Several strategies can help.

One approach is to make specific bequests – an investment property, a share portfolio, or a cash amount – directly to your children, with the remainder going to your spouse. This gives your children certainty and reduces the risk of a family provision claim, while still providing for your partner.

Another approach is a testamentary trust (covered in detail in a separate article in this series). In a blended family context, a testamentary trust can hold assets for your children while allowing income to be distributed to your spouse during their lifetime. This works well for larger estates where the administration costs are justified by the tax and protection benefits.

A more direct mechanism is a mutual will arrangement – a contractual agreement that neither you nor your partner will change your will after the other dies. The idea is to lock in the agreed distribution for both sets of children. However, mutual wills are inflexible, and the surviving partner is not literally prevented from making a new will – the remedy for a breach is typically a constructive trust claim by the disadvantaged beneficiaries after the survivor's death. They also do not prevent the surviving partner from spending or giving away assets during their lifetime. Most experienced estate planning lawyers will explore other options first.

Whichever structure you use, the will needs to be drafted by a solicitor who understands blended family dynamics. A template or DIY will is unlikely to address the layered obligations these families create.

Superannuation: The Asset Your Will Cannot Control

Superannuation sits outside your estate unless you take deliberate steps to bring it in. Your super balance is paid according to a death benefit nomination – not your will – and for many Australians, super represents one of their largest assets.

The most common blended family problem is outdated nominations. If you made a binding death benefit nomination during your first marriage and never updated it, that nomination may still direct your entire super balance to your former spouse. If your nomination has lapsed – binding nominations in many APRA-regulated funds expire after three years unless renewed, though some funds offer non-lapsing options and SMSF rules depend on the trust deed – your fund's trustee will use their discretion to decide who receives your benefit. In a blended family with competing claims from a current partner and children from a previous relationship, that discretionary process can take considerable time and produce an outcome no one is happy with.

Some members resolve this by splitting their nomination – directing a portion to their current spouse and a portion to their children. This is practical, but requires thought about proportions and tax consequences. Death benefits paid to adult children who are not financially dependent are taxed on the taxable component – at 15 per cent (plus Medicare levy) on the taxed element, or 30 per cent (plus Medicare levy) on the untaxed element – whereas benefits paid to a spouse are generally tax-free.

An alternative is to nominate your legal personal representative, directing your super into your estate for distribution according to your will. This gives you more control and can be useful where you want your will to manage the balancing act between your partner and your children. However, it also means your super may be accessible to creditors during estate administration and can expose the benefit to family provision claims.

The key action is to review your nomination whenever your circumstances change – and to check whether it is still valid and coordinated with the rest of your estate plan.

For SMSF members, the stakes are higher still. If you and your spouse are the only members and trustees, your death means a new trustee must be appointed. In a blended family, this can become contentious if the surviving spouse appoints one of their own children, potentially disadvantaging your children. A clear succession plan documented in the trust deed is essential.

Binding Financial Agreements: A Tool, Not a Solution

Binding financial agreements under the Family Law Act 1975 allow couples to agree in advance how their assets will be divided if the relationship ends. In a blended family, they can help delineate which assets each partner brought into the relationship, protecting pre-existing wealth for children from a prior relationship.

However, courts can set aside these agreements under section 90K of the Family Law Act in various circumstances – including fraud, non-disclosure of material matters, unconscionable conduct, or a material change in circumstances relating to a child. Both parties must receive independent legal advice before signing, and strict procedural requirements apply.

A binding financial agreement addresses what happens if the relationship breaks down during your lifetime. It does not govern what happens to your assets after you die. Estate planning and family law planning are complementary, not interchangeable – and both need professional attention.

Family Provision Claims: The Risk You Cannot Eliminate

In every Australian state and territory, certain people can challenge a will if they believe they have not been adequately provided for. These family provision claims are particularly common in blended families.

Eligible claimants typically include your spouse or de facto partner, your children (including, in some jurisdictions, stepchildren who were dependent on you), and anyone who was financially dependent on you. The specific rules vary by state, but the principle is consistent: a court can override your will if it considers the distribution inadequate for a claimant's maintenance and support.

Studies of Australian estate litigation indicate that adult children are consistently the most common claimants – accounting for around half to two-thirds of family provision cases in reviewed datasets – and that claimants achieve some change to the original distribution in roughly three-quarters of cases that proceed to judgment. In

blended families, the competing obligations between a new spouse and children from a prior relationship make it nearly impossible to satisfy everyone fully.

