

A ONE DAY ONLINE MASTERCLASS

# Securing Assets in the Estate Plan: One Day Masterclass

Friday 17<sup>th</sup> February 2023  
Online



Leaders in online CPD for Lawyers & Accountants

## Morning Theme: Trusts in the Estate Plan

9.00 – 9.05am

### Introduction and welcome

**Morning Chair: Paula Tallon, Tax Specialist, Salann Pty Ltd, Sydney, NSW**

9.05 – 9.55am

### Session 1: Taking Charge: Control Dilemmas in Family Trust Management

One of the most difficult issues families face in succession planning is who should be trustee of a family trust when the parents who established it are no longer willing or able to continue. This session will provide a guide to control management issues and strategies for navigating and avoiding disputes, including:

- Determining appropriate control arrangements for the next generation
- Key factors in the selection of trust controllers and how involved should the family be in the decision?
- Determining the makeup of the control mechanism:
  - Control of the corporate trustee
  - Appointorship
  - Guardianship
- Is co-management a viable option?
- Deed compliance in trustee variation and appointment
- Tips for drafting appropriate mechanisms for managing disputes and deadlocks between trustee and beneficiaries
- When will a court remove a trustee in a family dispute?
- Examples and lessons from recent cases

**Speaker: Greg Russo, Partner, Featherbys Lawyers, Melbourne, Vic**

9.55 – 10.05am

### Questions and Discussion

10.05 – 10.55am

### Session 2: Protecting Vulnerable Family Members through Trusts

For a parent, the biggest concern throughout life is the care and welfare of their children. Nothing compounds this situation more than having a child who is vulnerable and has special needs. This session examines estate planning options to safeguard the interests of vulnerable family members, including:

- In what situations should a parent be considering a special arrangement for their child in their estate planning?
- What present and future needs should be considered?
- When is a Special Disability Trust an appropriate option?
- A deep dive into Special Disability Trusts including legislative requirements, eligibility, financial considerations and other requirements
- Has the need and effectiveness of Special Disability Trusts been impacted by the NDIS?
- The role of protective trusts for vulnerable beneficiaries – at what stage should these be established?
- Considerations for establishment of a protective trust, including:
  - Asset shares and other family members
  - Impact on government benefits and tax implications
  - Appropriate limitations and conditions
  - Trustee selection, control and sibling involvement

**Speaker: Allan Swan, Director, Estate Planning Equation, Melbourne, Vic**

10.55 – 11.05am	<b>Questions and Discussion</b>
11.05 – 11.25am	<b>Morning Break</b>
11.25am – 12.15pm	<p><b>Session 3: Act in Haste Repent in Leisure: Challenges in Trust Deed Variation</b></p> <p>Trust deeds are complex and comprehensive documents, which is why they must be carefully consulted before any steps are taken under them. This session will examine trust deed amendment in the light of recent decisions which highlight what can go wrong when action is taken without proper consideration of the deed requirements, including:</p> <ul style="list-style-type: none"><li>• Lessons from Re Owies Family Trust [2020] VSC 716:<ul style="list-style-type: none"><li>○ Rules of trust construction</li><li>○ What are the obligations of a trustee?</li><li>○ Why compliance with variation requirements in the trust deed is essential</li><li>○ Financial impacts and other unintended consequences of non-compliance</li><li>○ Invalid appointments and decision-making</li><li>○ The importance of proper record-keeping</li></ul></li><li>• Consequences of failure to comply with the technical requirements in trustee appointment and removal: Advanced Holdings Pty Ltd as trustee for The Demian Trust &amp; Ors v Commissioner of Taxation [2020] FCA 1479</li><li>• Can a trust deed be amended after the vesting date? Re McGowan and Valentini Trusts [2021] VSC 154</li></ul> <p><i>Speaker: Jennifer Dixon, Practice Leader, Moores, Melbourne, Vic</i></p>
12.15 – 12.25pm	<b>Questions and Discussion</b>
12.25 – 1.10pm	<b>Lunch Break</b>



