

# THE 15<sup>TH</sup> ANNUAL ESTATE PLANNING CONFERENCE

OUR REGULAR TWO DAY CONFERENCE  
DELIVERED **ONLINE** IN FOUR PARTS  
**OVER FOUR HALF DAYS**

## **Part 1: Estate Planning and Family Dynamics**

*Thursday 18 March 2021 [10am to 12.45pm]*

## **Part 2: Protecting the Citadel**

*Friday 19 March 2021 [10am to 12.45pm]*

## **Part 3: Tax Issues in the Estate Plan**

*Thursday 25 March 2021 [10am to 12.45pm]*

## **Part 4: Authority Issues in the Estate Plan**

*Friday 26 March 2021 [10am to 12.45pm]*

### **FEEDBACK FROM LAST YEAR'S CONFERENCE:**

*"Interesting and relevant topics with very good presenters and good take away material."*

*"Mostly very good presenters who clearly new their topics."*

*"A great job in all the circumstances. Thank you for allowing the conference to go ahead by offering online delivery."*



Leaders in online CPD for lawyers

# PART 1: THURSDAY 18 MARCH 2021

**CHAIR PART 1: Paul Sokolowski,  
Partner, Arnold Bloch Leibler,  
Melbourne**

**THEME: ESTATE PLANNING AND FAMILY  
DYNAMICS**

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

## **Session 1: A Matter of Trust: Impact of Trusts on the Estate Plan**

Family trusts and testamentary trusts are a popular vehicle for asset protection and prudent financial management amongst family members. However, as a result of recent legislative changes, along with new case law, the landscape is shifting and it may be time for clients' estate plans to receive a grease and oil change. This session examines these key changes and how they may impact the estate plan, including:

- Unpacking the recent excepted trust income reforms
  - How do these reforms limit tax concessions for minors receiving trust income?
  - Are super assets considered to be outside of the deceased's estate?
- When will a trust deed need variation? Identifying reasons for change
- Reviewing key clauses - vesting date, death or incapacity of appointors and guardians, beneficiaries and variation
- What happens on the vesting date?
- Is the door now open to South Australian trusts? Examining impact of *Clark v Ebdon* [2020] SASC
- Case update, including *Callus v KB Investments* [2020] VSC 135

*Speaker: Matthew Burgess, Director, View Legal*

**10.45 - 10.55am Questions and Discussion**

**10.55 - 11.35am**

## **Session 2: Estate Planning for Clients with Assets and Beneficiaries in Multiple Jurisdictions**

The client has assets or potential beneficiaries in multiple jurisdictions and you are asked to advise on an estate plan. Where do you start? This session looks at the practical response to this question. It includes:

- Impact of dual nationality on the estate plan
- Establishing domicile
- Jurisdictional issues: which route to follow to achieve the greatest benefit
- Use of foreign wills and international wills
- Managing multiple wills and avoiding conflicts between them
- Foreign tax considerations in estate planning
- Impact of foreign resident beneficiaries in testamentary trusts
- Case studies

*Speaker: Bryan Mitchell, Principal, Mitchells Solicitors, Brisbane*

**11.35 - 11.45am Questions and Discussion**

**11.45 - 11.55am**

**Short Break**

**11.55am - 12.35pm**

## **Session 3: Shareholder Agreements in Wealthy Families - An Estate Planning Perspective**

The estate plan is in place and one more piece of the puzzle is required - a shareholder agreement. This session looks at these with a practical focus. It includes:

- Shareholder agreements and estate planning - an overview
- Nature of shareholder agreements and difference from buy-sell agreements
- Adapting agreement for other business vehicles
- Key inclusions in shareholder agreements:
  - Board appointment
  - Employing family members
  - Shareholder powers
  - Dispute resolution
  - Allotment and transfer of shares
  - termination
- Structuring the shareholders agreement to meet estate planning goals
- Shareholder agreement's role in tax effectiveness
- Case study - when the estate plan is at odds with the shareholders agreement

*Speaker: Daniel Smedley, Principal, Sladen Legal, Melbourne*

**12.35 - 12.45pm Questions and Discussion**

**12.45pm**

Part One Close

# PART 2: FRIDAY 19 MARCH 2021

**CHAIR PART 2: Andrew O'Bryan,**  
Partner, Hall & Wilcox Lawyers,  
Melbourne

## THEME: PROTECTING THE CITADEL

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

### **Session 4: Estate Planning and the Family Courts**

Following a relationship breakdown, even the most well-thought-out estate plan can be vulnerable to the increasing reach of the Family Court. This session will look at options for protecting the family assets from claims in the Family Court, including:

