

The buggger went and died on me and...

I DON'T KNOW WHAT TO DO!



GIL GORDON

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*This book is dedicated to my long suffering
wife Angie and business partner Chris,
both of whom tolerate my endless hours of
intellectual tangents and rantings about how
much better things can be done.*

Table of contents

<i>Introduction</i>	7	<i>1. People</i>	28
<i>Who should read this book</i>	8	Story 4: Make sure the divorce paperwork is finalised and be careful of who sleeps in your bed	32
Story 1: A parting gift to her husband and daughters	9	<i>2. Documents and key information</i>	37
Story 2: A life cut tragically short and two lives changed forever	11	<i>3. Legal structures and business entities</i>	40
A Better Story 2½: Estate Planning For Life	14	Story 5: The story of two families and one business	41
<i>What is Estate Planning?</i>	16	A Better Story 5½: A better solution for TillMac	45
<i>Seeking support from good advisers</i>	17	<i>4. Assets</i>	49
<i>First some basics</i>	21	<i>5. Debts</i>	54
<i>The Information That Matters</i>	25	Story 6: I've lost my husband, you can't take my car!	55
Story 3: Who are they and why do they think they have a right to some of Dad's estate?	26		

<i>6. Insurances</i>	58
Story 7: The simplest of things can be a huge burden	59
<i>7. Legal responsibilities</i>	60
Story 8: Executor sued	61
<i>8. Regular bills</i>	64
Story 9: Helen came home from hospital to find no power or telephone	65
<i>9. Medical records</i>	67
Story 10: The Doctors did everything right and nearly killed him	68
<i>10. Online identity/estate</i>	70
<i>Crisis Management Plans</i>	73
<i>Examples of questions your family should ask</i>	74



Introduction

Try to imagine a sudden tragedy in your family.

Imagine you are a husband who has relied on your wife's financial management your entire working life, she has taken care of you and the family since you first married and you have come to rely heavily on her. Perhaps she been diagnosed with a terminal illness or had a major car accident and you now need to step into the role of family financial manager.

Perhaps it is your parent or child that takes ill, needing to spend an extended period in hospital or rehabilitation after a stroke or major accident. So, without notice, you need to step in and take over the financial and medical decision making for your loved one:

- Where do you start?
- What documents do you need?
- What information do you need?
- What questions should you ask?
- Who should you talk to?
- What is important?
- What can wait?
- How long is all this going to take?

By the way, as their Attorney, Executor or Guardian you can be held legally liable for missing something important or making a poor decision.

The Australian Bureau of Statistics (ABS) tells us that \$1,455 billion dollars is owned by people over 65. For practical purposes all of this money/property will change hands in the next 25 years and yet studies have shown that 45% of Australians don't have a will let alone a record of all the things their family will need to know to assume control.

With so much focus on the longevity of baby boomers, the subject of how their wealth will be managed through their dotage and transferred in death, has been largely ignored – it is the elephant in the corner of our society.

The purpose of this book is to provide you with a step by step process to make sure that your own affairs are in order and to guide you through the management of a loved one's affairs.

Who should read this book

This book is written for the average family:

- ✓ **Single people or couples**
- ✓ **Parents of young children or empty-nesters**
- ✓ **Retirees – both self funded and those on government support**
- ✓ **Wage earners**
- ✓ **Small business owners**
- ✓ **Professional families**
- ✓ **Family businesses**

Many couples are happy and co-dependant, running their affairs quite efficiently. However, in my experience most family finances and information are controlled by one person – rarely both. Even the happy co-dependant couples who share responsibility between themselves tend to allow information to be siloed with one individual or another.

This book will provide you with a step by step guide to ensure you are prepared and have missed nothing.



Story 1

A parting gift to her husband and daughters

Simon and Eve had been happily married for 42 years. Both were aged 61 and childhood sweethearts. Eve was a retired nurse and Simon, a truck driver, was only coerced into retirement at the behest of his 3 granddaughters, all aged under 7. Simon was always happy and smiling and let “the womenfolk” take care of the financial matters ...I’m not a paperwork person Gil. Eve looks after me just fine...

At the age of 61 Eve was diagnosed with stage 4, metastatic lung cancer and survived for 9 months. In that time she worked with me to prepare a detailed record of all the Information That Matters so their daughters would be able to look after Simon. We prepared a Crisis Management Plan for the family to follow so that they knew who to talk to, what questions to ask, what was important and what could wait.

All the bills were arranged as direct debits from a specific account and all bank accounts were transferred to joint ownership so that when Eve passed the bank accounts would transfer automatically to Simon without the need for solicitors involvement (simple presentation of the death certificate is all that is required).

Simon had new Power of Attorney and Power of Guardianship documents prepared so his daughters could look after him and his affairs if necessary. Binding death nominations were put in place on Eve’s superannuation to ensure rapid payment of the money to Simon and plenty of money was held in the bank accounts so that Simon would not run short of money.

A family meeting was held with Simon, Eve and their daughters so that everything was understood and everybody knew what documentation and roles were in place and who the key advisers were.

Eve passed away gently a few months later and the family coped well with her passing.

The management of Eve's estate was quite simple requiring only the transfer of the car and house title from joint names to Simon's name. This was done quickly and without

significant expense. Probate was not required since all property and bank accounts were in joint names and binding death nominations were in place on Eve's super.

Simon simply had to sign some property transfer documentation and reinvest the proceeds of Eve's super. The paperwork took a grand total of 15 minutes to complete.

The family mourned the loss of Eve gracefully and in their own time without the constant reminder of complicated paperwork that would have taken months to resolve.

Story 2

A life cut tragically short and two lives changed forever

Dave owned a small electrical contracting company and had around \$40,000 owed to him by clients. Never one to get stressed about things, Dave had no Will or Power of Attorney in place, hadn't lodged personal or corporate tax returns in over 2 years and hadn't lodge a BAS (GST) return in more than 12 months.

Dave owed his father Patrick \$25,000 that had been spent on renovating Dave's house (no written agreement was in place) as well as \$15,000 to suppliers and around \$15,000 in GST. In addition Dave had a \$242,000 mortgage.

Dave had recently met Jane on a cruise whom he had declared to family as "the love of my life". Jane resigned her job on the cruise ship to come and live with Dave seeking work in hospitality onshore as she put it. Three weeks later

on a Sunday afternoon on the local lake, Dave, with a few drinks under his belt, dived off a boat into the water and didn't resurface. It took 12 hours to find his body.

Please let us bury our son!

Patrick and Simone, the parents, were in shock as Dave was a part of their daily life and quite simply was a joy to have as a son. They knew Dave didn't have a will but didn't understand what that meant for them as "default" executors of Dave's estate. A quick call to their financial adviser (me) put them in touch with a lawyer who started the legal process.

Their first task was to bury their son. However the new girlfriend Jane, still in shock, barred their way for several

days "...no, you can't come into our home...we were going to be married!..."

Patrick and Simone were then concerned about whether they were in some sort of family court dispute. All they wanted was clothes in which to bury their son. What were Jane's rights? Did she have a legitimate claim to his house and assets? How were they to handle this when they hadn't even buried Dave yet? Patrick and Simone were forced to seek legal advice about family court matters only two days after they first heard of Dave's death when they were still reeling in shock.

A day or two later Jane relented and allowed Patrick and Simone access to Dave's clothes and he was buried gracefully with a well attended service. Jane, in genuine shock, sought counselling and left Dave's house after a few weeks into the care of her family.

But it had only just begun...

However, the nightmare had only just begun for Patrick and Simone as they sorted through Dave's affairs:

- Without a will to be found, a solicitor had to write to all local law firms and advertise in the media to allow all potential claimants to register an interest.
- With no will ultimately found, Patrick and Simone needed to be appointed, via Letters of Administration, to take control of their son's estate. This meant they were legally responsible for calling in all Dave's assets and paying his debts.
- All banks, creditors and suppliers had to be contacted and individual arrangements negotiated.
- All Dave's business paperwork had to be found, sorted and reviewed before being given to his accountant to prepare the out of date GST and tax returns – both personal and business.
- Personal bills had to be identified and some paid quickly such as funeral expenses, electricity, gas, registration and general insurances just to keep the house and car functional.

- *Superannuation funds had to be contacted and life insurance proceeds claimed.*
- *The house had to be cleaned up after the girlfriend left, some kitchen renovations finished and then the house rented out.*
- *Dave's truck and some tools had to be sold.*

With a lot of help from their financial advisor co-ordinating a raft of genuinely caring accountants, lawyers, creditors, bankers etc the issues were dealt with one by one over an 18 month period. For a while it looked like the Tax Office was going to force Patrick and Simone to sell Dave's home at a firesale value. Luckily an excellent accountant negotiated a good outcome at the last minute.

Had any one of the creditors or banks been difficult then a horrible situation would have turned into a genuine nightmare for Patrick and Simone. As Administrators (i.e. executors) of Dave's estate they were constantly worried that a new creditor would turn up or an existing creditor would turn nasty and they would somehow be dragged into a legal battle or some other fresh hell. The first 6 months were the worst.

Impact on The Parents

All of these matters dragged on for months and months. Every day Dave's paperwork was sitting on the kitchen table – a constant reminder. Both Patrick and Simone suffered from depression and both had to seek professional counselling as their marriage came under extreme pressure. Ultimately the marriage survived as both are genuine people with deep love for each other.

