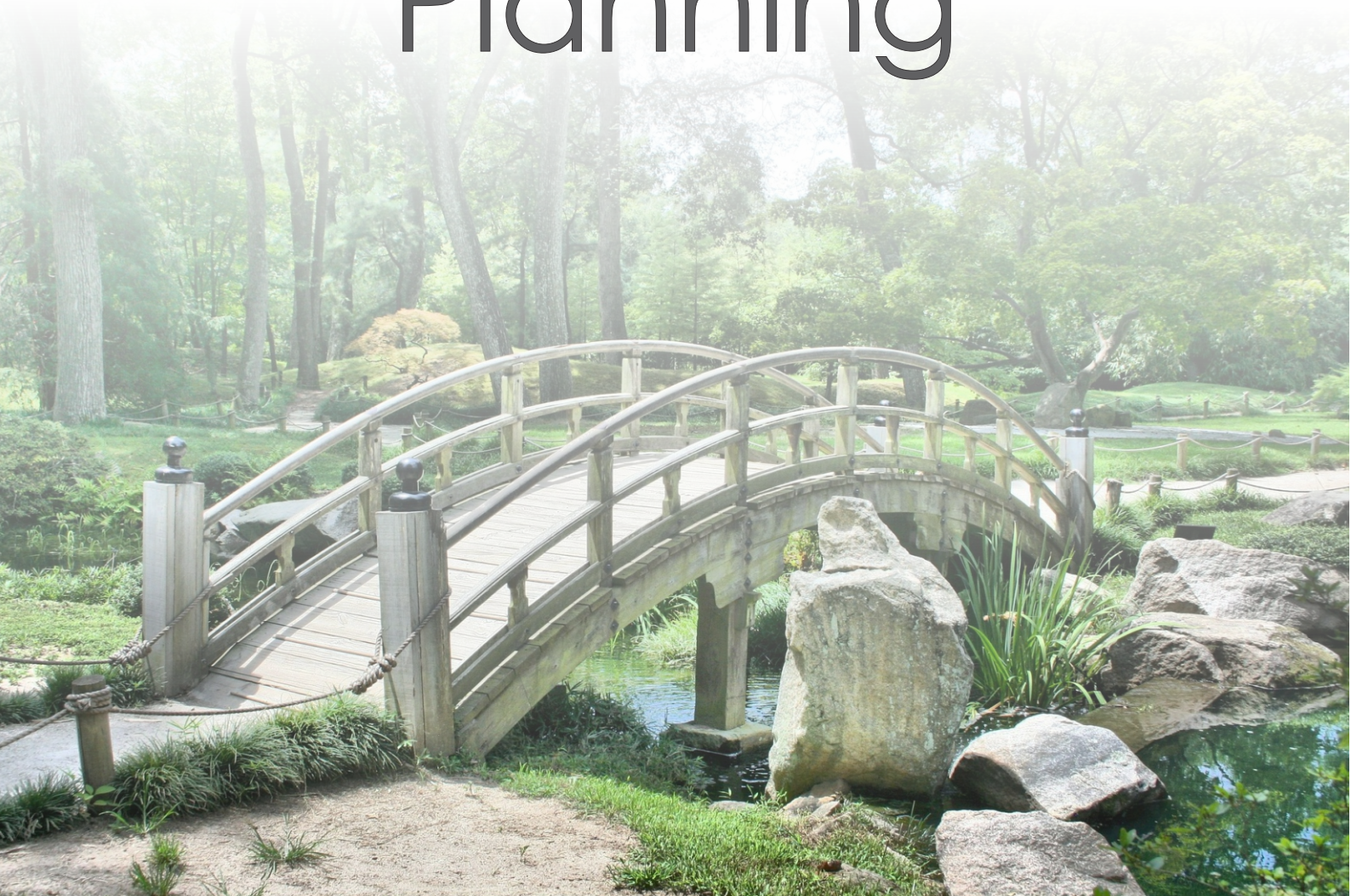
COVID-19: A Timely Reminder to Review your Succession Planning



During the COVID-19 lockdown we all seem to have a lot more time on our hands.
Some are exercising, some are baking banana bread and others are learning a new language or skill. But, perhaps our time in lockdown could be wisely spent reviewing our succession plans.

Now is not the time to DIY

Just because you can give yourself a haircut in lockdown, doesn't mean you should.
The same goes for making a will!
Do-it-yourself will kits from the local post office or found on the internet may seem like a quick, cost-effective idea at the time.
However a DIY will kit may cause more problems than it solves.

You could end up with a will that is ineffective or invalid, or worse, you could end up with a will that is valid and legally binding but does not give effect to your wishes. Some of the most common pitfalls of making a DIY will include:-

1. Failing to comply with legal formalities
A will is a legal document and to ensure that a will is valid it must:-

> be in writing;
> signed by the testator;
> the testator's signature must be acknowledged in the presence of two witnesses.

To avoid any disputes over when the will was created it should also be dated.

2. Leaving assets in your will that you don't own
The most common example is Superannuation. A direction given in your will to pay a member balance to a beneficiary is not binding on a trustee of a superannuation fund. This can only be done by executing a binding death nomination to the superannuation trustee. DIY will kits do not include a binding death benefit nomination form (which should not, in any event, be completed without reference to the rules of the fund).

Life insurance is another example. You need to correctly identify who owns the policy and who is the correct beneficiary. Getting the right advice will ensure any superannuation or life insurance policies are paid to your intended beneficiary.

