

## Client Scenario

NOTE: This follows on from the Betty Smith scenario.

After the meeting with Betty, Jenny and Steven come to see you regarding their estate planning needs. Jenny was previously married and during that time had a Will leaving all her assets to directed to her ex-husband in the event of her death. Her ex-husband was also her sole attorney in her enduring financial/legal and medical POAs.

Jenny and Steven both made a Will together 7 years ago (they have been together for 8 years) leaving their estate to each other in the event of one of them passing. They have one son Jeff who is 6 years old.

They have a residence in Brighton worth \$1,300,000 with no mortgage, two cars and superannuation worth \$480,000 and \$790,000 respectively in the same industry superannuation fund and a small bank account with a few thousand dollars in it. Life insurance is the minimum included level within their super funds and worth only a few thousand dollars. When they saw you previously you advised them to make additional contributions to superannuation which they have been doing as well as consolidate their credit card debt which they have also done. Further to the above assets, Jenny has recently invested \$110,000 in bitcoin after receiving a small inheritance from her maiden aunt.

### Specific Requirements

Jenny and Steven would like you to advise them on their estate planning issues given the above information. You don't need to provide your answer in a SOA format but you need to organise your answer effectively using appropriate headings and subheadings identifying the couples issues and risks from an estate planning perspective. Ensure you outline and explain how best the couple can address each issue and risk making sure to note any alternative actions and choice of most appropriate or preferred action.

Clearly state any assumptions you make and provide appropriate references where applicable.



# Limited Statement of Advice

Prepared for

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**Steven Smith & Jenny Smith**

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CLIENT CARE FINANCIAL PLANNERS PTY LTD  
Authorised Representative of Professional Planners Pty Ltd  
Australian Financial Services Licence (AFSL) No 11111  
ABN 88 999 999 999  
221 Burwood Highway, Burwood VIC 3125  
Phone (03) 5227 2333

Your adviser is  
Phillip Wong CPA,

**Dated: 30/06/2021**

This advice is valid for 60 days

You are entitled to receive a Statement of Advice (SOA) whenever we provide you with any personal financial advice as per Corporations Act 2001 and Corporations Regulations 2001. Personal financial advice is advice that takes into account any one or more of your objectives, financial situation or needs, limited as per your request. This is limited advice, and it does not cover all aspects of your financial situation. We are required by law to act in your best interests when providing you with financial advice.

This Limited SOA acts as a record of the personal financial advice provided to you and includes information on how we formulated our recommendations, a statement of our recommendations provided to you and the reasons why. Information about fees and commissions and interests or associations which might influence the advice is also included.

30/06/2021

Steven Smith and Jenny Smith  
Brighton VIC 3186

Dear Mr and Mrs Smith, *Steven & Jenny*

It is our aim to provide you with appropriate advice tailored to your specific needs that allows you to take control of your financial affairs, achieve your goals and enjoy a lifestyle in keeping with your unique values.

In accordance with this philosophy, the financial planning recommendations outlined in this Statement of Advice have been designed to help you meet your financial and lifestyle objectives.

This, your Statement of Advice is an important document that will help shape your financial future in the months and years ahead. Please take the time to carefully read and understand this document to ensure that it meets your objectives and reflects what we have discussed. To receive advice is important, to understand the advice is crucial. We are here to assist you by ensuring that you understand this advice and the decisions you are making. If there is anything that you do not clearly understand, please contact us immediately or raise your issue at our next meeting.

Please also review the Warnings and Disclosures sections of the Statement of Advice for an explanation of the fees associated with the development and implementation of the recommendations contained in the document.

Once you have had the opportunity to read and understand this Statement of Advice, please contact us so that we may discuss the next step in relation to the implementation of the recommendations that we have made.