The worst aspect of this entire experience was the fact that Patrick and Simone were never allowed to properly grieve for their son. They couldn't close the book on Dave's life. His affairs remained with them as an open wound for more than 18 months. This was Dave's legacy. Every wonderful memory they had was tainted by the burden they carried for many years after his estate was finalised.

To this day Patrick and Simone bear the scars of the experience but have asked me to tell this story in the hope that others may be spared their pain. Patrick says "...no parent should have to bury a child, but if it must happen let it be done quickly. We barely survived the whole experience Gil; it has been the hardest thing I have ever been through..."

A Better Story **2**^{1/2}

Estate Planning For Life

Patrick and Simone are now passionate advocates of Estate Planning For Life. Patrick and Simone have reminded all their friends and family to get their affairs in order so they too are prepared for unforeseen events..

They would much rather be telling the following version of the story.

Dave unfortunately died tragically but he had a valid will in place and had taken the time to prepare and maintain a document called the Information That Matters (ITM) along with another document called a Crisis Management Plan (CMP). An ITM document lists all the key information and key advisers (accountant, lawyer, banker, financial adviser, life insurance adviser etc) with their contact details.

Dave's parents see they are the executors in the ITM record. They contact his lawyer to obtain a copy of his will. They meet with his girlfriend who reads the will. When she realises she is not named she exits gracefully.

The ITM record lists all personal assets, debts, insurances and liabilities. It also directs them to the accountant and bookkeeper who keep all Dave's business accounts, assets, debts and insurances documented.

The CMP provides a set of questions for the parents to ask of the right people (bank manager, accountant and bookkeeper, financial adviser, insurance adviser etc).

It still takes 4 months for the estate to be processed, the tax returns to be completed and the money dealt with. However for the most part, 1 to 2 weeks of effort sees the

paperwork dealt with and the house cleaned up and prepared for rental.

There is little confusion, a little bit of counselling but relatively quick closure for the parents who can put this tragedy where it belongs and rebuild their lives relatively quickly.



What is Estate Planning?

In the world of men and women in suits (accountants, lawyers and financial advisers), Estate Planning is traditionally defined as:

The right money to the right people at the right time

Patrick and Simone were ultimately the rightful recipients of their son's estate. In their case the right money went to the right people – a little delayed perhaps but the legal system would argue that the time period was reasonable. I would not consider Patrick and Simone's case to be an example of a good outcome.

After more than 20 years as a financial adviser helping families like Patrick and Simone through periods like this I feel the above definition is not good enough.

A better definition of Estate Planning reads as follows:

***The right money;
the right information;
the right documents;
and the right guidance to
the right people at the right time.***

This book will help you prepare your affairs and significantly lessen the burden on your family in times of duress. It is my fervent hope that by investing a few simple hours over a week or two you can ease your family's journey through those most painful and common of experiences – illness or death.



Seeking support from good advisers

I am a professional financial adviser of more than 20 years experience. As a “man in a suit” I have a strong belief in the value of good advice and the support competent professionals provide to our clients. There are many subtleties of finance, business and property ownership that can result in expensive mistakes should they be overlooked. This book does not attempt to identify these issues.

I am a strong believer in Testamentary Trusts as a very good (but not perfect) mechanism to protect your children’s inheritance from financial, legal and marital risks. In a country where more than 50% of our children’s marriages end in divorce and a large number of families have adult children with some form of disability we are now seeing inheritances averaging significant sizes – in my practice we frequently see numbers exceeding \$500,000 per child when the value of parent’s properties are considered. Your advisers should be familiar with the design and operation of Testamentary Trusts.

A good estate planning practitioner will be interested in:

1. Drawing out your family tree showing all relevant members (typically they should ask about the health and circumstances of your children, grandchildren, parents, siblings and business/ investment partners);
2. Your spouse and children and the applicable financial, marital and health circumstances
3. The relationships between your children and their ability to work together to help you and each other in the event of death and disability
4. A description of your major assets and their physical location (e.g. out of state or country property)
5. Any legal entities you have an interest in such as Self Managed Superannuation Funds;
6. Any jointly owned assets or business partnerships you may have and your preferences for the handling of applicable assets in the event of your death/disability;

If your adviser/accountant/lawyer fails to ask about these things and then discuss options relating to how to manage these issues then I would suggest you seek the services of a more experienced practitioner.

Many of Australia's best professional advisers are consulting with me to implement a formalised Estate Planning For Life™ service within their own practices. They recognise the need for the service and are confident in the value it brings their clients. Estate Planning For Life™ is also the name of software designed to fully explore and document the estate and estate planning needs of all Australians. This book is based on some of the key deliverables produced by this software.

I also strongly advocate that you speak with your accountant, lawyer or financial advisers about Family Succession and Estate Planning on a regular basis (say every second year at a minimum). If this is not part of your regular discussions with your advisers then you should raise the matter with them as a priority.

But how do you identify a good financial adviser?

Search online or ask your friends but at the first contact with a new adviser ask them these simple questions:

1. Are you a fee for service advice practice?
2. How many years have you been in business?
3. When was the last time you assisted a client's family through the loss of a key loved one?

Trust your instinct when interviewing advisers. Are they more interested in you and your family or the professional "product" they are selling? The best advisers understand that **people and families** are at the centre of their advice and the investments, tax advice and legal documents they provide, whilst necessary, only make sense in the human context.

How do you identify a good lawyer/solicitor

Lawyers and solicitors (I don't really understand the difference either!) play a critical role in the production of the estate planning instruments (Wills, Powers of Attorney, Powers of Enduring Guardianship, Shareholder Agreements etc). Unfortunately there are not many lawyers in Australia that have sought the specialist Estate Planning accreditation and I am told it is not even a mandatory subject in some law degrees. Apparently the average Australian law degree contains less than 8 hours lecture time on this subject. However, there are many excellent practitioners all over the country who have taken the time to develop the necessary skills to help you – the difficulty lies in finding them!

If you are interviewing a lawyer for the first time I would suggest you ask the following questions before engaging their services:

1. How many years have you been preparing complex wills for your clients?
2. What is your process for identifying the estate planning needs of your clients? (they should follow the steps above)

3. How often do you prepare wills with protective trusts?

4. What is the cost of your typical will?

(if it is free with a property purchase/sale or a few hundred dollars you should question the quality of the document produced).

5. Where do you find your legal precedents and how often do you update your estate planning precedents?

(this last question relates to where the lawyers find all the paragraphs that they put in the legal documents – the bad firms just trot out the same old will, change the names and charge you for the work. The good firms constantly review their bank of precedents or subscribe to a regularly updated legal precedent database)

The following links may be useful if you are seeking the support of practitioners with experience.

Organisation	Website	What to select
Financial Advisers¹	fpa.com.au/find-a-planner	Select "Certified Financial Planner CFP". If you are lucky you may find an adviser in your area that is an accredited Estate Planning Specialist (AEPS). Unfortunately there are only around 50 AEPS's throughout Australia.
NSW Lawyers	www.lawsociety.com.au/community/findingalawyer/SpecialistAccreditationScheme/index.htm	Select "Wills & Estates law"
QLD Lawyers	services.qls.com.au/MBR/Find_Legal_Services/Accredited_Specialist/Member/FindLegalServices/AccreditedSpecialist.aspx	Select "Succession Law" as a specialty
Victorian Lawyers	www.liv.asn.au/Specialists	Choose "Wills and Estates"
South Australian Lawyers	www.lawsocietysa.asn.au/LSSA/Community/Legal_Referral_Service_Portal.aspx	Choose "Wills/Probates/Estates/Pwr Attorney/Inheritance"
Tasmanian Lawyers	members.lst.org.au/members/search/organisations/	Select Wills and Estates from the Areas of Practice box
ACT Lawyers	www.actlawsociety.asn.au/law-firms-directory	Choose Find a Firm tab and then select "Wills/Probate and Estate Law"
NT Lawyers	lawsocietynt.asn.au/index.php/For-the-Community/legal-referral-service.html	

¹ Note that the other main financial planning bodies in Australia (the Association of Financial Advisers (AFA) and CPA Australia) do not have specialist training and accreditation programmes in Estate Planning. Whilst there are many fine practitioners in these organisations their websites are unable to direct you to someone with specific skills in this area. Likewise a review of the accounting organisations couldn't direct me to Estate Planning specialists hence they are not shown on the above list.

First some basics

Estate Principals

I use the term Estate Principals to describe the core client(s) – this can apply to Mum and Dad, Dad and Dad or Mum and Mum, or just Mum or simply Dad (just to be clear I am talking about same sex and opposite sex relationships).

What things can go wrong

(and the documents you need to have in place)

There are four major Estate Events that affect the lives of ordinary people:

1. Temporary Illness
2. Permanent Disability
3. Terminal Illness
4. Death

Illness and Disability normally require a document called a **Power of Attorney** to manage. In some states this document empowers the holder to make financial, medical and lifestyle decisions. In other states the Power

of Attorney applies only to financial matters and a second document called a **Power of Enduring Guardianship** is required for medical and lifestyle decisions.

A **Will** normally only has legal authority once the will maker has died. Prior to that it has little significance.

What if these documents don't exist?

If the Estate Principals take ill or die without these documents in place the family can **apply through a lawyer** to be granted (by the court or the appropriate state government authority) with:

- ✓ An Enduring Power of Attorney and/or a Power of Enduring Guardianship to manage through illness and disability; and
- ✓ Letters of Administration to act as Administrator of the Estate. That is, they effectively become the executor.

Gaining these documents is not simple but as Patrick and Simone's story (story 2) shows, applying for Letters of Administration was the least of the hurdles they faced.