- The use of binding financial agreements - when should they be used and what should be included?
- Can a BFA prevent a family provision claim?
- Family and testamentary trusts - Family Court scrutiny and court orders, assessing "effective control" and other aspects
- Managing and structuring loans from parents to child
- The use of a deed of release in property settlements to prevent estate claims down track
- Case law update

*Speakers: Jennifer Dixon, Principal, and Sarah Lacey, Senior Lawyer, Moores, Melbourne*

**10.45 - 10.55am** Questions and Discussion

**10.55 - 11.35am**

### **Session 5: Equitable Remedies and the Estate Plan**

This session focuses on the equitable remedies which might be available to attack even the most well thought-out estate plan and the options that might be available to minimise the risk of such claims. It covers:

- When will equitable relief be sought?
- What are the advantages of equitable relief?
- Reasons why equitable relief may be refused
- Proprietary estoppel and creating an interest in land through oral representations
- The use of constructive trusts as a sword and a shield
- Breach of fiduciary duties by trustees
- Strategies to minimize the risks of such claims
- Lessons from recent cases

*Speaker: Steve Grant, Director, Merthyr Law, Brisbane*

**11.35 - 11.45am** Questions and Discussion

**11.45 - 11.55am**

**Short Break**

**11.55am - 12.35pm**

### **Session 6: Maximising Super: It's Time to get Strategic**

Superannuation forms a large part of a client's wealth outside of their personal estate. However, not all super strategies are created equal. This session provides advanced planning strategies to maximise the impact of super, with a focus on contributions and pensions. It covers:

- Tax effective pension strategies
- Reversionary v non-reversionary pensions
- Optimising the amount held in tax free retirement phase
- When should you restructure a member's retirement phase pensions?
- Contributions to suit your client's long-term estate plan
- Combining benefit withdrawal and contribution strategies
- Death benefits and the transfer balance cap
- Assessing the impact of COVID-19 on super

*Speaker: Nathan Yii, Principal Lawyer, Chartered Tax Advisor and SMSF Specialist Advisor - Nathan Yii Lawyers, Melbourne*

**12.35 - 12.45pm** Questions and Discussion

**12.45pm**

Part Two Close

# PART 3: THURSDAY 25 MARCH 2021

**CHAIR PART 3: Ross Higgins,  
Partner, Mills Oakley Lawyers,  
Melbourne**

**THEME: TAX ISSUES IN THE ESTATE PLAN**

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

**Session 7: Restructuring Arrangements: Making the Most of the Small Business CGT Concessions**

When reviewing a client's estate plan, advisers may discover that certain assets are not sitting in the right structure. This session examines how advisers can use the small business CGT concessions to restructure assets, without triggering significant tax consequences. It covers:

- When is it appropriate to restructure assets to pass on to the next generation?
- Issues to consider when moving assets within family group
- Options for restructuring assets into separate companies
- When is an asset an active asset?
- Deriving capital proceeds to enable the use of the CGT concessions
- Understanding how to identify market value
- Getting the money into the hands of individuals

*Speaker: Andrea Carrick, Director, AG Tax Lawyers, Melbourne*

**10.45 - 10.55am Questions and Discussion**

**10.55 - 11.35am**

**Session 8: Managing the Long Reach of Division 7A and UPEs in the Estate Plan**

An increasing number of private family groups have unpaid present entitlements and Division 7 loans, with no strategy in place as to how to eliminate these sitting time bombs in the estate plan. This session considers how Division 7 and UPEs can impact on the estate plan, and the planning strategies advisers should be implementing now to avoid tax headaches down the track. It covers:

- Tidying up Div 7A loans and application of debt forgiveness rules
- Section 100A issues
- Should you forgive UPEs and soak up carry forward losses now?
- Does forgiveness of an unpaid present entitlement in the will constitute a specific gift for the purposes of family provision claims?
- Are there any tax consequences triggered on forgiveness of an unpaid present entitlement?
- Managing unpaid present entitlements in bucket companies
- Impact of unpaid present entitlements on value of the estate