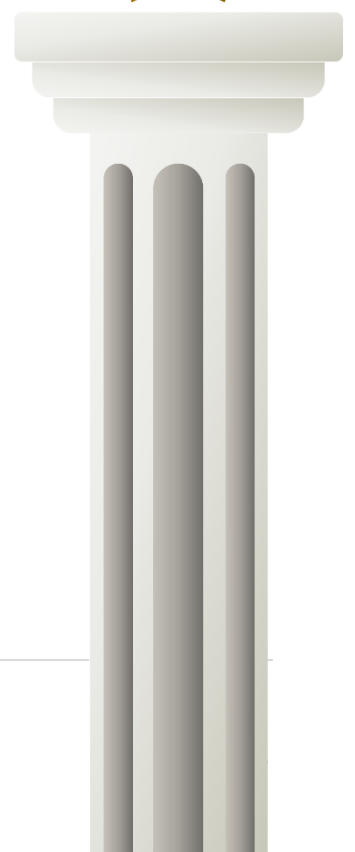
Yours sincerely,

  
Phillip Wong CPA,

**Directors of CLIENT CARE FINANCIAL PLANNERS PTY LTD**



Jen &  
Steven





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# Strategy overview / Executive Summary

## Client objectives

Betty, we aim to protect your legacy and ensure your wishes are upheld. We understand your goals are:

Priority	Goals / Objective
1	To protect your son Jeffery
2	To plan your estate affairs, proactively address any potential issues

## Strategies

Strategy	Description
<b>Strategy 1:</b>	Establish appropriate Powers of Attorney
<b>Strategy 2:</b>	Update life insurance and other personal insurance cover
<b>Strategy 3:</b>	Update wills with a specific focus on protecting your son Jeff
<b>Strategy 4:</b>	Establish a testamentary trust in your will
<b>Strategy 5:</b>	Move to protect your digital assets

## Adviser fees

Our fees will be \$3,500 fee-for-service covering the preparation of this Statement of Advice. There are no commissions in this advice, and there is no ongoing fee arrangement.



# Scope of Advice

This Limited Statement of Advice has been prepared based on our recent discussions to achieve your objectives.

In Scope	<ul style="list-style-type: none"><li>• Estate Planning</li></ul>
Out of Scope	<ul style="list-style-type: none"><li>• Superannuation planning</li><li>• Retirement Income</li><li>• Debt management</li><li>• Cashflow (budgeting)</li><li>• Insurance</li><li>• Aged care</li></ul>

## Legal limitations

Client Care Financial Planners are not legal practitioners, and our strategies should be reviewed by your lawyer when drafting and executing your will. If you do not have a legal representative, we recommend:

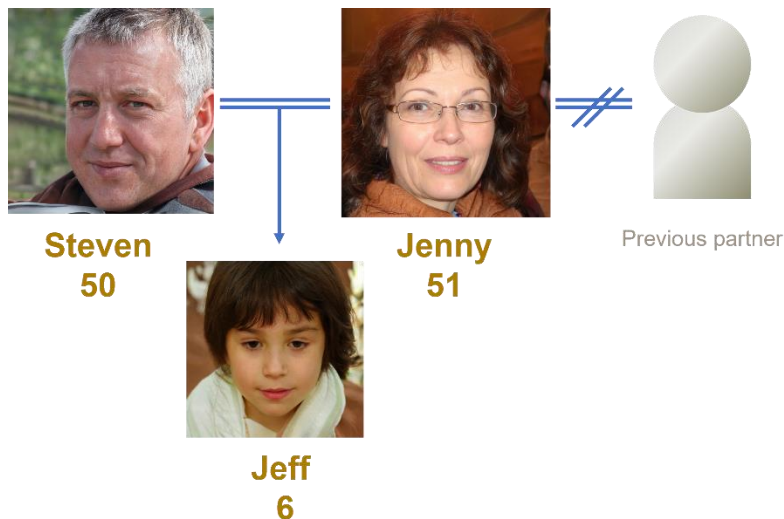
Ms Lex Judicia  
Judicia & Partners  
(03) 5555 5555

We receive no commissions or inducements.