If there is no will (or a valid will cannot be found) then the law considers the deceased person as having died Intestate – which simply means “without a will”. Each state has different laws² that define who is entitled to receive what money from your estate. Basically the money will pass to your spouse, children and then extended family. If no family can be found it will ultimately pass to The Crown (State Government) but this is normally quite unlikely.

OK, I have the Power of Attorney document now what?

Anyone acting with **Power of Attorney** (PoA) or acting as Guardian has a legal responsibility to act in the best interest of the Estate Principal and failure to do so can mean you could face a heavy legal penalty. As an example the person holding Power of Attorney is not allowed to use the Estate Principal's money to provide:

- food and support for the spouse of the disabled person
- regular gifts to family of the disabled person
- any benefit that serves another person's interest

unless that power is specifically authorised in the PoA document.

The PoA grants personal power to act to the “attorney”, it does not automatically grant the attorney the right to sign on behalf of the grantor in matters related to trusts, companies and other positions of authority. A common example where problems occur would be a smaller family company where one person acts as director and the spouse (incorrectly) assumes the PoA document would enable them to sign company documents on their spouse's behalf if needed. The issue can normally be resolved by accountants and lawyers only after significant time, cost and complexity.

2 Each state has quite specific laws describing how the estate of the deceased must be allocated. I suggest you Google “intestacy laws” with your state or country name.

OK, I am the Executor now what?

If you are acting as the **Executor³ or Administrator** of an estate then you have a heavy legal obligation⁴. You should:

1. Locate the latest will of the deceased;
2. Select a lawyer or organisation (such as the State Trustee and Guardian) to work with and establish quickly your right to act as Executor or Administrator as very little can be done before this is established;
3. Make sure employers and government agencies are properly advised of the passing of the deceased;
4. Meet with the beneficiaries, listen to them and discuss how you plan to proceed;
5. Prepare a written list of assets and debts of the deceased, including an estimate of their value;

6. Seek Probate⁵ and place advertisements online or in a newspaper to alert creditors and beneficiaries;
7. Take legal control of assets and debts. To do this you will need to present:
 - the death notice,
 - a certified copy of the will, and
 - your identity documents (drivers licence etc)
8. Decide how to manage assets of the estate;
9. Pay all funeral costs, taxes, debts etc;
10. Distribute remaining assets of the estate to the beneficiaries as per the will;
11. Make sure you keep a clear paper trail of every step.

Typically this process will take no less than 6 months. There is a generally accepted principal known as the Executor's Year which means the legal system and tax office will be patient for 12 months before questioning the actions of the executors.

³ The correct legal term is Legal Personal Representative or LPR, a male LPR is known as an Executor, a female LPR used to be known as an Executrix. In today's world of gender neutrality and for simplicity I use the word Executor to apply to both men and women.

⁴ Refer to www.tag.nsw.gov.au/executor-cautions.html for a good basic summary

⁵ Probate is a Latin term meaning "proving" of the will and is granted by the supreme court of your state hence the need for legal assistance. It is not always required but as an example the banks will typically require probate if bank account balances of the deceased exceed \$20,000. Legal fees for gaining of Probate are fixed by the Law Society of each state or territory, they are not normally negotiable and can grow dramatically in exceptional circumstances.

Unfortunately the Executor's Year principal does not typically apply to mortgages or documented debts. The executor will usually need to make arrangements with the credit providers within a matter of weeks.

It is not uncommon for families to fight over the estate of their loved ones and things are said and done that can cause permanent damage to relationships. Managing the politics of the family is never easy but I do recommend the executor take the following actions:

1. Take a video recording of the contents and personal possessions in any house left vacant as a result of the passing of the Estate Principal;
2. Make sure any vehicles or property owned by the deceased that may be used by family members are properly insured;
3. Call a family meeting and give everyone a right to speak and make public any matters they feel need to be considered, e.g. undocumented loans, promised gifts or rights to live in houses etc;
4. If the family is going to fight, make it clear you are taking legal advice (or if possible ask the lawyer to attend the meeting);

5. If necessary change the locks on the deceased's house to prevent unauthorised access and if challenged say you have done this under legal advice;
6. Do not allow family members to bully you into releasing assets or information before you are ready to do so. Generally the only entitlement that beneficiaries have is the right to a copy of the will, they have no rights to control assets or receive money until the executor is satisfied that it is "safe" to release such assets.

Simply possessing the legal authority to act without the Information That Matters (ITM) means that the Executor or Attorney can have a long and stressful road in front of them. What follows is a guide to assist you in making sure the ITM is properly documented.



The Information That Matters

If you become disabled or pass away then your family will need to attend to:

1. People
2. Documents and key information
3. Legal structures and business entities
4. Assets
5. Debts
6. Insurances
7. Legal responsibilities
8. Bills
9. Medical records
10. Online identity/estate

The pages that follow will show you what you need to document to ensure that your family can proceed with the management of your affairs.

Story 3

Who are they and why do they think they have a right to some of Dad's estate?

John was a 60 year old merchant seaman, he had spent years working away from home on various ships having joined the navy as a young man. He had 2 adult children from a prior marriage and had been living happily with Yvonne for the last 15 years when she was diagnosed with terminal lung cancer and died within 12 months of the diagnosis.

John had around \$450,000 in superannuation and a military pension, Yvonne owned the house they lived in on the Northern beaches of Sydney.

John and Yvonne had prepared wills on their own using the Legal Will Kit which meant John inherited Yvonne's house but passed that house to Yvonne's two adult sons in his will, leaving his superannuation to his two daughters.

Always one to enjoy a beer, John started to drink much

more after losing Yvonne and was tragically killed in a car accident less than 18 months after her death.

John's daughters Cherylanne and Sienna were the named executors in his will and they approached a local law firm to help with managing the estate. Yvonne's sons (Luke and Joel) were not close to Cherylanne and Sienna but the girls intended to honour their father's will and pass the property (worth well over \$1,500,000) to them without problem.

"What do you mean Dad has another daughter?..."

Sienna received a letter a few weeks after John's death from the solicitor which informed her that contact had been made from two women from Port Kembla, south of Sydney, claiming to be John's ex wife and daughter. John's brother Ken confirmed who they were. As a young sailor John had

got a girl pregnant and married her, the marriage only lasted 18 months but for a few years John had sent them money. John had largely ignored them for 30 years, certainly never discussing them with his new families.

Now things were going to be difficult. As an ex spouse and legal child of John the women had a genuine right to be considered as beneficiaries of his will. They had both been financially dependant on John, had lived under his roof and for a period of years had received ongoing financial support. This meant that they had a strong likelihood of a successful outcome in court. The solicitor informed them that legal fees associated with disputed estates can not only become horrendous but if the claimants are genuine then the estate will normally bear the legal costs of both sides of the dispute.

Cherylanne and Sienna now had to explain to Luke and Joel that their father's past was going to be a problem. The girls had mixed emotions because they were very close and the thought of a third sister was attractive to them.

After a few months the matter was settled out of court with John's first wife receiving a 6 figure settlement. John's first daughter ultimately received very little and was more interested in forming a relationship with her lost sisters.

Luke and Joel said some unkind things and the relationship with Cherylanne and Sienna never recovered.

The great irony of this story is that Yvonne could easily have protected her son's inheritance from legal challenge by asking a solicitor to create a will with a life tenancy arrangement over the house rather than pass it directly to John. As they say, legal advice can be very expensive ... especially if you don't pay for it!





1 | People

There is a lot of information required about legally significant people when managing the affairs of someone you care or cared for. The absence of this information can result in confusion and delays that can be costly.

Basic information

For every Estate Principal or dependant family member you should record the following:

- ✓ First name
- ✓ Middle name(s)
- ✓ Family name
- ✓ Date of birth
- ✓ Prior names
- ✓ Current countries of citizenship
- ✓ Email address
- ✓ Phone number(s)
- ✓ Home and Mailing Address

Nuclear family and other dependants

Traditionally a Nuclear Family was a normal family unit, ie parents and their children. Today it can include:

- Spouses,
- children,
- ex-spouses,
- financially dependent relatives such as parents, grand children, live in girlfriends (see next section) etc.

When you pass away details of these people are normally required by the Advisers who help you with the will, superannuation, life insurances etc.

For Dependants and Nuclear Family you should record the Basic Information and also:

- ✓ The relationship of each person to estate principals
- ✓ Nature of financial dependency if not spouse or child

Legally key relationships and documents

In a time where blended families or second marriages are far more common it is important that documentation of current relationships exists and legal separation or divorce for prior relationships is provable. Failure to possess the correct documents at a time of crisis can expose the family to significant legal stress. You will need:

- ✓ Basic information of all prior spouses
- ✓ Place and date of marriage or date of commencement of current and prior significant defacto relationships
- ✓ Basic information of any step children that have lived “under your roof”
- ✓ Copies of Binding Financial Agreements (BFA – this is the Australian term for “pre-nuptial agreement”)

- ✓ Date of separation and/or date and court where divorce was registered
- ✓ Location of originals or copies of all court paperwork
- ✓ Quality of relationship (e.g. amicable, distant, acrimonious etc)
- ✓ Other relevant information about the relationship

The Girlfriend Law – Really?

In 2006 the law changed in NSW to introduce the notion that a Financial Dependant can make a legal claim against the estate of a deceased person. This was discussed widely in the media as the “Girlfriend Law” wherein someone who had had a long term relationship (typically but not always sexual) which included financial support could register a Family Provision Claim if they felt that they had not been appropriately considered in a will.