3. Not updating your will when circumstances change

A will isn't a "set and forget" type of document. Circumstances change all the time and when they do, this usually calls for a review of your estate plan. For example, you may leave your house to a beneficiary in your will. If you sell your house without changing your will, that beneficiary would miss out on the gift and would ultimately be disappointed.

4. Not including potential beneficiaries

While a testator is free to do what they wish with their assets, some beneficiaries may be overlooked or simply forgotten in the estate planning process (including spouses and financial dependants). By not properly considering potential beneficiaries, your estate plan may end up being a family provision application trap (see Confessions of an Estate Planner Part 5 and Part 6).

5. Undesirable tax consequences

Generally, most assets can be transferred to beneficiaries without immediate tax consequences. However there are particular classes of assets directed to certain beneficiaries that may trigger a capital gains tax (CGT) event. CGT must be realised at the time it is transferred to the beneficiary and must be paid by the estate.

6. Guardianship

Who looks after the children when you are gone? This is a decision ultimately made by the court, however, the court will give consideration to your wishes expressed in your will. With the right advice, you can create a supporting document like a letter of wishes that explains why a guardian was chosen for your children.

Where there's a will, there's a way

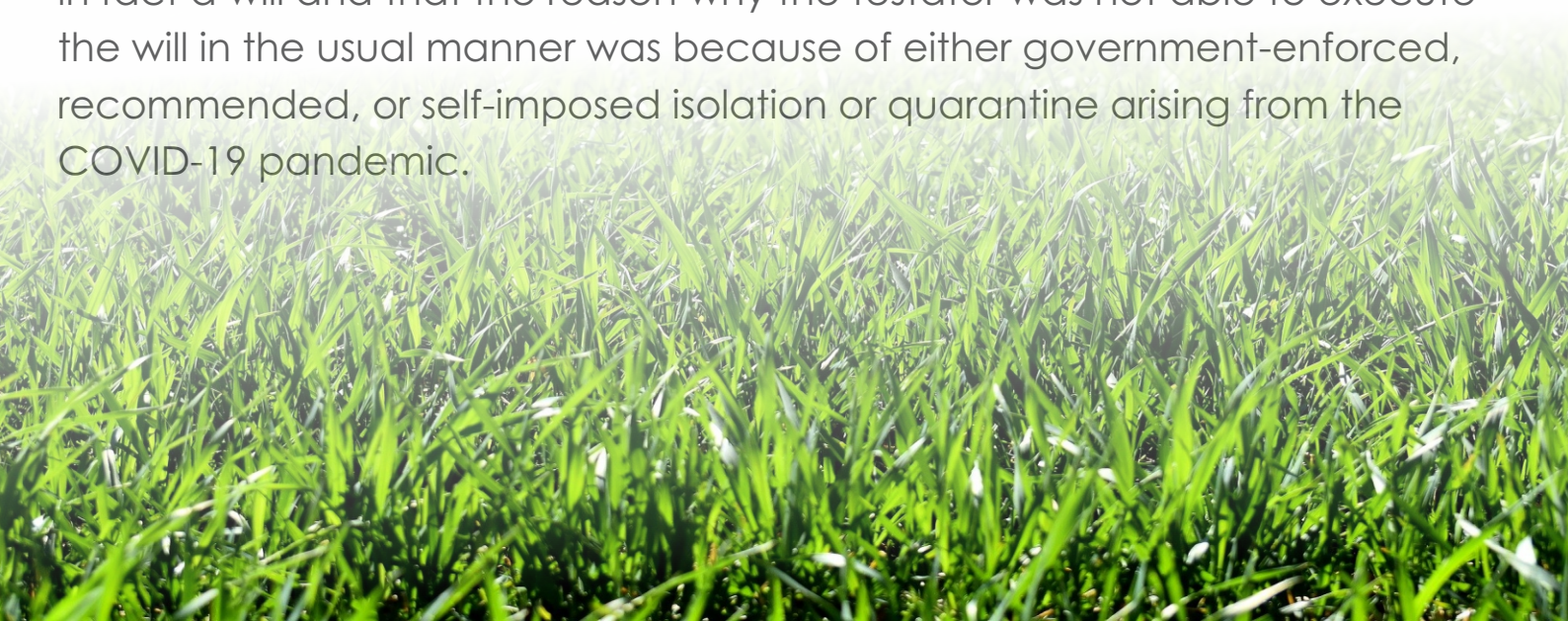
Things are changing quickly and so are we.

Connolly Suthers appreciates that times are challenging. We are still committed to providing our clients and the broader community with our usual level of service and support.

Just because Covid-19 is affecting nearly everything we do does not mean you automatically have to do something about your estate planning. If there is an urgent need to review or change that is still possible. If you are worried about anything one phone call to us may put your mind at ease.

With social distancing measures in place, it may be more difficult than usual to travel to see a solicitor in the presence of witnesses and execute your will. To dispense with the requirement of signing a will in the presence of two witnesses, the Supreme Court of Queensland released a Practice Direction which allows a testator to sign their will in the presence of two witnesses by way of video conference, or in the presence of one witness by way of video conference. The registrar must also be satisfied that the will was drafted by a solicitor, or a solicitor is one of the witnesses to the will, or the person supervising the execution of the will. The testator must intend for the document to take immediate effect as their will, alteration to their will, or full or partial revocation of their will.

The witness or witnesses must be able to identify the document executed is in fact a will and that the reason why the testator was not able to execute the will in the usual manner was because of either government-enforced, recommended, or self-imposed isolation or quarantine arising from the COVID-19 pandemic.



Make an appointment today to update your Will

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