## Key Personal Details

Name	<b>Steven Smith</b>	<b>Jenny Smith</b>
Address	Brighton VIC 3186	Brighton VIC 3186
Current Age	50	51
Occupation	Unspecified	Unspecified
Do you have a Will?	✓ Will (needs updating)	✓ Will (needs updating)
Provision for testamentary trust	✗ None	✗ None
Do they have a Power of Attorney?/ Type / Attorney's name	✗ None	🛑 Inappropriate POA
Income	Unspecified	Unspecified

## Family Tree



## ASSETS & LIABILITIES

<b>Statement of Net Worth</b>				<i>Notes</i>
For the Financial year ending 30 June 2021				
	Steven	Jenny	\$Market Value Houshold	
<b>Life Style Assets</b>				
Main Residence			1,300,000	
Home contents			25,000	1
Vehicles	30,000	30,000	60,000	2
<b>Subtotal</b>			<b>1,385,000</b>	
<b>Investment Assets</b>				
Savings			3,000	
Superannuation	790,000	480,000	1,270,000	
<b>Subtotal</b>			<b>1,273,000</b>	
<b>Total Assets</b>			<b>2,658,000</b>	
<b>Liabilities</b>				
Credit Card			Negligible	
Mortgage - Main Res			nil	
<b>Subtotal</b>	-		<b>Negligible</b>	
<b>Net Wealth</b>			<b>2,658,000</b>	
<b>Note</b>				
1 This is a standard insurance estimate. It's likely to be conservative. Please provide an estimate for your home contents				
2 Two vehicles, assumed to be \$30,000 each				





# Analysis: Identifying risks and problems

## Issues identified:

The following is a lists of estate planning issues we have identified:

Potential issue	Goal	Impact
Inappropriate or no Power of Attorney	2	Critical. Fix immediately.
Outdated wills	1, 2	Serious
Insufficient life insurance.	1	Important
Testamentary trust advantages	1, 2	Important
Loss of digital assets	2	Important

## Inappropriate or no Power of Attorney

**Jenny:** While divorce ordinarily invalidates a will, however it does not affect a Power of Attorney (PoA). This means your POA with your ex-husband is remains valid. Jenny, should you become incapacitated, your previous partner can make any financial decision for you and to decide your medical well being. Meanwhile Steven would be powerless.

This is critical and we ask you to fix this immediately.

**Steven:** You need appropriate PoAs.

## Outdated wills

The will you drafted 7 years ago predates the birth of your son Jeffrey. We are concerned the existing will may not adequately consider his needs or your updated circumstances. Here are some scenarios to consider. If one or both of you are either critically injured or pass away, what will happen to Jeff? Who will be Jeffs guardian? What protections will you need to hold any money in trust for him so a minor is not responsible for their family wealth.



## Insufficient life insurance.

We are concerned your life and personal insurances are insufficient to provide for your son's upbringing.

## Testamentary trust advantages

Currently you do not have a provision for a testamentary trust, which can be useful tools for the surviving partner in managing family affairs. They can also help protect Jeff's interests should you both pass away.

## Loss of digital assets

Bitcoin and other digital assets are easily lost by estate administrators. Special instructions and administration can help to ensure these assets are properly passed along.



# Strategy Recommendations

## Strategy 1: Establish appropriate Powers of Attorney

We recommend you consult with your lawyer to establish an enduring and a medical powers of attorney which will allow your spouse to handle your affairs should you be incapacitated.

Your will deals with all your legal matters upon your death, but what happens if you are in a coma for several years? Long periods of incapacity prior to passing away are common.

A power of attorney is a deed that grants legal authority to another person to make decisions on your behalf. Estate planners usually specify in the deed that this authority only comes into power if and when you become incapacitated. You can unilaterally revoke this authority at any time.

You will need two distinct types of power of attorney: enduring, and medical. Enduring power of attorney deals with financial issues allowing your spouse to sign documents as if they were you, and the medical power of attorney deals with and health care decision including the decision to withdraw life support. These deeds are usually mirrored in that they are identical for each spouse, but each will substitute each other's names.

**Advantages:** Your spouse will have the authority to look after your affairs when you are incapacitated.

**Drawbacks:** This area of law can be complex and poorly drafted deeds can create legal problems. Work with a trusted lawyer who specialises in estate planning to avoid these issues.

