

Your legal health check

Prepared for Margaret • Illustrative answers

Source position: 19 October 2026. Dates and legal statements are unverified.

Worth attention

Based on your answers: 2 worth attention • 2 worth checking. These are prompts for discussion, not verified conclusions about your documents.



C5 / ACT / HOME

Planning a sale or refinance

You told us a sale or refinance is planned or underway.

Next step: Contact Assure as soon as you have a date.

Solicitor verification required



C12 / ACT / PEN

Arrange an enduring power of attorney

You told us you do not have this document.

Next step: Discuss who you trust to manage your finances if needed.

Solicitor verification required

Your next step

Your next step. The items under "Worth attention" are the ones we suggest dealing with first. Reply to this email or book a 15-minute call, and a solicitor will go through them with you. We will confirm the scope and a fixed fee before any new work begins.

A discussion does not commit you to new work. Any new work needs an agreed scope and fee.

Worth checking



C11 / CHECK / COMPANY

Check who takes over your trust

Your trustee answer calls for a succession check.

Next step: Check the trust deed and who can appoint a replacement.

Solicitor verification required



C15 / CHECK / FILE

Check your super nomination

Your nomination is missing, may be old, or is uncertain.

Next step: Check that it matches your estate plan.

Solicitor verification required

The detail behind your findings

The source text below is retained without alteration. Every finding remains a draft for solicitor verification.

C5 Sale or refinance planned

Tell us early about your sale or refinance. Your family trust holds a caveat or mortgage over your property. It must be removed at settlement, and usually moved to the new property or loan if you want the protection to continue. If we hear about it late, it can hold up settlement. Contact us as soon as you have a date.

C12 No enduring power of attorney

You do not have an enduring power of attorney. Your Will only works after you die. If you lose capacity during your life, for example after an illness or accident, an enduring power of attorney lets someone you trust manage your finances. Without one, your family may need to apply to a tribunal, which takes time and may result in someone you would not have chosen.

C11 Other trustee arrangements

Check who takes over your trust. Your trust deed should say who replaces the trustee, and who holds the power to appoint a trustee, if someone dies or loses capacity. We can check the deed and confirm the position.

C15 Super and life insurance

Your super may not follow your Will. Super and the life insurance inside it usually do not pass under your Will. They go where your fund's rules or your nomination direct. Some nominations lapse after three years. It is worth checking yours matches your estate plan.

What has happened

F1 • SOURCE WORDING • SOLICITOR VERIFICATION REQUIRED

Your Will and trust still work.

In May, the Federal Budget announced changes to how property and trusts are taxed. When we last wrote, these were only proposals. Here is where things stand as at {date_of_position}.

Unchanged. The Budget did not change the law on Wills. Nothing in it makes your Will, your trust or your loan arrangement invalid.

Now law. From 1 July 2027 there are two changes for property owners. First, the 50% discount on capital gains tax is replaced for gains made after that date. Gains made up to 30 June 2027 keep the discount. Second, negative gearing is limited to new builds. A property you owned on 12 May 2026 keeps its current treatment for as long as you own it.

Not yet law. The Government has proposed a 30% minimum tax on family trusts. It is now before Parliament and may change. If it passes, it would start no earlier than 1 July 2028.

What your structure does

F2 • SOURCE WORDING • SOLICITOR VERIFICATION REQUIRED

A quick reminder of what you have.

Your arrangement has three parts that work together.

1. A family trust. Some years ago, money was gifted to a family trust set up for you. The trust then lent that money back to you.
2. Security over your property. Because the trust lent you money, it holds a caveat or mortgage over your property, much as a bank does. If you ever faced a claim from a creditor, there would be less unprotected equity for them to reach.
3. A testamentary trust in your Will. This trust does not exist yet. It is created by your Will when you die. Instead of your family receiving everything directly, what you leave can be held in a trust for them. That can help protect it if a family member goes through a divorce, a business failure or a lawsuit, and it can let income be shared within the family in a tax-effective way.

None of this has been changed by the Budget.

