



# 18<sup>TH</sup> ANNUAL ESTATE PLANNING CONFERENCE

Intergenerational Business Estate Planning  
Factoring Parental Loans into the Estate Plan  
Protecting Vulnerable Family Members in the Estate Plan  
Choosing the Right Executor to Implement the Estate Plan  
Challenges in Estate Planning for the Elderly Client  
Inclusion and Exclusion in Estate Planning  
Protecting Family Trusts from the Ex-Laws  
Mis-Deeds, Irregularity and Deficiencies  
Be Alert and Alarmed: Superannuation Tax Update  
The Devil in the Detail of Binding Death Benefit Nominations

A Two-day Conference  
**Thursday 21 & Friday 22 March 2024**

Crown Towers Melbourne

## Feedback from last year's conference:

- Top presenters who are leaders in their fields. It is obvious you put a lot of effort into choosing the contents, which was all very relevant to my practice. Thank you.
- Great range of topics and very good speakers.
- The venue was great and topics were generally of interest and well presented and overall an educational and enjoyable experience. Looking forward to next year.
- All speakers were not only knowledgeable about their topics but also presented in a way that was accessible to delegates of varying levels/experience in respect of those topics, and pointed to materials/authorities for continuing research where delegates may wish to explore further.



Leaders in online CPD for Lawyers & Accountants

# DAY 1: THURSDAY 21 MARCH 2024

## THEME: DESIGNING THE ESTATE PLAN TO MATCH THE NEEDS OF THE NEXT GENERATION

### 11.00 - 11.10am

Welcome and Opening Remarks

**Chair: Justine Taylor, Principal Director, Uther Webster & Evans, Sydney**

### 11.10 - 12.00pm

#### Session 1: Succession and Control in Intergenerational Business Estate Planning

The image of the family scions battling each other for control of the family business is not purely the stuff of television fiction, but a real issue for many families as their parents age. This session will examine the importance of estate planning for family businesses, the major issues that need to be managed and dispute risk minimisation, including:

- Considering and meeting family expectations and concerns - the planning process and who should be involved
- Advice for helping the older generation “let go”
- Current structures, control mechanisms and processes and how to ensure validity and enforceability through to the next generation
- Using shareholder and family agreements to achieve desired outcomes
- Practical components of a staged succession process
- Managing equalisation and accounting issues
- Lessons from real life examples and cases

**Speaker: Greg Russo, Principal, Greg Russo Law, Melbourne**

### 12.00pm - 12.10pm Panel Comments and Questions

### 12.10 - 1.00pm

#### Session 2: Factoring Parental Loans into the Estate Plan

Parents are increasingly putting their hand in their pocket to assist their children as the price of houses rises and the economy experiences a downturn. The formalisation of this arrangement is essential in the context of asset protection and estate planning. This session will examine what needs to be included in a parent/child loan agreement and how to factor in existing loans on the death of the lender, including:

- Gift or loan and legal presumptions
- Drafting a loan agreement - key clauses
- Repayments and other terms
- Should the lender take security?
- Taxation and other financial considerations
- Treatment of parent to child loan agreements by the family and civil courts
- Factoring loan agreements into estate planning
- The consequences of the death of the lender
- Record keeping and other tips.

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

### 1.00pm - 1.10pm Panel Comments and Questions

### 1.10 - 2.10pm Lunch

### 2.10 - 3.00pm

#### Session 3: Trust Me: Protecting Vulnerable Family Members in the Estate Plan

Particular types of inter-vivos and testamentary trusts provide a very important vehicle for the ongoing support and protection of vulnerable family members, and give comfort to the parents of children with special needs. This session will highlight key factors in advising on, establishing and managing these types of trusts, including:

- The suitability of trusts for vulnerable and special needs family members
- Considerations for establishing an inter-vivos or testamentary trust
- The difference between protective trusts and special disability trusts and the characteristics of each
- Statutory requirements for a Special Disability trust including purpose and eligibility
- Financial and taxation considerations, including pension impacts for both the donor and beneficiary
- Trust control issues and decision-making capabilities of the beneficiary
- Tips for guarding against undue influence and other vulnerabilities
- Trust assets including superannuation proceeds
- Accounting requirements, administration and ongoing management.