## Strategy 2: Life insurance and other personal insurance

We recommend you undertake a comprehensive review of your personal insurances, specifically life insurance cover.

We are concerned that were one of you to pass away, it might be difficult for your surviving spouse to raise Jeff alone. As a general rule-of-thumb, the quantum of insurance should be sufficient to raise your child and settle any outstanding debt. Your total debt burden is trivial, which leaves only Jeff as our only consideration.

Our office will be happy to provide you with a comprehensive review of your insurance needs along with competitive quotes. Our analysis will consider if it more effective to hold this insurance in your superfund or in your own name.

**Advantage:** There will be adequate funds to raise Jeff

**Drawback:** We also note that life insurance will become increasingly expensive as you approach retirement age.



## Strategy 3: Update wills and protect your son Jeff.

We recommend you consult with your lawyer to update your wills, with specific attention given to protecting Jeff.

Potential issue	Explanation
Alternative guardianship	Who will look after Jeff if both of you pass away simultaneously?
Spouse remarries	If your spouse remarries after you pass away, are there any special arrangements you would like to make to protect your son's interests?

We are not privy to the contents of your current will, and therefore we ask that you work with your lawyer on the specifics on how to improve your estate.

**Advantages:** You have considered son specifically and will have specific clauses to care for him.

**Drawbacks:** None.

## Strategy 4: Establish a Testamentary trust

We recommend you consider establishing a testamentary trust as part of your will. If your partner passes, a testamentary trust could be a tax effective vehicle to invest the life insurance funds received (see strategy 2). These investment returns are intended to replace your partners income in their absence. The key advantage of testamentary trusts is that trust distributions to minors will be taxed at adult rates. Without this structure, the investment returns will accrue to the surviving partner, possibly pushing you into a higher tax bracket. Testamentary can be especially helpful to the surviving parent as they will need to conserve capital.

If both parents were to pass away, the trust can be used to protect your capital for Jeff until he reaches adulthood. Your lawyer will help you select an appropriate trustee.

Furthermore, testamentary trusts can be drafted to provide flexibility. For example, the trust can be wound up if it is no longer needed, or you can by pass the trust and elect not to establish the trust and instead receive the funds directly.

**Advantages:** Lower taxes, asset protection

**Drawbacks:** Trusts add slightly more complexity and compliance as they require annual tax returns when they come into existence. Generally testamentary trusts are not viable with less than \$300,000 of capital. If you do not wish to take out insurance, there may not be sufficient funds to justify creating a testamentary trust.

## Strategy 5: Protect your digital assets

Estate managers find digital assets are especially easy to lose when compared to physical or financial assets. The two most common problems are

- 1) **identifying exactly what assets were held by the deceased, and**
- 2) **gaining access to and establishing control of the assets.**

Digital assets can be categorised as either corporate sponsored, or distributed. Corporate sponsored digital assets include:

- Cloud data and media held in Adobe Creative Cloud, OneDrive, Google Drive or Dropbox.
- AdSense revenue streams from monetised YouTube channels, or other monetised platforms.
- Game libraries purchased from Good Old Games or Humble Bundle (but not Steam, or the Epic Store which are licences and are not owned).
- Music and media owned from iTunes library, Google Play, BandCamp or other online store.

Distributed assets include any crypto currency, NFTs<sup>1</sup> or other decentralised systems where there is no single authority.

While you have spoken about your Bitcoin holdings, we ask you to think carefully and identify any Corporate sponsored digital assets you own. Please don't include streaming only services such as music on Spotify or films on Netflix as these titles are not owned by the user.

Digital assets that are held with corporations are substantially easier because there is an authority who can grant access to the asset. The executor with probate can contact the company to request access to the account, usually through a password reset. Some services will allow your to transfer purchased titles from the deceased account to the beneficiary's account, however most will not. Your lawyer can advise you further on specific services.

