

Wills and Estate Planning 101

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No one likes to think about it too much, but estate planning is crucial. A carefully devised estate plan can serve several objectives:

OBJECTIVE 01

Your estate assets go to people who **you** nominate.

OBJECTIVE 02

Tax is managed effectively.

OBJECTIVE 3

Risk of disputes like family provision claims is minimised.

ESTATE ASSETS V NON-ESTATE ASSETS

● Estate Assets

Estate assets are assets that **are** dealt with by provisions of a will.

Examples:

- Tenancies in common
- Cash, personal effects
- Shares

● Non-estate assets

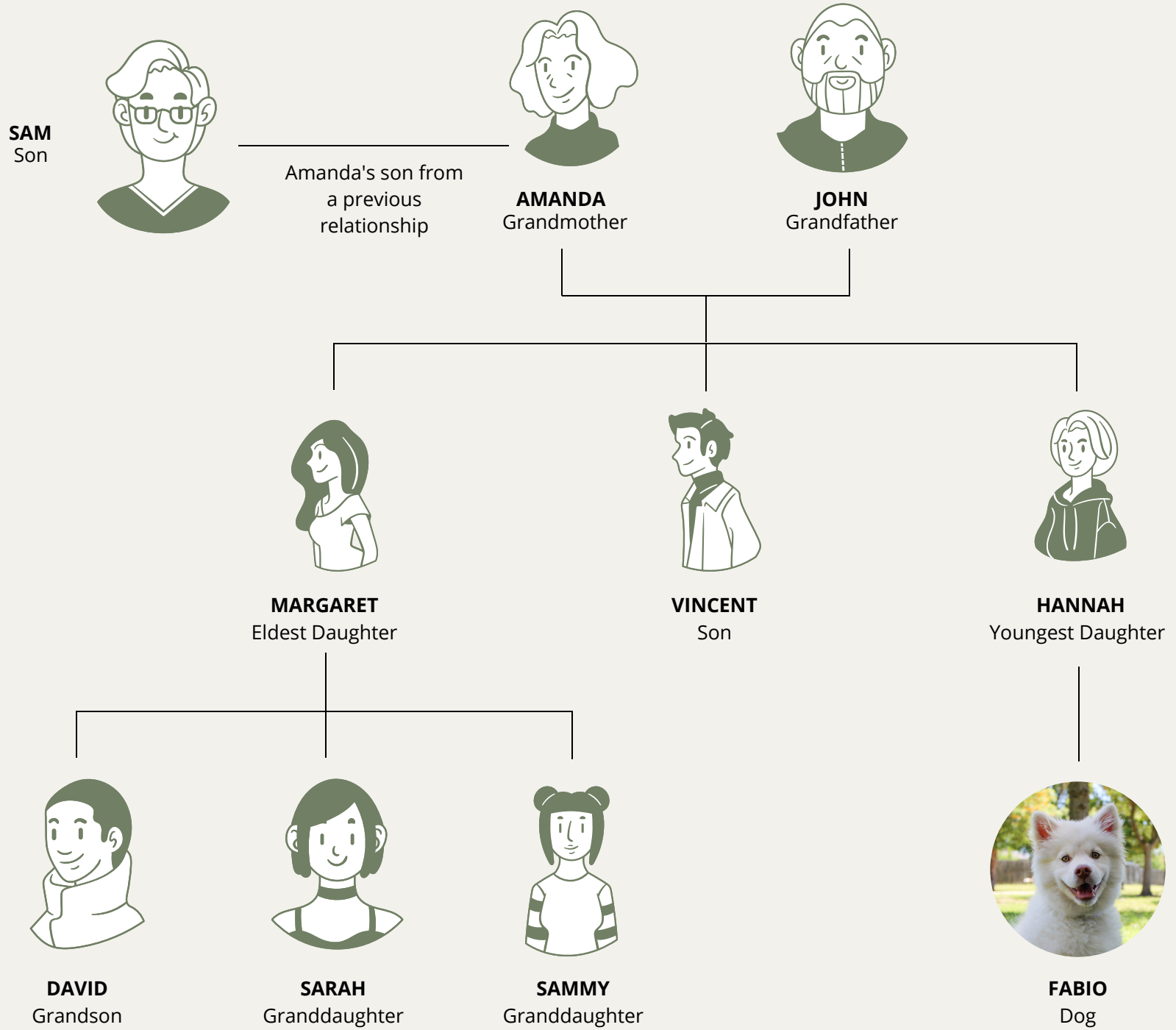
Non-Estate assets are assets that **do not** fall within the scope of a will. They require other estate planning documents or strategies.