While somewhat titillating, the following example clearly illustrates how this law has added to the complexity of family law and estate planning in NSW.

(www.smh.com.au/federal-politics/society-and-culture/even-lust-loses-in-this-story-of-dirt-20111002-1l3rj.html)

However the principal extends further to include:

- Grandchildren who have received sustained financial support from grandparents, such as school fees
- Parents living in a “granny” or “poppy” flat behind the house of the deceased
- On again or off again sexual partners who may have provided financial or physical contributions to the household over a period of years

Therefore you should also document:

- ✓ Basic Information for any person(s) with whom you have held a long term relationship where a pattern of financial support exists;
- ✓ A description of the financial support provided, e.g. amounts, timeframes, agreements etc



The bugger went and died on me and... I DON'T KNOW WHAT TO DO

Story 4

Make sure the divorce paperwork is finalised and be careful of who sleeps in your bed

The story

Susan had not had an easy life. Married early to an unpleasant man she had divorced with two young children and worked as a bookkeeper and administration manager most of her life. Her daughter committed suicide 10 years earlier and left Susan to raise a young boy who was now a brooding 15 year old. Her son was unemployed and still living at home in his mid 30's with a marijuana problem.

Susan's on again off again boyfriend Phil was a great help around the house, taking care of the yard maintenance and doing various "man jobs". Phil was receiving a single person's Newstart Allowance and listed his address as his mother's home several km away.

Despite her difficulties, Susan had paid the house off, built

up a reasonable amount in super and had been looking forward to easing into retirement in a few years when she turned age pension age.

Susan was introduced to me having been diagnosed with stage 4 lung cancer caused by smoking her entire life. She had no will, no powers of attorney and wanted to "get my affairs in order while I can...".

A new will was prepared creating a trust for the teenage grandson, and an instruction to the executors to retain the house in trust for 6 years so that the son and grandson had somewhere to live. Everything was to be split equally between the son and grandson so a binding death nomination was established on Susan's super directing payment to her estate.

The problem

She passed shortly after these documents were put in place. Then the problems began, not for Susan but for her executor – her sister Irene.

Susan had been living with Phil on and off for several years and he felt he was entitled to a share of the house from the estate “...for looking after it, y’know I put a lot of effort in...”. In all states of Australia spouses have a right to challenge the will if they feel they have been unfairly provided for. This is an example of The Girlfriend Law operating as “the Boyfriend Law”.

But the plot thickens, property searches showed that Susan did not in fact own the house, it was still in her ex husband’s name 25 years after their divorce. Susan had not noticed his name on the Valuer General statement and the local council had accepted her at face value and changed the rates notices. The bank had changed the names on mortgage paperwork but not bothered to tell her that she was not the owner of the property.

Susan and her ex-husband had never finalised the divorce paperwork and transferred the property to Susan’s name. The law firm that assisted during the divorce was quite derelict in their duties, had not followed the issue up and in any event were no longer in business. Nonetheless pointing the finger would not solve the problems confronting the executor Irene.

The Solution

Despite Phil possibly having the right to make a Family Provision Claim against the estate it was pointed out that pursuit of his claim might result in Centrelink fraud charges being brought against him. Ultimately Phil weighed up the possible windfall from the estate against criminal fraud charges and he dropped his claim.

In this case it was lucky that the ex husband could be coerced into behaving with some ethics however this is extremely unlikely in most cases with a difficult settlement and legal fees being the normal outcome.

Extended Family

Less significant legally, but highly important emotionally, are the following people

- ✓ Parents
- ✓ Siblings
- ✓ Cousins
- ✓ Grandchildren
- ✓ Aunts, Uncles, Nieces and Nephews

Legally Significant Non Family

- ✓ Executors and backup⁶
- ✓ Power of Attorney holder and backup
- ✓ Power of Guardian holder and backup
- ✓ Business partner or fellow directors of trusts or companies you have an interest in[#]

Note that business relationships and the documentation of those are discussed on page 20.

⁶ It is not legally necessary to appoint backup or alternate executors, attorney's or guardians. These people typically have no rights unless the primary person is unwilling or unable to fulfil their role. As an example, in NSW if your sole executor dies without a backup being discussed in your will then the deceased's executor will become your executor – this may not be what you want to happen. I therefore consider it good practice to ensure that there are backup appointments made for all major estate planning roles.

Socially Significant Network

- ✓ Close friends
- ✓ Family Priest
- ✓ Old school or university friends
- ✓ Former work colleagues
- ✓ Community groups you belong to

Advisers and Professionally Associated People

- ✓ Doctors – GP and any treating specialists
- ✓ Work and professional colleagues
- ✓ Accountant
- ✓ Solicitor
- ✓ Financial Adviser
- ✓ Life Insurance Adviser
- ✓ Bank Manager
- ✓ Real Estate/Property Agent
- ✓ Clubs and associations
- ✓ Professional affiliations and memberships

To ensure your family can contact all these people you should record:

- ✓ Basic Information excluding date of birth and citizenship; plus
- ✓ Description of their relationship to you;
- ✓ Organisation/company they are associated with (if any);
- ✓ Other relevant information



2 | *Documents and key information*



It doesn't matter whether you like it or not, should crisis strike you or your family there will be paperwork that will need to be found and forms to be completed.

The Most Common Documents That Your Family Will Need to Find

- ✓ Will/s
- ✓ Power/s of Attorney
- ✓ Enduring Guardianship/s
- ✓ Birth certificate/s
- ✓ Marriage certificate/s
- ✓ Title deeds to the family home
- ✓ Divorce decree/s
- ✓ Passport/s
- ✓ Driver's licence/s

- ✓ Title deeds to properties
- ✓ Medicare or DVA Gold card/s
- ✓ Centrelink or DVA card/s
- ✓ Private health care details

Storing copies of these documents is also good advice for anyone travelling. We recommend all clients retain a copy with their children or via an online email account or in cloud storage such as with Apple's iCloud, Google Drive or Dropbox.

We also recommend storing Certified Copies of these documents away from your home – typically with your children, bank or trusted advisers.

Key information that your family will be needing

The following information **will** be required by your Executors or Attorneys when they manage your affairs:

- ✓ Country, City and Date of Birth
- ✓ Birth Certificate
- ✓ Passports/citizenship held
- ✓ Passport number, place of issue, date of issue, date of expiry
- ✓ Drivers licence, state of issue, licence number and date of expiry
- ✓ Tax file number
- ✓ Centrelink or DVA number
- ✓ Medicare or DVA Gold Card Number

Certified copies will do

A certified copy of a document is sufficient for most (if not all) legal purposes. This means that you can keep original documents in a safe place. A copy can be “certified” by many people, the most accessible are:

- An officer of the court
- A Justice of the Peace (JP)
- A bank officer (of more than 2 years experience)
- A Post Office employee
- A solicitor
- Most accountants
- A financial advisers (of more than 2 years experience)
- Most medical professionals – doctor, nurse, pharmacists, dentists etc
- A police officer
- Most people working in law offices
- A Minister of Religion or Marriage Celebrant

Many others – please see the following link:

www.mediasuper.com.au/super-combine-your-super/who-can-certify-your-id-documents

Funeral and final instructions

It is stressful enough burying a loved one so if you have any preferences (or not) it is helpful to record them for your family:

- ✓ Buried or cremated? If so where?
- ✓ Preferred publications/newspapers for the placement of funeral notices?
- ✓ Preferred church/location /celebrant for funeral service
- ✓ Preferred music and readings for the service
- ✓ Other preferences (flowers, preferred charities or organisations to be included in ceremony etc)
- ✓ Sentimental Items – typically jewellery, paintings or grandad's medals. It is normal and wise to leave a letter outlining your preferences for who receives what items.

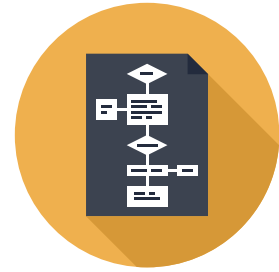
Insurance record for your family home

To assist in fire and theft claims all insurance companies request that their policy holders keep a list of specific valuable items such as cameras, TV's, jewellery or furniture and clothing. This can take the form of:

- ✓ Copy of receipts
- ✓ Copy of the user manual
- ✓ Photographic evidence of the item in your home

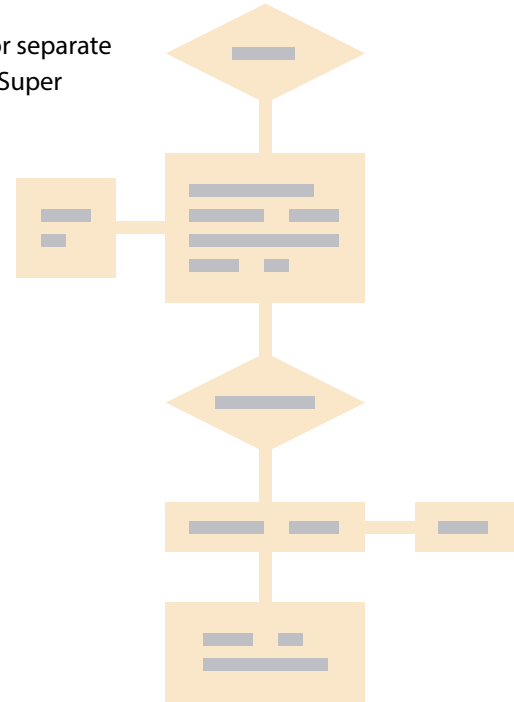
In practice most people don't keep this record so we provide our clients with a high definition video camera to record the contents of their family home. Typically the home can be videoed in 45 to 60 minutes and stored on a 1 GB USB Thumb Drive or DVD and a copy stored off site.

