



# RetireLaw

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## BUSINESS SUCCESSION PLANNING

RetireLaw was established with the express intention of making available to the wider community the significant long-term benefits of Modern Estate Planning.

RetireLaw usually becomes involved with business owning clients because their **accountant** or **other professional adviser** has recognised that they need expert estate planning advice and documentation.

Working closely with the client's accountant or professional adviser ensures that RetireLaw's experienced Estate Planning lawyers have an accurate picture of the client's business interests, a pre-requisite for incorporating a trust for such interests in their **Modern Estate Planning Wills**.

Such trusts offer considerable advantages to the client's family, and can provide a safety net in the absence of existing business succession strategies.

## DO YOU HAVE A BUSINESS EXIT STRATEGY?

Australian research shows that only a very small minority of business owners have a strategy in place. Typical of such strategies where there are multiple non-family owners are shareholder agreements, or more commonly buy/sell agreements which are usually underpinned by life insurance policies.

However, problems can arise following the untimely death of a business partner where the life cover has not kept pace with the value of the business, leaving the family of the deceased partner under compensated for their share of the business.

## UNDERSTANDING YOUR BUSINESS

Once we have a clear idea of the extent of the business interests, we discuss with the client what they would like to see happen to the business on their death. Working with the client's accountant or professional adviser, we explore a range of options for how the business might be retained for the family's medium to long term benefit.

## THE BUSINESS SUCCESSION TRUST SAFETY NET

A trust is fiduciary relationship whereby an individual, corporation or association (the trustee) holds assets for another party (the beneficiary).

The trustee has the legal authority and duty to make decisions regarding financial matters on behalf of the other beneficiaries of the trust, usually family members.

At RetireLaw we recommend that our Modern Estate Planning Wills include separate testamentary trusts, dealing with private assets such as the family home on the one hand, and dealing with business assets such as companies, trusts, real estate, stock or intellectual property on the other. A testamentary trust is simply a trust created by a person's Will.

RetireLaw recommends that the beneficiary inheriting private assets is the trustee of the trust for such assets. The trustees for the business assets are also appointed by you, and usually includes your executor, normally your spouse or partner, and as well as a professional adviser should your spouse or partner be unfamiliar with the business.

For there to be an effective and readily managed trust in the business owner's Will, special provisions are included in the trust terms embedded in the Will to provide guidance for the executors so as to ensure maximum flexibility and control over the business interests and their future. Testamentary trusts enjoy special advantages under tax legislation.

## WHY HAVE TRUST PROVISIONS?

Often, when a business partner dies, the family of the deceased may not have the knowledge or experience to decide what should happen to the inherited business interest. Even if family members have a sound understanding of the business, they may not be in the best position emotionally to deal with complex decisions about the future of the business that will maximise benefit to the family. In effect, the detailed terms of the testamentary 'business interest' trust allow the trustees to take **time deciding the business's future**.

This may include "grooming" the business for sale over the next year or two, or simply building on the work of the deceased owner to ensure continued benefit from the business to the family over the long term. Such 'business succession' or 'business interest trust' provisions in a modern Will serve two highly useful functions.

Firstly they act as a **safety net** so that the family of the deceased stake-holder will not be disadvantaged if left to deal with a significant business asset that they may be unfamiliar with. This is particularly useful in cases where a buy/sell or shareholder agreement had not been formalised.

Secondly, a well drafted Will with business succession provisions offers a much smoother and financially beneficial transfer of business assets from one generation of the family to another with **no capital gains tax implications**.

Further, such an approach provides significant asset protection opportunities as testamentary trusts are given **privileged status** by the Tax and Bankruptcy legislation and by Family Court practice, effectively shielding business inheritances from the impact of common family occurrences such as divorce, bankruptcy and disability.

## THE RETIRELAW ADVANTAGES

- Protection of inheritances from **unnecessary taxes**
- Protection of inheritances from **divorce settlements**
- Protection of inheritances from **bankruptcy**
- Protection of inheritances from **litigation and disputes**
- Protection provisions for **child or vulnerable beneficiaries**
- Protection from high estate **distribution costs**
- Protection provisions for **inheritance equality** (if desired)
- Protection of business assets via **safety net provisions**
- Protection provisions for **superannuation, assets in trusts and life insurance payouts**

## THE RETIRELAW QUALITY GUARANTEE

Underpinning **RetireLaw's** quality documentation are the best Will precedents available in Australia. The templates are regularly updated to reflect any changes in Federal and State laws that can impact on Wills and Succession law. In addition, the **RetireLaw** quality guarantee extends to notifying clients when they should upgrade their documentation to take into account such changes.

## ENSURING CLIENT AWARENESS

Once the Wills and related documents are signed, we send clients a portfolio containing not only copies of their Estate Planning documents, but also a plain language explanation of each document. The portfolio also includes a detailed guide for executors of the Wills.

## HOW WE CHARGE

It's simple. Our fees are based on a highly competitive sliding scale, with your quote dependent upon the complexity of your particular wishes and asset circumstances.

Once you have met with one of our expert Estate Planning solicitors, an obligation free lump sum quote will be provided for the services and documentation required to ensure that your specific wishes are met, and that your estate is both protected and financially maximised.

## CONTACT RETIRELAW

Call solicitors **Terry Purcell** or **Dawn Wong**

**(02) 8908 9700**

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Email [info@retirelaw.com.au](mailto:info@retirelaw.com.au)

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## THE RETIRELAW PROCESS

After an initial conversation over the phone or via email, a questionnaire will be sent to you or your adviser and a time will be arranged to meet with a **RetireLaw** solicitor.

All initial meetings with **RetireLaw** are obligation free.

At the end of this first meeting a **final lump sum quote** will be provided for you to consider. If you wish to proceed, a second meeting will be then arranged for the Wills to be explained and signed.

## WHAT RETIRELAW CLIENTS RECEIVE

If business assets make up part of your estate, having a business succession plan or safety net integrated into your Will is a prudent course of action.

Once we have clarified and verified which assets you own or control, our expert **RetireLaw** solicitors will provide you with the cutting edge documentation needed to both protect and financially maximise your family and business interests.

The documentation and services supplied by **RetireLaw** for both spouses/partners are listed below:

- **Modern Estate Planning Wills** offering beneficiary controlled testamentary trusts, and including a Business Succession Trust.
- **Enduring Powers of Attorney**, including provisions covering superannuation, with primary and substitute appointees – a must for everyone.
- **Appointments of Enduring Guardian** with primary and substitute appointees – recommended for everyone.
- **Written explanatory material** covering each document category as well as a guide for your executors.
- **Safe custody of clients' Wills**, plus registration with the NSW Registry of Births, Deaths & Marriages.

## Online Estate Planning Presentation

Go to [www.retirelaw.com.au](http://www.retirelaw.com.au)

Watch **The Convenient Truth**, a short online presentation explaining the advantages of modern Estate Planning over simple Wills.