You cannot prevent a family provision claim entirely, but you can reduce the risk by ensuring all potential claimants receive some provision. A well-drafted will that demonstrates genuine consideration of every eligible claimant's needs – supported, perhaps, by a separate statement of wishes explaining your reasoning – puts your estate in a stronger position to defend a challenge. Leaving someone out entirely is far more likely to invite a successful claim than providing them with a defined, if smaller, share.

Executor Selection: An Underrated Decision

In a blended family, choosing the right executor matters more than usual. The executor administers your estate and manages conflicting interests among people who may not trust each other.

Appointing your current spouse as sole executor creates an obvious conflict if they are also a beneficiary and your children from a previous relationship are entitled to a share. Appointing one of your adult children creates the opposite risk. Some families address this with co-executors from each side, though this can create deadlocks. Others appoint an independent executor – a solicitor or professional trustee company – to remove the perception of bias. This costs more, but it can prevent disputes that would cost far more.

Having the Conversation

Perhaps the most important step is also the most difficult: talking about it. With your partner. With your children. With your stepchildren, if they are part of your life in a meaningful way.

These conversations are uncomfortable because they involve money, mortality and the acknowledgment that your family is not a single unit with perfectly aligned interests. But silence is almost always worse. Assumptions go unchallenged, expectations go unmanaged, and grief is compounded by the shock of discovering that the estate plan does not reflect what anyone expected.

You do not need to share every detail of your will. But being open about your intentions and reasoning gives everyone the opportunity to understand your decisions before they become irreversible. Your financial adviser can help facilitate this conversation if the dynamics are sensitive.

Discussion Points for Your Adviser

If you are in a blended family, there are several questions worth raising at your next review: How is your property owned, and is that structure consistent with your estate plan? Have you reviewed your super death benefit nomination since your most recent change in circumstances? Does your will adequately provide for both your current partner and your children from a previous relationship? Have you considered whether a testamentary trust, life interest or specific bequests would better serve your family? Is your executor appointment appropriate given the dynamics involved? Would a binding financial agreement complement your estate plan?

Estate planning in a blended family is not something you do once and forget. Regular reviews – ideally every two to three years, or after any significant life event – ensure your plan keeps pace with your life. The stakes are high, the emotions are real, and the consequences of getting it wrong can last a generation. But with the right advice and honest conversations, you can build a plan that protects everyone you care about.

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BY WEALTH ADVISER

Most people think of estate planning as something that takes effect after they die. The will, the testamentary trust, the beneficiary nominations – all designed for the world you leave behind. But there is a document that matters far more during your lifetime, and the window for creating it is narrower than most people realise.

An enduring power of attorney authorises someone you trust to manage your financial and legal affairs if you lose the capacity to manage them yourself. Without one, your family cannot simply step in. They cannot access your bank accounts, pay your bills, manage your investments, sell your property, or deal with Centrelink on your behalf – no matter how close the relationship, no matter how obvious the need.

With an estimated 446,500 Australians living with dementia in 2026 – a figure projected to reach over 812,000 by 2054 and exceed one million by 2065 – and countless others affected by strokes, accidents, and other sudden incapacity, this is not an abstract risk. It is a planning priority that belongs alongside your will, your insurance, and your superannuation strategy.

What Happens Without One

If you lose the ability to make your own decisions and you have not appointed an enduring attorney, your family faces a difficult and often distressing process. Someone – usually a spouse, adult child, or other family member – must apply to a state or territory tribunal (such as NCAT in New South Wales, VCAT in Victoria, QCAT in Queensland, or SAT in Western Australia) to be appointed as your financial manager or administrator.

This is not a formality. The tribunal will assess your capacity, consider who is appropriate to manage your affairs, and make a determination following a hearing. The process takes time – weeks or months – during which your bills may go unpaid, your investments unmanaged, and your financial affairs effectively frozen. If family members disagree about who should be appointed, the proceedings become adversarial. In some cases, the tribunal may appoint the Public Trustee or Public Guardian rather than a family member, particularly where there is conflict or no suitable person is available.

The costs are real: legal fees for the application, ongoing administration fees if a public trustee is appointed, and the emotional toll on a family already dealing with a health crisis. All of this is avoidable with a document that a solicitor can prepare in a single appointment.

What an Enduring Power of Attorney Covers

An enduring power of attorney (EPOA) gives your chosen person – your "attorney" – the legal authority to act on your behalf in financial and legal matters. This typically includes

operating bank accounts, paying bills, managing investments, buying or selling property, dealing with government agencies, and signing legal documents.