3 | *Legal structures and business entities*



It is quite common for Australians to have some form of legal structure or separate legal entity associated with their affairs, e.g. Businesses, Self Managed Super Funds, Trusts, Trustee Companies etc.

It is quite important that these be properly documented.



Story 5

The story of two families and one business

John Tillman and Greg Macintyre owned TillMac Mining Services, a successful Australian company selling machinery and equipment to the mining industry in the Hunter Valley of NSW. In a few years TillMac had grown from zero to several million dollars turnover with 45 staff. Greg was the salesman and the networker. His relationships kept the business healthy and growing but he relied on John to keep the business working and the back office and workshop functioning smoothly. The shares of the company were owned by John and Greg's respective family trusts which were managed by the same accountant. The accountant valued the business at more than \$1,500,000 on the open market.

John's story

Over the Christmas holidays John developed abdominal pain and was taken to hospital. One week later he was diagnosed with late stage pancreatic cancer with a very poor prognosis – he had 3 to 6 months to live.

John simply didn't go back to work and died 5 months after Christmas.

Greg's story

Without John running the business and workshop Greg had to spend a lot less time on the road and more time in the office. It took a few weeks to notice but without Greg generating sales, business began to slow. Greg kept paying John's salary and car lease however the company had debts and cashflow pressure was becoming an issue.

Acting with her Power of Attorney, a few weeks before his death, John's wife Pam signed some bank paperwork relating to the company overdraft. Greg was stunned to be contacted by the bank and told that Pam's signature was invalid as she was not a director of the company. A quick phone call to the accountant confirmed that the Power of Attorney did not mean Pam could sign for John on company matters. And now aware of John's failing health, the bank asked for a meeting with Greg to "discuss their facilities". Greg was now quite nervous as TillMac relied on bank overdraft funding secured against outstanding invoices.

Greg grew increasingly worried as he couldn't find a workshop manager with John's skills while client orders declined and complaints grew. The business was struggling without John and Greg in their normal roles.

The company continued to pay John's salary and car lease even though Greg had commenced laying off staff due to the drop in sales. Greg was about to ask Pam if she could manage without John's salary when he died.

Six weeks before John's death Pam asked Greg to arrange for John's share of the TillMac business to be sold "...as soon as you can...please..." so she could focus on caring for John

and later her children after John died. John had told her that their share of the business was worth \$750,000 and the accountant had also reminded Pam that the company owed John and Pam \$150,000 which had been loaned to the business at the beginning.

*A week or two later Greg met with the accountant and looked over the financials for the first time since John's illness. With the sudden drop in profit in the business and no cash in the bank, the accountant told Greg that John's share was no longer worth \$750,000. A generous offer would be \$250,000 **assuming** Greg could borrow the money from the bank. Greg didn't have the money to repay John's \$150,000 loan let alone buy back his share of the business.*

Mercifully Pam didn't force the issue and nodded along when they met to discuss the business. Greg was quite uncomfortable when Pam's lawyer raised the issue of her being appointed director in John's place. He could feel Pam's distrust and wished his accountant had been proactive in addressing company succession plans at the beginning.

6 weeks after John's death Greg was forced to tell Pam the bad news about the value of the company. Several tense and unpleasant months passed before Greg borrowed

\$300,000 against his home and paid this in exchange for John's shares and debt - \$600,000 less than the Tillman Family Trust was expecting.

The business did survive, but only just, and it took Greg more than 10 years to repay the additional debt he took on from John's death

Pam's story

John's wife Pam had never taken a role in their business or running of the family trust leaving it to John and the accountant.

Her world was turned upside down when John was diagnosed with cancer. However John's salary was still coming in from the business and she was able to focus on caring for John and the children.

Three months after diagnosis Pam and her father met with the accountant who confirmed what John had told her. The Tillman family share of the company was worth \$750,000 plus a \$150,000 loan from John and Pam, totalling \$900,000. At the behest of her father Pam contacted Greg and asked for the family's share of the business to be sold and the loan repaid.

In the last weeks of John's life Pam simply survived, living with the support of her parents she faced each day as best she could. Pam resisted multiple attempts by the accountant and financial adviser to meet with her to discuss tax returns, superannuation and insurance claims.

As John's illness progressed Pam grew worried, "...Greg seems very tired and doesn't want to talk about money... something feels weird..." she told her father. Weeks would pass without contact from Greg and Pam got nervous. She had some money coming from John's super but with the kids in private school she knew it wouldn't last more than a year or two. She needed that \$900,000 and felt that Greg was hiding something.

By now quite nervous Pam asked her lawyer to fix things so she could "...sign for John at work...". This required a lot of paperwork to be prepared which Greg seemed nervous about and Pam didn't understand. Pam didn't understand the financial world and several meetings with Greg and the accountant did not make things clearer. She felt that the accountant agreed with Greg too readily and her lack of understanding of the figures meant that her trust in both Greg and the accountant was eroded very quickly.

Her concerns were confirmed when Greg told her that all he could offer her was \$300,000 not the \$900,000 she was expecting. The accountant “suddenly” changed his valuation of Tillman shares from \$750,000 to \$150,000 and Pam was forced to accept the money or take nothing. To add insult to injury Pam had to pay a \$25,000 capital gains tax bill on the money she did receive.

Less than 12 months after her husband died Pam was forced to downsize her family home and take the kids out of Private School. Everything was different, she felt abandoned and cheated by people she had trusted completely. The Tillman and Macintyre families, despite once being very close, never spoke again.

A Better Story 5^{1/2}

A better solution for TillMac

12 months before John took ill, both he and Greg were referred by their accountant to an Estate and Business Succession Planning Specialist who critically examined how their business would be affected by exit of the shareholders either via choice or medical necessity. The specialist put in place a range of measures including:

- ✓ A voluntary exit plan with shareholder agreements and financing arrangements so either Greg or John could retire and sell their share of the business
- ✓ An emergency exit plan with shareholder agreements where medical necessity (such as happened to John) would trigger life insurance policies to enable the partners to exit and receive fair compensation for their share of the business
- ✓ A staff training and development plan to ensure that business wasn't dependant on any single person

- ✓ Company key man insurance policies to protect company cashflow should medical crisis strike
- ✓ Proper documentation of key family and business information so that the families and business had a record of what they needed to know
- ✓ A properly documented Crisis Management Plan for each family and the business to guide them through both Personal and Company issues
- ✓ A regular review process to ensure information, crisis plans and financial measures are up to date.

All the above would have meant that with John's illness:

- ✓ John's family would have both the Information That Matters and a Crisis Management Plan to guide them

- ✓ John's family would have a quick and fair financial payout for their share of the business
- ✓ Greg and the business could employ someone in John's role and the business would remain healthy and profitable
- ✓ The bank would not become nervous about the company's financial status
- ✓ Pam would be better able to cope with the loss of her husband and grieve appropriately and feel she had the support of Greg all through the process

- ✓ The relationship between Greg and John's families would remain intact

Unfortunately there are too many stories like TillMac and far too few that address the issue proactively.

Structures and business

In a legal sense a **Structure** is a separate legal **Entity** with a unique **Tax File Number** and/or **Australian Business Number** – both these numbers come from the Australian Tax Office.

Structures exist for many reasons, the most common being:

1. To operate businesses
2. To own assets or share ownership of assets between parties
3. To separate assets from personal or business risks
4. Taxation reasons

A well run business will operate independently of the family that ultimately owns it and typically via some form of structure.

The most common types of structures seen in Australia include:

- Companies
- Unit Trusts

- Sole Trader Businesses
- Partnerships
- Family Trusts
- Self Managed Super Funds
- Joint Ventures

What do you need to know?

At a minimum this must include:

- ✓ Legal name of structure
- ✓ Controllers: e.g. trustees, directors, partners
- ✓ Your percentage share of the structure and who owns it
- ✓ Main purpose of this structure
- ✓ Assets of the structure
- ✓ Debt amounts, account numbers and bank or institution involved
- ✓ Personal guarantees made – these are legally binding on your estate

- ✓ Location of establishment and operating documents, e.g. Trust Deed, Company Constitution, Partnership Agreements
- ✓ Location of financial statements, tax returns and other documents:
- ✓ Identifying numbers such as Tax File Number (TFN), Australian Company Number (ACN), Australian Business Number (ABN), Super Fund Number (SFN)
- ✓ Advisers to call, e.g. accountant, financial adviser, business partner

When Things Go Wrong

There are several critical things to consider when illness or death strikes to ensure your interest in these legal structures is protected or passes fairly to your family.

These include:

- ✓ Control – who runs the show if you are not able?
- ✓ Obligations – who fulfils the legal obligations (e.g. tax returns or bank documents) and what penalties apply if they are ignored?

- ✓ Assets – who manages the valuable assets of the entity?
- ✓ Debts and liabilities – do debts exist? Who pays them, for how long and what happens if they are not paid?
- ✓ Employees – who is supervising staff and meeting obligations to them?
- ✓ Reporting – what government forms and reporting obligations exist with this structure
- ✓ Shareholder or partnership written agreements that describe how affairs are handled in crises
- ✓ Life insurance (or similar) policies to fund a “buy out” of your share of the business
- ✓ Personal Guarantees and business risks – who is liable if things go wrong at work?
- ✓ Business documents – do you have a copy of key documents and contracts, e.g. shareholder agreements?