## Afternoon Theme: Family Dynamics and the Estate Plan

1.10 – 1.15pm	<p><b>Introduction and welcome</b>  <b>Afternoon Chair: Michelle Griffiths, Partner, TAG Financial Services, Melbourne</b></p>
1.10pm – 2.05pm	<p><b>Session 4: Heading the Outlaws Off at the Pass in Estate Planning</b></p> <p>Not all relationships last the distance, and parents are increasingly concerned about protecting their adult children’s potential share of that wealth from a former partner following a relationship breakdown. This session provides a guide to practitioners on estate planning mechanisms for quarantining assets from family court proceedings, including:</p> <ul style="list-style-type: none"> <li>• What does the FCFCOA look for in assessing assets available for property claims?</li> <li>• How effective are family trusts in protecting property from third party claims?</li> <li>• Strategies for drafting trust deeds and managing distributions to fend off former partner claims</li> <li>• Structuring testamentary trusts for asset protection</li> <li>• Can a Binding Financial Agreement effectively prevent claims against trust assets and wider family property?</li> <li>• Cases including <i>Rigby &amp; Kingston (No 4) [2021] FamCA 501</i></li> </ul> <p><b>Speaker: Matthew Burgess, Director, View Legal, Brisbane, Qld</b></p>
2.05 – 2.15pm	<p><b>Questions and Discussion</b></p>
2.15pm – 3.05pm	<p><b>Session 5: Second Spouses, the Family Home and the Estate Plan</b></p> <p>Estate planning for second or later spouses comes with significant challenges, particularly when one partner dies, leaving a spouse or family living in the most valuable asset of the deceased’s estate. This session examines how an estate plan can best manage potential conflict between adult children and surviving spouses regarding the family home, including:</p> <ul style="list-style-type: none"> <li>• Life interests in the family home:             <ul style="list-style-type: none"> <li>○ When are they appropriate?</li> <li>○ Should any limitations or restrictions be placed on a life interest?</li> <li>○ How can a life interest take ageing and health into account?</li> </ul> </li> <li>• Characteristics of a right to reside             <ul style="list-style-type: none"> <li>○ What conditions can be attached to a right to reside?</li> <li>○ When does a right to reside end?</li> </ul> </li> <li>• Who pays for maintenance of the property?</li> <li>• Navigating the tax consequences of life interests and rights to reside</li> <li>• What happens if the surviving spouse later goes into aged care?             <ul style="list-style-type: none"> <li>○ Can the property be used to fund aged care?</li> </ul> </li> <li>• Case studies</li> </ul> <p><b>Speaker: Steve Grant, Director, Merthyr Law, Brisbane, Qld</b></p>
3.05 – 3.15pm	<p><b>Questions and Discussion</b></p>
3.15 – 3.35pm	<p><b>Afternoon Break</b></p>

3.35 – 4.25pm

### **Session 6: Exit Stage Left: Designing an Estate Plan for the Family Business**

One of the most difficult issues a business owner will face is planning what will happen to the business down track, particularly when family members are involved. This session will provide a guide to family business succession planning and advice on handling some of the most challenging problems that arise when passing on to the next generation, including:

- Determining priorities, timelines and goals
- Who needs to be involved in planning from the family side?
- Effective use of family constitutions
- Dividing up the estate when only some of the kids are interested in the family business
- What if multiple families own a business asset? Tips for allocating across the children
- Using buy/sell agreements – whose names should be on the contract?

**Speaker: Patrick Ellwood, Director, Clover Law, Brisbane**

4.25 – 4.35pm

### **Questions and Discussion**

4.35pm

### **Masterclass Close**



### GENERAL INFORMATION

#### Masterclass Registration Fee

The registration fee includes attendance at the live online masterclass.

#### Masterclass Papers

Access to the papers and PowerPoints will be available online to all delegates in the lead-up to the masterclass (as they become available). The materials will be available in .pdf format for easy download to your local computer or portable device.

#### CPD – Accountants

6 CPD/Training Hours

CPD

Certificate

All delegates will receive a CPD certificate confirming registration and the CPD units applicable



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Please register me for **Securing Assets in the Estate Plan: One Day Masterclass Online** to be held online on Friday 17<sup>th</sup> February 2023. [code: SXEFFEB23A]

- Early Bird Registration** – for registrations paid on or before 31 January 2023 - \$770 (\$900 + \$90 GST)  
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The papers from this masterclass will be available in electronic form only approximately 1 week after the masterclass has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au) [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) (Code: PSXEFEB23).

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