The word "enduring" is critical. A general power of attorney ceases to operate if you lose mental capacity — precisely the moment you need it most. An enduring power of attorney, by contrast, continues to operate (or begins to operate, depending on how you set it up) after you lose the capacity to make your own decisions. This is the whole point of the document.

You choose when the EPOA takes effect. Some people activate it immediately upon signing, which is useful if you travel frequently or want your attorney to be able to act while you are still capable but unavailable. Others specify that it only activates when they lose capacity. Your solicitor can help you decide which approach suits your circumstances.

An EPOA does not cover medical or lifestyle decisions — where you live, what health care you receive, whether you consent to medical procedures. Those decisions require a separate document, discussed below.

Who to Appoint — and How to Structure It Well

Choosing your attorney is the most consequential decision in the process. This person will have significant power over your financial life at a time when you cannot oversee their actions. The appointment should be made thoughtfully, not reflexively.

Choosing your attorney is the most consequential decision in the process. This person will have significant power over your financial life at a time when you cannot oversee their actions. The appointment should be made thoughtfully, not reflexively.

Most people appoint a spouse, an adult child, or a close family member. That is often the right choice, but it should be an active decision, not a default. Consider whether the person you are appointing has the practical skills to manage financial affairs, the temperament to make decisions under pressure, and the integrity to act in your interests rather than their own. A loving family member who is poor with money, overwhelmed by paperwork, or in financial difficulty themselves may not be the right choice — and there is no shame in recognising that.

You can appoint more than one attorney, and how you structure multiple appointments matters. Appointing attorneys "jointly" means they must agree on every decision — this provides a built-in check, but can create delays if one attorney is unavailable or if they disagree. Appointing attorneys "severally" means any one of them can act independently — faster and more practical, but with less oversight. A common middle ground is appointing two attorneys jointly for major decisions (selling property, for example) and severally for routine matters (paying bills, managing accounts).

You can also include conditions and limitations. If you want your attorney to manage your day-to-day finances but not sell your family home without the agreement of a second person, you can specify that. If you want to require your attorney to keep records of major transactions, you can include that requirement. These safeguards are worth discussing with your solicitor, particularly where the estate is complex or family dynamics are sensitive.

If you are concerned about having a single point of control, consider appointing a professional — such as a solicitor, accountant, or trustee company — as a co-attorney or as a fallback if your primary attorney is unable to act. This adds cost but provides an additional layer of accountability.

A Note on State and Territory Differences

Powers of attorney are governed by state and territory legislation, and the rules vary across jurisdictions. The terminology differs — what is called an "enduring power of attorney" in most states covers only financial decisions, while medical and lifestyle decisions require a separate document (an "enduring guardian" in NSW, a "medical treatment decision maker" in Victoria, an "advance health directive" in Queensland, and so on). In Queensland and the ACT, a single enduring power of attorney can cover both financial and personal or health matters, though specific forms and witnessing requirements still apply.

The witnessing requirements, prescribed forms, and registration rules also differ by state. This is an area where getting it right matters — a document that does not comply with your state's requirements may be invalid precisely when it is needed most. A solicitor in your state should prepare these documents. It is not expensive, and it is not a place to cut corners.

The Companion Document: Medical Decision-Making

While you are with your solicitor preparing an EPOA, there is a second document you should prepare at the same time — one that covers the decisions your financial attorney cannot make.

Every state and territory has a mechanism for appointing someone to make medical, health care, and lifestyle decisions on your behalf if you lose capacity. The terminology

varies — enduring guardian, medical treatment decision maker, advance care directive — but the purpose is consistent: ensuring that someone you trust can consent to medical treatment, decide where you live, and make personal care decisions if you cannot.

This is not just a concern for the elderly. A serious accident or sudden illness can leave anyone temporarily or permanently unable to communicate their wishes. Without a medical decision-making document, health care providers may need to seek directions from a tribunal, or decisions may fall to a statutory hierarchy that does not reflect your actual preferences.

The medical document and the financial EPOA work as a pair. You may appoint the same person for both roles, or different people — a spouse for medical decisions and an adult child with financial expertise for the EPOA, for example. What matters is that both roles are filled by people you trust, and that each person knows they have been appointed.

Many people also find it valuable to prepare a separate statement of wishes — not a legally binding document, but a written expression of your values, preferences, and priorities for care. This can guide your medical decision-maker in situations the formal document does not specifically address.

When to Do This — and When to Review It

The single most important thing about an enduring power of attorney is that you must make it while you still have capacity. Once you have lost the ability to understand and make decisions, it is too late. There is no retrospective fix.