4 | Assets



In Australia there are many types of assets, the most common being:

1. Retirement and Superannuation Products

- a.* Australian superannuation funds
- b.* Account based pensions
- c.* Australian annuities
- d.* Government superannuation pensions
- e.* Overseas pension
- f.* Entitlement to a future overseas pensions

2. Regular Investment Products

- a.* Bank, building society or credit union accounts
- b.* Shares and other securities sold by stock brokers
- c.* Government and corporate bonds
- d.* Managed funds

3. Bonds and Tax Paid Investments

- a.* Aged care bonds
- b.* Insurance bonds, education bonds and funeral bonds

4. Property or Real Estate Assets

- a.* Real property – investment and family home
- b.* Funeral plots
- c.* Aged care facilities

5. Non Property Assets

- a.* Goods and chattels such as jewellery, tools, wine collection, memorabilia or granddad's medals
- b.* Safety deposit box or secure storage facilities:
- c.* Motor vehicles, boats or caravans etc

6. Intangible Assets

- a.* Operating and usage leases over sites/property
- b.* Licences such as liquor, taxi or gambling licences
- c.* Government rights such as mining or water rights
- d.* Contractual rights
- e.* Royalties – such as music or books
- f.* Intellectual property for ideas such as copyrights, trademarks, patents and computer programs

7. Debts and Loans

- a.* Unsecured loans – typically to family and close friends
- b.* Secured loans – with a registered interest over specific assets

Key data and documents to store for each type of asset is as follows:

Asset Type	Key Information Required	Documents to Store/Copy
Retirement and Superannuation Products	<ul style="list-style-type: none"> ✓ Super Fund/Company Name ✓ Policy Number ✓ Owner ✓ Death Benefit Nomination ✓ Future personal contributions req'd to maximise a pension value? ✓ Is pension payable to partner/children on death of owner? ✓ Adviser/organisation to call for help 	<ul style="list-style-type: none"> ✓ Annual statements
Regular Investment Products	<ul style="list-style-type: none"> ✓ Institution/provider ✓ Account Number ✓ Owner ✓ Value/number of shares/units ✓ Where is the capital gains tax history ✓ Debt details associated with this investment. ✓ Adviser to call for help 	<ul style="list-style-type: none"> ✓ Annual statements ✓ Capital gains tax and/or contributions history
Insurance, Education and Funeral Bonds (Tax Paid Investments)	<ul style="list-style-type: none"> ✓ Institution/provider ✓ Account Number ✓ Owner ✓ Approximate value of bond ✓ Adviser to call 	<ul style="list-style-type: none"> ✓ Original policy documents ✓ Annual statements

Property and Real Estate	<ul style="list-style-type: none"> ✓ Property description ✓ Address or Membership number ✓ Owner(s) ✓ Type of Ownership (joint or tenants in common) ✓ Rental income expected ✓ Location of key ✓ Location of capital gains tax records ✓ Insurance policy details ✓ Estimated value ✓ Associated debt details (bank, amount, repayments) ✓ Contact details of managing agent ✓ Location of lease/documentation ✓ Adviser to call 	<ul style="list-style-type: none"> ✓ Purchase contract ✓ Title deed (if held) ✓ Detailed tax returns showing depreciation schedule etc ✓ Summary of expenditure on property ✓ Mortgage documents
Non Property Assets	<ul style="list-style-type: none"> ✓ Item description ✓ Identification Numbers ✓ Owner(s) ✓ Location ✓ Promised to family member? ✓ Managing organisation ✓ Ongoing costs/payments ✓ Approximate value ✓ Insurance policy details ✓ Location of capital gains tax records ✓ Adviser to call for help 	<ul style="list-style-type: none"> ✓ Purchase records ✓ Policy document or similar showing ownership

Intangible Assets	<ul style="list-style-type: none"> ✓ Description of assets ✓ Identification Numbers ✓ Owner(s) ✓ Managing Agent ✓ Relevant insurance details ✓ Ongoing licence fees ✓ Ongoing obligations and renewal dates ✓ Ongoing revenue expectations ✓ Adviser to call for help 	<ul style="list-style-type: none"> ✓ Purchase records ✓ Policy document or similar showing ownership
Loans	<ul style="list-style-type: none"> ✓ Loan Description and borrower details ✓ Owner(s) ✓ Loan amount ✓ Location of documentation ✓ Details of assets offered as security ✓ Repayment terms (interest rate, amount, frequency) ✓ Adviser to call for help 	<ul style="list-style-type: none"> ✓ Loan documentation ✓ Proof of purchase or ownership of assets offered as security



5 | *Debts*

The executor of your estate is legally obliged to ensure the repayment of your debts is addressed before distributing any assets to beneficiaries. Failure to do so ***will*** result in the executor(s) being legally liable for the payment of those debts.

Fortunately most organisations are reasonable about loan repayments and other obligations when people are disabled or die. You should you contact them early to discuss the situation.



Story 6

I've lost my husband, you can't take my car!

Ian worked as a mid level accountant for a major telecommunication company. Lizzy, his partner and mother of his 3 kids aged 3, 5 and 7 worked 2 days per week in a real estate agency. Ian leased a nice family 4 wheel drive through work as part of his salary packaging but for practical purposes this was Lizzy's car for driving the kids around. Ian drove a 15 year old "banger" to work every day.

Ian was a keen triathlete and bike rider and used his annual leave every year to travel to competitions all over Australia. Unfortunately while training one morning Ian was hit by a car and suffered major brain injuries losing his life around 8 weeks later.

Lizzy was in shock. Ian, always the detail guy had made sure that he was insured and everything was in order for his family but Lizzy knew nothing about the actual policies and documentation. She had trusted Ian to take care of

everything and she had to not only find the information she needed but she also had to find someone she could trust to help her sort things out – that is how she was referred to me.

Ian was insured through an industry super fund and we quickly identified that Lizzy and the kids would be ok financially however she had to make do for around 10-12 weeks before the superannuation and insurance money was paid out. Quick negotiations with the bank and a redraw on their mortgage meant Lizzy had enough to get by and with the support of her parents Lizzy coped well enough although she was the first to admit she was overwhelmed by all the paperwork and didn't read a lot of what was sent to her from Ian's employer, the banks and the super funds.

She forgot to tell me that Ian had a novated lease on a car through work.

Lizzy was sitting quietly at home a couple of months after Ian died and answered a knock at the door to find two large and intimidating men politely asking her for the keys to her car. They provided paperwork from a firm she didn't recognise stating that they were repossessing her car due to non payment of the car lease. Lizzy quickly realised that she had forgotten about the car being leased through work but didn't know these men and had never heard of their company – certainly the men were not related to Ian's employer in any way she could see.

The men politely informed Lizzy that since the car lease had been left unpaid for so many weeks Ian's employer had written to her explaining that if she didn't make arrangements for payment that the lease would be on-sold to a repossession company. These gentlemen worked for that company and showed her copies of letters she had been sent warning her that repossession would happen shortly if she didn't contact the company.

They took Lizzy's car.

Fortunately she called me immediately. I was able to speak to the right people and make arrangements to have her car returned to her a few weeks later (when the superannuation and insurance money was paid out). Lizzy had to pay around \$1,500 in legal fees and penalties but she had enough money to do this.

The whole exercise was extremely traumatic for Lizzy and one she could well do without.

All debts (including car leases) have to be addressed by the executor of the estate, and promptly. Most debtors are reasonable as long as they are kept informed of the situation. Proper documentation and records would mean this situation could have easily been avoided.

The following article about consumer rights during vehicle repossession is quite interesting www.consumer.ftc.gov/articles/0144-vehicle-repossession

The most common types of debts are:

1. Credit Cards
2. Personal Loans
3. Property Mortgages
4. Car loans or similar hire purchase
5. Investment Loans – e.g. margin loans
6. Family or other loans

Information you need to record includes:

- ✓ Loan provider
- ✓ Account number
- ✓ Borrower(s)
- ✓ Who actually pays the loan (employer, borrower, family member or third party)
- ✓ Contact details
- ✓ Loan amount
- ✓ Repayment terms (monthly payment, interest rate, bank account details etc)
- ✓ Item offered as security
- ✓ Location of loan documentation
- ✓ Adviser to call for help

It is quite common for the terms of family loans to change if someone dies, typically to be forgiven or inheritance to be reduced in the will by the outstanding loan balance. To avoid family tension it is critical that this issue be addressed in writing, either in the loan documentation or the will.

Increasingly gifts of money to children are being documented as an interest free loan without obligation to repay until requested by the lender, typically the parent. This would normally allow the loan amount to be repaid to the parent in a divorce who would then be freed to relend the money to their child after the divorce is settled. Such loans are classified as unsecured loans and people in receipt of government pensions should be careful to properly inform Centrelink or DVA that such an advance of money is a loan and not a gift

6 | *Insurances*



Types of Insurance

1. Asset Insurance

- a.* Property
- b.* Vehicle
- c.* Specific Item

2. Life Insurance

- a.* Life (Death)
- b.* Total and Permanent Disability
- c.* Medical Crisis (Trauma)
- d.* Income Protection
- e.* Accident

3. Other Insurances

- a.* Professional Indemnity
- b.* Workers Compensation
- c.* Directors Insurance
- d.* Home Owners Warranty
- e.* Work site
- f.* Landlords
- g.* Public Liability

Information you need to record includes:

- ✓ Type of insurance
- ✓ Insurance company
- ✓ Policy number
- ✓ Owner of policy
- ✓ Item/person insured
- ✓ Amount insured
- ✓ Adviser to contact

Story 7

The simplest of things can be a huge burden

Tomasino was a retired coal miner and a gentle, uncomplicated man. Julia was always smiling and beloved by all. They were out driving one Saturday in their family 4 wheel drive when an undiagnosed Parkinson seizure made Tomasino black out and cross to the wrong side of the road, hitting a station wagon coming the other way. Multiple fatalities resulted including that of Julia. Their daughter Amy called us the following day seeking help, not knowing where to start. We had copies of their will and introduced lawyers that helped Amy take care of Julia's estate. Tomasino was able to sign necessary documents but his wife's estate was not complex nor legal matters a real issue.