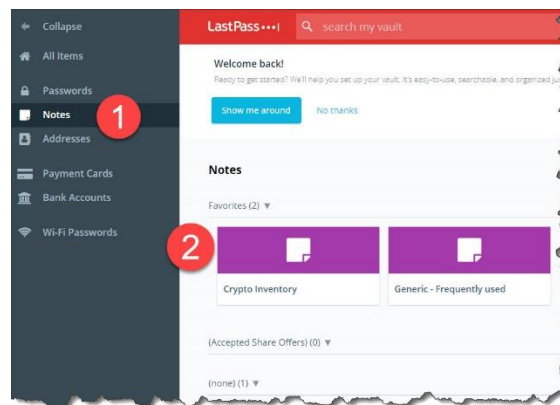
Distributed digital systems (such as bitcoin) are substantially more difficult because they offer no point of contact. A lost password often means the asset is lost for good. A court order to recover the asset will be ineffective.

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<sup>1</sup> Non Fungible Tokens

Ideally, we recommend you create an inventory list of crypto holdings in your will, however this is often impractical as you trade cryptotokens, and we find users will accumulate multiple wallets or accounts for various different coins and system. You may only hold Bitcoin right now, but as you grow in confidence investing in digital assets you may also trade other assets such as Ethereum, Dogecoin, NFTs, etc. Therefore, we recommend your will accurately describes where your LPR can find your inventory which is kept separate of your will. Remember this inventory may form part of legal evidence used by your estate, so it must be updated regularly and stored securely. This inventory needs to include all passwords to access computing devices, all usernames for online accounts, and the public and private keys for cryptocurrency accounts.

Security of such an inventory is paramount. We recommend you use a password manager such as LastPass, 1password, DashLane or KeePass. We recommend you create a new note within your password manager that has a detailed inventory of your crypto holdings, and includes instructions on how to access these assets. Your will should make specific reference on where to find this note.



If you use a third-party provider to hold the cryptocurrency (such as a custodian, exchange or other online wallet provider), details of the provider should be included in the inventory. Some wallets are stored on a physical device USB or phones. Include instructions on where these devices are physically located and describe what they look like. Don't forget that a phone-based wallet also means you will need to include the phone password as well.

Make sure their digital life remains available to the next generation is to identify their online accounts and to leave a detailed inventory of all their online accounts.



## Maintaining privacy while you are alive

Cryptocurrency is often favoured by people who also have strong preferences for privacy. How can we ensure your executors or attorneys can access your assets when you pass away, but do not have access to the account while you are still alive?

A simple and practical method to split your passphrase, giving one half in a sealed envelope to your lawyer to keep with the will, and the other half to your spouse. The passphrase should be a long alphanumeric, for example 24 characters. The passphrase can be hashed and the output value and can be included in both the text of the will and the passphrase document. Don't forget to include the name of the hashing algorithm used (SHA1, SHA256, SHA512, etc).

Remember, should you ever need to change your passphrase, you will need to update the contents of each sealed envelope, otherwise your assets will be lost.

**Advantages:** Proper record keeping will ensure your digital assets can be passed on.

**Drawbacks:** Inventory can be time consuming. Careful attention to security is important to avoid leaking your personal data.



# How to follow our advice

Steps you should take to follow our advice:

Step	Description	Urgency	Date Completed
1	Contact your lawyer to establish: a) Renewed wills b) Powers of Attorney (Medical and Enduring)	Urgent	__/__/20__
	Ensure your lawyer revokes the power of attorney with Jennifer's previous husband.	Critical	__/__/20__
	Discuss with your lawyer the potential to create a testamentary trust	Important	__/__/20__
	Make an appointment with our office to get a quote for personal and life insurance.	Important	__/__/20__
2	Create an inventory of your crypto holdings and other digital assets. Keep this up to date.	Important	__/__/20__
	Use a password manager	Recommended practice	__/__/20__



# Appendices

## Appendix 1: Assumptions

- 2020/21 tax rates
- Assumed car values and home contents values were drawn insurance values from undisclosed conversations with financial advisors in current practice. In practice we would query the client on these.

## Appendix 2: Images Source

All images are original and were generated by Phillip Wong. This includes all portraits which were produced using the GAN (generative adversarial network) AI algorithm. Please see <https://thispersondoesnotexist.com/> for more information



*These images are not of real people!*