This means the right time to prepare these documents is now — not when a diagnosis arrives, not when health begins to decline, not when a hospital admission forces the issue. Preparing an EPOA while you are healthy is not pessimistic. It is practical, and it is an act of care for the people who would otherwise have to deal with a tribunal application during one of the most stressful periods of their lives.

It is also worth reviewing your documents periodically. Relationships change — the person you appointed a decade ago may no longer be the right choice due to their own health, a change in your relationship, or a shift in circumstances. If your attorney has died, moved overseas, or become estranged, the document needs updating. A review every three to five years, or after any major life change, is sensible.

Discussion Points for Your Adviser

Power of attorney sits at the intersection of legal planning, financial strategy, and family dynamics. Several questions are worth raising at your next review.

Do you have a current enduring power of attorney, and does it reflect your present circumstances and wishes? If you have one, when was it last reviewed — and is the person you appointed still the right choice? Have you also prepared a medical decision-making document for your state, and does your family know where both documents are kept? If you have complex financial affairs — an SMSF, investment properties, business interests, or assets in multiple states — does your EPOA give your attorney sufficient authority to manage them? For SMSF owners in particular, has the fund's trust deed been reviewed to confirm that your attorney can step into the trustee role if needed — because the EPOA alone may not be enough? For couples, have you each prepared separate documents, and have you considered what happens if you both lose capacity at the same time? If estate planning or aged care planning is on your agenda (both covered in detail in separate articles in this series), has your adviser confirmed that the right powers of attorney are in place to support those plans?

A will determines what happens to your wealth after you die. An enduring power of attorney determines who looks after it — and you — while you are still alive. For many Australians, it is the more urgent document. If you do not have one, or if yours is out of date, a conversation with your solicitor is one of the most practical steps you can take this year.

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Q&A: Ask a Question

Question 1

What's the difference between an offset account and a redraw facility, and does it matter which one I use?

Both an offset account and a redraw facility can help reduce the interest you pay on your home loan, but they work quite differently – and the distinction can matter more than you'd expect.

An offset account is a separate transaction account linked to your mortgage. The balance in the account is "offset" against your loan, so you're only charged interest on the difference. For example, if you owe $500,000 and have $50,000 in your offset account, you're only paying interest on $450,000. The money remains yours and is accessible at any time.

A redraw facility, on the other hand, allows you to access extra repayments you've already made on the loan. While it can function similarly day to day, the key difference is that redraw funds are considered part of the loan rather than separate savings. This can have important tax implications – particularly if you later convert your home into an investment property. Redrawing funds for private use can create a mixed-purpose loan, which may complicate or reduce future interest deductibility. Using an offset avoids this issue because you're spending your own cash rather than re-borrowing from the loan.

Your adviser can help you understand which option best suits your lending structure and long-term plans.

Question 2

I've been named as the executor of a family member's estate. What does that involve and what should I be aware of?

Being named as an executor is a significant responsibility. As executor, you're legally responsible for administering the deceased's estate according to their will. This includes locating and securing assets, notifying relevant institutions, paying debts and taxes, and ultimately distributing what remains to the beneficiaries.

The process can be more involved than many people expect. You may need to apply for a grant of probate through the court, manage ongoing financial matters like super death benefit claims and insurance, and handle any disputes that arise among beneficiaries. Depending on the complexity of the estate, this can take several months or longer.

It's worth knowing that executors can be held personally liable if the estate isn't administered correctly – for example, if debts are overlooked or assets are distributed prematurely. You don't have to do it alone, though. Solicitors, accountants, and financial advisers can support you through the process, helping ensure obligations are met and the estate is settled efficiently and in line with the deceased's wishes.

Question 3

My spouse doesn't work or earns very little. Is there anything I can do to boost their super?

There are a couple of strategies worth considering if your spouse has a low income or isn't working. The first is making a spouse contribution – this is an after-tax contribution you make directly into your spouse's super fund. If your spouse's income is $37,000 or less, you may be eligible for the full tax offset of up to $540. The offset phases out and cuts off entirely at $40,000.

Another option is contribution splitting, where you arrange to transfer a portion of your own concessional (before-tax) contributions into your spouse's super account. This doesn't give you a tax offset, but it helps build your spouse's balance over time, which can be useful for retirement planning and managing the transfer balance cap down the track.

Both strategies are subject to contribution caps and eligibility rules, so it's important to check the details before acting. Your adviser can help you work out which approach suits your household and how it fits within your broader financial plan.

With all these topics, there is no single "right" choice. Your personal situation matters, and you should seek advice from a licensed financial adviser to understand what is most appropriate for you.