Tomasino was a physical mess, with a shattered left leg and badly broken pelvis he was in and out of hospital for 7 months and went to live with Amy permanently. However Amy only owned a small car with 4 children of her own.

Tomasino required dozens of trips to the doctors and specialists and getting around was a real problem requiring specialist disability taxis and time off work. They lived in a country town lacking big city medical facilities meaning these trips to the doctor were lengthy, expensive and time consuming. There were many months of frustration as Amy sorted through the piles of paperwork that Julia left behind.

The single biggest frustration was finding the vehicle insurance paperwork so that Amy could replace her father's car –ultimately taking 5 months to resolve. When Amy did finally purchase a new vehicle moving her father around became simpler and far less of a financial burden. Simply having an ITM record which listed the insurance company and policy number would have saved Amy and Tomasino literally months of frustration and cost.

7 | Legal responsibilities



We all have legal, family and social responsibilities that we may not be able to properly execute due to illness and death.

You may be executor for your mother, director of a company, on the board of the local Bowling Club or Trustee of your own Self Managed Superannuation Fund. These are legally significant responsibilities that will impact on your family and need to be considered in your estate planning as well.



Story 8

Executor sued

John lived in Moree, a divorced ex shearer and farm hand he had 2 sons whom he hadn't seen in several years. He spent most of his days in the local pub where he worked part time cleaning up. John's only sister Myra lived in Western Australia and while they spoke once or twice a year they were not particularly close. John died of lung cancer relatively quickly 2 weeks after his 67th birthday but Myra was not able to be at his bedside for his passing and John's sons arranged the funeral.

Myra received a letter from a Moree solicitor 4 weeks later informing her (to her surprise) that she was the executor of John's estate. The letter informed her that he should contact the children who were the named beneficiaries and begin the process of identifying and realising the assets of John's estate.

Myra had no idea where to start and was not able to get away from work for a couple of weeks but eventually rang John's sons, flew to Moree and began the process of collecting paperwork, superannuation information and bills. Ultimately this process took around 4½ months most of which happened from WA.

In that time a local grass fire spread to the house and burned it to the ground. Dismayed Myra sorted through John's paperwork to find that the house insurance had lapsed 2 weeks after his death.

Myra contacted the insurance company to be told that:

- *Due to non payment of premium the house had been uninsured for more than 90 days, the policy had therefore lapsed and they would not pay the claim;*

- *The house had been uninhabited for more than 90 days and under the terms of the policy they would not have paid the claim even if the premium was paid.*

Myra spoke to the solicitor to discover that as executor she was legally obliged to properly protect the assets of the estate (it is widely accepted that this means properly insuring estate property such as houses and cars). Failing to have in place the appropriate insurance meant that she could be held legally liable for the value of the house.

Upon hearing of the fire John's two children sought legal advice and took action against Myra for her "...failure to properly execute her duties as executor of the estate of the late John XXXX." Myra was unable to use the other assets of the estate to settle this lawsuit as they "belonged" to the beneficiaries not her.

As is often the case Myra settled the matter out of court and had to borrow more than \$75,000 against her house (and contribute \$25,000 from her savings) to pay her nephews and her legal bills.



Types of Responsibilities

1. Parenthood and Carer
 - a. Children (natural, step or foster)
 - b. Care provider (typically for elderly adult relatives)
 - c. Guardianship of the disabled
2. Estate Responsibilities
 - a. Executorships
 - b. Powers of Attorney
 - c. Powers of Guardianship
3. Personal Guarantees
 - a. Business
 - b. Financial
4. Corporate or Organisational Responsibilities (e.g. director, trustee, board position)

Information you need to record for parental, carer and estate responsibilities includes:

- ✓ Responsible person
- ✓ Person supported
- ✓ Type of responsibility or care provided (e.g. guardian, carer, Power of Attorney, executor etc)
- ✓ When will responsibility become active
- ✓ Adviser to call for help

Information you need to record for personal and business guarantees includes:

- ✓ Relevant person
- ✓ Organisation to which guarantee is provided
- ✓ Description and/or amount of guarantee
- ✓ Asset offered as security for guarantee
- ✓ Adviser to call for help

Information you need to record for corporate and organisational responsibilities includes:

- ✓ Relevant person
- ✓ Organisation or legal structure involved
- ✓ Description of responsibility, e.g. company director, trustee of SMSF
- ✓ Have you signed any personal guarantees in this role
- ✓ Does organisation have insurance to protect you
- ✓ Organisational contact person and details (if applicable)
- ✓ Adviser to call for help

8 | *Regular bills*



As any person who has had to quickly come to terms with the day to day bills of another person will know how frustrating a task this is. While intellectually not complex, the process can be very time consuming and difficult. Taking a little time now to record the various bills and associated information will release your family from a massive burden if you need their support during a difficult time.

The most common bills we pay include:

- ✓ Council rates
- ✓ Water rates
- ✓ Electricity
- ✓ Gas
- ✓ Internet Service Provider
- ✓ Home phone
- ✓ Mobile phone
- ✓ Pay TV
- ✓ House insurances
- ✓ Vehicle insurances
- ✓ Health insurances
- ✓ Gym memberships

- ✓ Auto club memberships
- ✓ Life insurances
- ✓ Rent
- ✓ Mortgages
- ✓ Car Loans and other loans
- ✓ Credit card bills
- ✓ School Fees

The list can be endless but they have common elements. You should list:

- ✓ Bill description
- ✓ Organisation paid
- ✓ Account number
- ✓ Name of bill
- ✓ Frequency and when due
- ✓ Typical amount
- ✓ Payment method (credit card, direct debit, bPay, cash, cheque etc)
- ✓ Persons authorised to enquire
- ✓ Authorisation questions
- ✓ Login details

Story 9

Helen came home from hospital to find no power or telephone

Helen was a widow who lived alone, with an active social life and friends all over the state. She loved spending time with her children and grandchildren and belonged to several social clubs which kept her week full.

An intelligent and professional woman Helen had always taken care of the family finances, was actively involved with computers and griped about internet speed as it stopped her skyping with her grandchildren easily. She changed phone and internet service providers out of frustration, arranged her own insurances and even got the “solar man” to come and setup panels on her roof so that she saved money on the cost of her power bills.

Her children frequently found that she was not at home and were proud that she lived a happy and active life.

One day Helen started to have pain in her temple and felt quite strange. Overnight the pain became excruciating and she called her daughter Hannah to say something was wrong. Hannah, a senior nurse at the local hospital met her when the ambulance arrived and she was rushed into surgery having had a nasty stroke.

Hannah and her siblings waited for many hours before the surgeons confirmed that their mother had suffered a significant stroke and at best would require hospitalisation for 2 months, at worst she may never recover or have another stroke this time fatal. As you can imagine this was a difficult period during which the family stayed close. Helen was very ill but ultimately recovered, although had to remain in care for 5 months.

During that time the bills continued to arrive including her internet and telephone bill, power bills and house insurance. For reasons that make no sense in hindsight Hannah and her brother both assumed that the other was collecting the mail and paying their mother's bills.

When Helen returned home she was dismayed to discover her power had been cut off and her internet had been disconnected the day before. Phone calls and payments made sure the power was restored within a few days but Helen had to stay with her children until then. It took 4 weeks for the

home phone and internet to be restored, it was of course the holiday season and services were very slow.

Helen recovered well but tired easily and needed the connection that the telephone and internet brought her.

Had there been a simple checklist of things to address and a list of bills to attend to Helen's domestic situation would have been handled gracefully and she could have returned home without frustration.



9 | *Medical records*



One of the first things you need when emergency strikes is a medical summary to present to the doctor who treats you (typically this would be a doctor in an Emergency Ward of a hospital but may also be a new GP or specialist).

The complexity and necessity of the record increases for those with chronic medical conditions (typically, but not always, older people) and without it, errors can be made.

This record should be maintained for all members of your family.

- ✓ Height
- ✓ Weight
- ✓ List current medical conditions and medication regimes
- ✓ List of allergies
- ✓ All significant childhood illness
- ✓ All significant illnesses you have had as an adult
- ✓ List of surgeries, dates and hospitals
- ✓ Age of onset of chronic illnesses of close relatives (particularly parents and siblings)
- ✓ Age and causes of death of close relatives (particularly parents and siblings)
- ✓ List of pregnancies, date of delivery and relevant hospital and medical complications (if any)
- ✓ List Countries visited and year of visit

Story 10

The Doctors did everything right and nearly killed him

Giles was an intelligent and independent man in his 60's who had congestive heart failure. He was kept healthy and relatively active by the outstanding medical collaboration between his GP and Cardiologist and was on a cocktail of medications that had been trialled, tested and finely tuned to suit his lifestyle. Nonetheless Giles was prone to angina and had cardiac incidents every few years.