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

**11.35 - 11.45 am Questions and Discussion**

**11.45 - 11.55am**

**Short break**

# PART 3: THURSDAY 25 MARCH 2021

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11.55am - 12.35pm

## Session 9: Granny Flat Arrangements: Tax Relief on the Horizon

Older Australians are increasingly looking into multigenerational living arrangements with their children as a viable alternative to residential aged care. These types of arrangements are only likely to increase in popularity following the Federal Government's recent announcement regarding targeted CGT exemption for granny flat arrangements. This session looks at best practice advice and structuring of so-called "granny flat" options to achieve family harmony and maximise the tax benefits, including:

- Is a granny flat arrangement right for your client?  
Helping them analyse the benefits and disadvantages
- Structuring the arrangement:
  - Contribution percentages
  - Title, ownership and rights issues
  - Gift or loan
- Unpacking the new CGT exemption
- What needs to be in the formal, written agreement to qualify?
- Anticipating the risks of family disputes, financial troubles and relationship breakdowns and building in safeguards
- What happens if the parent needs to go into aged care?
- Making sure the arrangement is factored into estate planning through wills and other instruments
- Recent cases

*Speaker: Dung Lam, Special Counsel, Coleman Greig Lawyers, Sydney*

12.35 - 12.45pm Questions and Discussion

12.45pm

Part Three Close

# PART 4: FRIDAY 26 MARCH 2021

**CHAIR PART 4: Andrew O'Bryan,**  
Partner, Hall & Wilcox Lawyers,  
Melbourne

**THEME: AUTHORITY ISSUES IN THE ESTATE PLAN**

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

## **Session 10: Estate Planning When Capacity is an Issue**

When capacity is the issue, estate plans require careful management. This session examines how advisers can establish an estate planning framework to minimise the risk of incapacity by a key decision-maker, and what they should do if that happens without appropriate measures in place. It covers:

- Determining capacity - what are the obligations on the estate planner?
- Capacity to make testamentary dispositions other than wills:
  - Capacity to make or revoke a continuing power of attorney or for personal care
  - Capacity to manage property or make personal care decisions
  - Capacity to contract or make gifts
  - Capacity in respect to transfer of real or personal property
- When is medical testing and intervention required?
- Planning ahead to manage capacity issues through company constitutions, trust deeds and other instruments
- Case studies

*Speaker: Paul Evans, Partner, Makinson d'Apice Lawyers, Sydney*

**10.45 - 10.55am Questions and Discussion**

**10.55 - 11.35am**

## **Session 11: Enduring Powers of Attorney and Misuse of Power: Prevention Better than Cure**

An enduring power of attorney can provide protection for those who have lost decision-making ability. However, in practice, this can result in the misuse of power. This session examines the key preventative measures estate planners can implement to ensure clients are protected when granting powers of attorney. It covers:

- Choosing the right attorneys
- Taking care in construction or power of attorney document - risk prevention
- Duties, conditions and limitations - drafting tips
- Risk prevention versus ensuring powers given are sufficient to fully manage the affairs of the appointor
- To what degree does financial power of attorney deal with the family trust and SMSF?
- Case studies

*Speaker: Kylie Wilson, Partner, Holding Redlich, Brisbane*

**11.35 - 11.45am Questions and Discussion**

**11.45 - 11.55am**

**Short Break**

**11.55am - 12.35pm**

## **Session 12: Fraud on a Power and the Power of Variation in Trusts**

This session looks at the established trust principle of fraud on a power and how it may impact estate plans with an invalid exercise of trustee discretion. This session includes:

- What is fraud on a power and when can it arise?
- How invalid exercise of discretion can impact estate planning
- Exercising discretion to avoid a fraud on a power
- Avoiding a fraud on a power - looking at intention of the settlor
- Spotlight on power of variation or amendment
- How to properly draft power of amendment to avoid issues down the track
- Case update

*Speaker: Ed Skilton, Principal Lawyer, Sladen Legal, Melbourne*

**12.35 - 12.45pm Questions and Discussion**

**12.45pm Conference Close**

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference materials and recordings of each of the sessions provided after the conference.

## Conference Materials

Access to the conference materials will be available online to all delegates. Access will commence in the lead-up to the conference as the materials become available. Following the conference delegates will have access to the conference materials online with no expiration date.

## CPD Units/Points

**Lawyers (except WA):** 11 CPD units (substantive law)

**WA Lawyers:** 6 CPD points (substantive law)

**Accountants:** 11 CPD/Training hours

## CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

## Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

## Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, public health emergencies, natural disasters, and other Acts of God.

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