The one thing worth checking

F3 • SOURCE WORDING • SOLICITOR VERIFICATION REQUIRED

Your testamentary trust and the proposed trust tax.

The proposed 30% trust tax excludes genuine testamentary trusts like the one in your Will. That is good news. But there is a condition you should know about.

Because your testamentary trust is only created when you die, the rules that apply are the rules in force at that time. Under the law as proposed, a testamentary trust created after 1 July 2028 would stay outside the tax only if its income can go to individuals, not to companies. Many Wills of this kind allow a company to be one of the beneficiaries. If yours does, the trust could lose the exclusion.

In most cases this can be fixed with a small update to the Will. There is no need to act today, because the law may still change. Once it passes, we can check your Will and tell you whether an update is needed.

An example. Imagine your Will lets the trustee pay income to your children, your grandchildren or a family company. Under the new rule, the option to pay a company could mean the whole trust is taxed at 30%. Removing that one option could keep it outside the tax.

Why families keep their testamentary trust

F4 • SOURCE WORDING • SOLICITOR VERIFICATION REQUIRED

Why a testamentary trust is worth keeping.

Most people leave everything to their children outright. Once it is in a child's name, it is theirs, and so are the risks that come with it. A testamentary trust works differently, and the reason is simple: a person cannot lose what they do not own.

In a testamentary trust, your children are beneficiaries, not owners. The trustee decides who receives what, and when. Until something is actually paid out, no single beneficiary owns any of it. That one feature is what makes the difference in situations like these.

If your son divorces. Had he inherited your home outright, it would be his property and could be divided in a property settlement. Held in a testamentary trust, it is not his to divide, although a court can still take into account what he may receive from it.

If your daughter's business fails. Her creditors can pursue what she owns. Assets sitting in the trust are not hers, so they are much harder for creditors to reach.

If you have young grandchildren. Ordinarily, income paid to children under 18 is taxed at penalty rates. Income from a testamentary trust is one of the few exceptions: it can be paid to children and grandchildren and taxed as if they were adults, each with their own tax-free threshold. For a family with several grandchildren, that can mean thousands of dollars a year that stays in the family rather than going in tax.

If a family member is not good with money, or is unwell or vulnerable, the trustee can provide for them over time, rather than handing over a lump sum they may lose.

This is why the carve-out matters. The proposed trust tax would have taxed trust income at 30% no matter who received it. The exclusion for genuine testamentary trusts means your family keeps these benefits. It is also why it is worth making sure your Will meets the conditions described above.

What well-advised families check

F5 • SOURCE WORDING • SOLICITOR VERIFICATION REQUIRED

The details that make the difference.

A testamentary trust is only as good as the choices behind it. These are the points families who are well advised tend to look at, and most people never think to ask about.

Who is in control. The protection is strongest when the person at risk is not the only one controlling the trust. If your son is going through a divorce and is also the sole trustee and appointor of his trust, the court is more likely to treat the assets as his. Many families appoint a sibling or trusted adviser to act alongside the beneficiary.

One trust or one for each child. A single trust for the whole family can lead to disagreements. Separate trusts for each child let each branch of the family make its own decisions.

Where your super goes. Super does not automatically pass under your Will, so it does not automatically go into your testamentary trust. With the right nomination, it can be paid to your estate and then into the trust, so it receives the same protection.

What happens to jointly owned property. Property owned as joint tenants goes straight to the other owner and bypasses the trust entirely. Some families change how property is held so it can pass into the trust.

Whether the trust can still adapt. Wills drafted years ago may not allow for blended families, grandchildren born since, or the new tax rules. A review can confirm your trust still does what you intended.

Where your family trust earns significant income, such as rent or business profits, your accountant can also advise on the options under the proposed trust tax before 2028. For most clients in your position, whose family trust holds only the loan to them, that is unlikely to be needed.

Before relying on this report

This report gives general information based on your answers. It is not legal or tax advice for your circumstances. Please speak with us before acting, and with your accountant about tax.

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