One Saturday afternoon whilst on holidays in Northern NSW Giles collapsed in the city centre with his wife by his side. He was taken to the local base hospital where he was treated by the emergency doctors. These doctors, whilst hard working professionals, cater for all emergencies and were not expert in the latest treatment of cardiac patients. They correctly asked Giles' wife Margaret about his drug regime and

asked about his GP and Cardiologist. Unfortunately being a weekend they could not reach Giles' doctors and Margaret could only provide a limited amount of information.

Using their best judgement they administered new drugs to treat Giles heart attack. The effect was not good, his condition worsened and the signs were not improving.

Over the next 36 hours Giles' condition became perilous however the doctors persisted with the drugs that they were using to treat him as these were tried and true regimes. Fortunately Giles' daughter Jane was a cardiac nurse who was able to get to Giles bedside early on Monday morning. She was familiar with the cocktail of drugs that Giles had been taking to keep his heart in step and appealed to the doctors to restore him to his previous treatment plan. After



several hours of heated arguments and a phone call to the cardiologist Jane was able to convince the residents to modify his treatment programme.

Giles stabilised over the next 24 hours and recovered enough to be transported to a major hospital with a cardiac department for treatment and ultimate recovery, although this took more than 3 weeks.

To be fair to the local doctors they were following the correct

protocol and did not breach that protocol at all. The reality of modern medicine means that many people are kept alive through the excellent advice of specialist physicians and we cannot expect Emergency Room and local hospital doctors to be able to match that level of care.

Giles and his family knew that he came very close to death by simply being unprepared. He never again travelled without an impeccable medical history and explanation of his treatment regime.

10 | *Online identity/estate*



Our online identity is now a very real part of our daily lives and therefore our estate planning. Security of your user names and passwords is important but so is backing up this information and making sure it is available to your family during times of need.

Warning

It is important to note that the unauthorised use of someone else's login credentials for financial matters can be a serious crime and is considered to be financial fraud. Therefore you should not use those logins to make financial arrangements without ensuring that you are:

1. Acting with authority, typically as Executor or using a Power of Attorney;
2. Acting in their best interest;
3. Keeping good records of everything you do

Recent surveys have shown that a significant number of people want their Facebook and other online content pages kept open for a period after their death to enable

friends to communicate or remember them by. There is some logic to this but others may find it distasteful. It is prudent therefore to document your wishes.

Types of Logins

The most common logins people hold include:

Financial logins

- ✓ Online banking
- ✓ Superannuation and investment fund logins
- ✓ Online share trading accounts
- ✓ Tax office logins
- ✓ Accountant, solicitor, financial adviser logins
- ✓ Utility logins (e.g. for your bills)
- ✓ Telephone banking access codes
- ✓ Internet Service Provider logins

Work Related

- ✓ LinkedIn
- ✓ Google
- ✓ Skype
- ✓ Facetime
- ✓ Work related logins
- ✓ Remote work logins
- ✓ Work emails

Travel Related

- ✓ Jetstar
- ✓ Qantas
- ✓ Virgin
- ✓ Hotel chain loyalty programme and booking logins
- ✓ Tripadvisor.com
- ✓ Trivago.com
- ✓ Booking.com
- ✓ Expedia.com

Online Shopping

- ✓ Paypal
- ✓ Amazon
- ✓ eBay
- ✓ Flybuys
- ✓ AliBaba
- ✓ Gumtree
- ✓ Carsales.com.au
- ✓ Myer
- ✓ The Iconic
- ✓ Pumpkin patch
- ✓ Think Geek
- ✓ etc

Online Content

- ✓ iTunes (Apple)
- ✓ Email Logins (Gmail, hotmail, apple mail etc)
- ✓ Facebook
- ✓ Google+ ID
- ✓ YouTube

- ✓ Twitter
- ✓ Tumbler
- ✓ Dropbox
- ✓ Google drive
- ✓ Microsoft Skydrive
- ✓ Authoring (blogging) logins
- ✓ Pinterest
- ✓ Instagram
- ✓ Torrent logins

Online Gaming

- ✓ Betting websites
- ✓ Xbox Logins
- ✓ PlayStation logins

What You Should Record

You should produce a table of websites with the following information:

- ✓ Website
- ✓ User name
- ✓ Password
- ✓ Shutdown upon death?
(immediately/after ___ months/never)



Crisis Management Plans

...it will be hard enough surviving the loss of my partner...

...don't expect me to be able to process a complicated document during the worst time of my life, I just won't be able to do it...

...do not put me in a position where our accountant says to me, 'Angie I wish you had asked me that question 3 months ago, we could have done something then, but now it is too late...'

....Angie W – the author's wife

The presence of the Information That Matters (ITM) record is critical when tragedy or crisis strikes. Over the years of working with clients that have lost loved ones we came to understand that simply possessing the information is not always enough.

To make sure your family is as well prepared as possible it is good practice to provide them with a guidebook:

1. Who should they call for help?
2. What questions should I ask?
3. What is important?
4. What can wait?

I intend to write another book on the subject of preparing a Crisis Management Plan to guide your family during difficult times. The book will comprise two parts,

1. A checklist of questions that you will need to ask your advisers
2. Background information that you need to know about Centrelink, tax, legal rights and obligations associated with each aspect of your estate planning.

Examples of questions your family should ask

Superannuation and Pension Questions

1. Does the superannuation fund hold any Income Protection Insurance?
2. Does the superannuation fund hold any Total and Permanent Disability Insurance?
3. If an account based pension is being paid and the member dies:
 - ✓ How long will the pension/annuity continue to pay to a bank account?
 - ✓ Will a pension/annuity or lump be payable to the family or domestic partner when the fund is advised of the member's death? If so what pension/annuity is payable?
 - ✓ What is the best option for the family to take – pension or lump sum?
4. Can the family expect to receive an anti-detriment payment with a lump sum payment from the deceased's superannuation/pension? If so, what do we need to do?
5. Does the superannuation fund hold any Life Insurance?
6. To minimise tax, should the superannuation fund be cashed out before death?
7. What death nominations and type of nominations (discretionary or binding) exist on the superannuation fund?

Shares

1. Can you please clarify which shares the family can sell immediately and which should not be sold at this time?
2. Can you confirm the exact owner/s of the shares?
3. What are the tax consequences of selling or transferring these shares?
4. When can the family access these monies?
5. Can you assist with off market share transfers, or can you recommend someone who can?

I hope you have enjoyed this book and urge you to document your lives while you are healthy and able, in that way you will significantly lessen the burden on your family.

Take care
Gil Gordon

Please visit the following website for a series of articles, links and ideas that you may find useful on the subject of Estate Planning in Australia.

www.estateplanningforlife.com.au

Gil is available as a speaker and consultant to organisations and professional services firms on the subject of Estate Planning and Professional Services. Gil's firm Systems For Professionals designed and promotes the industry leading software Estate Planning For Life. Gil can be contacted at:

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About the author



Gil Gordon is a multi award winning financial adviser and speaker, he received the 2013 Proprietor of the Year award within the RI Advice and RetireInvest financial advice networks.

Gil is the Managing Director and Senior Partner in RI Lower Hunter a financial planning firm that serves a large range of families from modest to high net wealth. Gil also co-founded Systems For Professionals, a business providing software, training and speaking services to the professional advice industries.

Gil is known as a thought leader and innovative thinker and he designed the Estate Planning For Life software which is recognised as the most advanced Estate Planning software system available in the Australian professional market today.

A passionate believer in estate planning, cashflow management and fee for service advice, Gil is regularly

called upon to speak publicly and professionally about how to build and then protect family wealth.

Gil is a Certified Financial Planner (CFP) and one of the very few financial advisers in Australia to hold the sought after Accredited Estate Planning Specialist (AEPS) designation, Gil holds degrees in Mathematics and Engineering from Newcastle University, a Diploma of Financial Planning (CFP) from Deakin University and a Certificate of Investment and Financial Planning (CIFP) from the Investment Training College. Gil is also a member of the World Futurist Society and is intensely fascinated and speaks passionately about changes in our societies and disruption in our business models.

Married for more than 20 years, Gil lives on a small acreage in the Hunter Valley, chases his son and 3 daughters from one sporting event to another and is an enthusiastic cyclist.

Please let us bury our son!

Patrick and Simone were in shock, their son Dave had just died suddenly in a boating accident. He ran a small electrical contracting business, owed money to the tax office and had a large mortgage. They knew Dave didn't have a will but they didn't understand what that meant for them as "Administrators" of Dave's estate.

Their first task was to bury their son. However his new girlfriend Jane, still in shock, barred their way into his house *"...no, you can't come into our home... we were going to be married!..."*

Patrick and Simone were now scared they were in some sort of family court dispute. All they wanted was clothes in which to bury their son...

45% of Australian's die without a will. The net wealth of householders over 65 years of age is almost \$1,500 billion. More than 50% of Australian marriages end in divorce.

If you find yourself thrust into managing the assets and finances of a loved one, where do you start?:

- What documents and information do you need?
- Who should you talk to and what questions should you ask?
- What's important? What can wait?

Written by one of Australia's leading financial planners **The bugger went and died on me... AND I DON'T KNOW WHAT TO DO** is the first practical "How To" guide for managing and/or transferring the wealth of all Australians. Written in simple language and full of surprising and emotional examples, this book is a call to action for every Australian.



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