Examples:

- Joint tenancies
- Interests in super
- Interests in trusts

Let's have a look at some examples:

EXAMPLE





Example 1

Joint tenancy

Amanda and John own a house as joint tenants. Amanda wants her assets including the house to go to her 4 children equally. In order to fulfill that wish she **must sever the joint tenancy** first to tenancy in common. Otherwise and if she simply prepares a will stating that her assets to be divided equally amongst her children, following her death the house will go to John and her estate assets (not the house) will be divided between her children.



Example 2

SMSF

Amanda and John are trustees and members of a Self-Managed Super Fund. For tax purposes, John wants his interest in SMSF to go to Vincent only. If he does not prepare a valid **Binding Death Benefit Nomination**, his interest will most likely go to Amanda. Planning for SMSFs is particularly important as there will be no recourse to **Superannuation Complaints Tribunal**.



Example 3

Directorship in companies

John is a director, shareholder of a company. He can plan for his shares in a will but the fate of his directorship after his death cannot be decided in a will.



Example 4

Interest in Trusts

Margaret and her husband are beneficiaries of a trust. How can they make sure their interests in this trust goes to their children?

Trusts are entities that separate beneficial and legal ownership. There are many different types of trust for different purposes.

Depending on the structure of the trust, their role and purpose of the trust, different strategies can be put in place to ensure their testamentary wishes are fulfilled. A well-drafted trust deed is a good start.

Some Estate Planning Documents



Wills and
Testamentary
Trusts



Power of
Attorney



Appointment
of Enduring
Guardians



Death Benefit
Nominations



Testamentary Trusts (TT) are trusts within a will. TTs are used for various purposes such as asset protection and tax management and can provide flexibility for beneficiaries.

Example: John wishes to prepare a will. He is concerned that Hannah has been quite a spendthrift lately. If she inherits a big chunk of money, she might spend it all in a couple of months. He is also concerned that Margaret might separate from her husband and has to go through a nasty property settlement. **A Testamentary Trust** might be a good option for John.



Power of Attorney (POA): anyone with legal capacity can appoint one or more trusted people to deal with their financial affairs. Attorney(ies) power can be unlimited or limited in various ways.

If the attorney(ies) need/s to deal with land, the POA must first be **registered with Land Registry Services**. A POA can be revoked by the principal in writing at any time.

Abuse of power by the attorney(ies) is a criminal offence, but it is crucial that you appoint someone who you absolutely trust as your attorney.

Example: Sam wants to take a gap year and travel in Europe. He prepares a Power of Attorney, his mother and step-father being joint attorneys to deal with his bank accounts, car and taxes, should anything come up.



Appointment of an Enduring Guardian: anyone with legal capacity can appoint one or more trusted people, **guardians**, to deal with their lifestyle and health decisions. Guardian(s) can make decisions such as place of residence and medical treatments received by the principal. Scope of Guardian(s) power can be limited by the principal. Guardian(s) can only make these decisions after the principal has lost capacity.

Example: Amanda and John are over 60 years old and they want to be prepared in case their health took a turn for the worse. They trust Margaret with their life and she is a nurse, so she knows about their medications and preferred lifestyle. It is a good idea for them to appoint Margaret as their Enduring Guardian just in case.

Estate planning can be a complex area of law. Early legal advice can save a lot of money and hassle.

Get started now on **checkslaw.wills.settify.com.au** or contact **0477002929 - mana@checkslaw.com.au** for a 15 minute free consult.

Disclaimer

This pamphlet does not constitute legal advice. It is not prepared with your objectives and circumstances in mind and should not be relied on to make specific decisions. Please seek legal advice tailored to your circumstances and objectives prior to making estate planning decisions.

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