**Speaker: Warwick Gilbertson, Partner, Turnbull Hill Lawyers, Sydney**

### 3.00pm - 3.10pm Panel Comments and Questions

# DAY 1: THURSDAY 21 MARCH 2024

**3.10 - 4.00pm**

## **Session 4: Choosing the Right Executor to Implement the Estate Plan**

Choosing the right executor can be difficult, and getting rid of the wrong executor can be even harder. This session will examine the key considerations in executor choice and provide a guide to manage executors when they fail to live up to obligations and expectations, including:

- What attributes should the ideal executor have?
- The risks of appointing family members and other interested persons
- A spotlight on executor compensation and calculation
- Unexpected taxation consequences of choosing a non-resident executor
- Does an executor need to get along with the beneficiaries?
- What constitutes unacceptable behaviour of an executor and what are the potential consequences?
- Challenging the actions of an executor
- Tips and traps in applications for executor removal
- Cases and examples including *Prothonotary of the Supreme Court of NSW v Whit* [2023] NSWSC 264; *Jortikka v Haukka* [2023] VSC 20; *Re Boglis* [2022] VSC 309

*Speaker: Stephen Lynch, Director, Somerville Legal, Sydney*

**4.00pm - 4.10pm** Panel Comments and Questions

**4.10 - 4.30pm** Afternoon Tea

**4.30 - 5.20pm**

## **Session 5: Five Minutes to Midnight: Challenges in Estate Planning for the Elderly Client**

People are living much longer thanks to medical developments and intervention, and the thought of death can be far from their minds. Faced with a client in their very advanced years, advisors must consider a whole raft of issues in their advice and planning. This session will examine key estate planning matters for the very elderly including:

- Issues related to capacity
  - The decision-making capacity of the client and the influence of family members
  - Tests for capacity and knowledge and approval
  - Who is my client? Managing accompanying and involved family members
  - Powers of Attorney and who to appoint
- Aged care Issues
  - Residential and care options
  - What to do about an elderly partner left behind
  - Proposed aged care reforms - what impact will it have on family assets and expectations?

*Speaker: Tanya Chapman, Solicitor, Baker Love, Wallsend, NSW*

**5.20pm - 5.30pm** Panel Comments and Questions

**5.30pm** Close Day 1

# DAY 2: FRIDAY 22 MARCH 2024

## THEME: RISKS IN THE ESTATE PLAN

### 9.00 - 9.10am

Welcome and Opening Remarks

**Morning Chair: Stephen Lynch, Director,  
Somerville Legal, Sydney**

### 9.10 - 10.00am

#### **Session 6: Damned if you do, damned if you don't: Inclusion and Exclusion in Estate Planning**

The premise underpinning estate planning is to provide for families and dependants post-death, but due to relationship breakdowns and for other reasons the decision-maker may have other plans. This session will examine the risks of exclusion or inadequate provision in estate planning and strategies for preventing challenges, including:

- The ability of the "excluded" and disappointed to make a claim - jurisdictional issues and differences
- Judicial decision-making trends in estate challenges - an analysis of recent cases
- Legal principles concerning family and dependants in estate planning
- Dealing with client's emotion and estrangement issues
- What does "adequate provision" really mean?  
Kornwasser v Spigelman [2022] WASCA 215; Mead v Lemon [2017] WASCA 215
- Pre-empting potential challenges through other means including pre-death giving and restructuring
- Statements of wishes and other documented intentions - worth the paper they are written on?

**Speaker: Christian Teese, Special Counsel, Rigby Cooke, Melbourne**

### 10.00am - 10.10am Panel Comments and Questions

### 10.10 - 11.00 am

#### **Session 7: Hands Off: Protecting Family Trusts from the Ex-Laws**

Relationship breakdowns are difficult enough, but the wider family members can also be impacted when a family trust and its assets become a target in proceedings in the Family Court. This session provides proactive advice and strategies for protecting family trusts from potential claims, including:

- Relevant provisions of the Family Law Act pertaining to property of the parties
- Jurisdiction of the Family Court when it comes to characterising and dealing with trusts
- Trusts - an asset or financial resource? Why it makes a difference and an analysis of relevant cases
- The ability of the Family Court to "bust the trust"
- What aspects of control and contribution does the court look at?
- Can a prior Binding Financial Agreement prevent consideration of a trust in divorce proceedings?
- Strategies for minimising the vulnerability of discretionary trusts including drafting tips
- Cases including Rigby & Kingston (No 4) [2021] FamCA 501; Woodcock & Woodcock (No 2) [2022] FedCFamC1F 173; Barrett & Winnie [2022] FedCFamC1A 99

**Speaker: Barry Berger, Principal & Accredited Family Law Specialist, Dignity EDR, Melbourne**

### 11.00am - 11.10am Panel Comments and Questions

### 11.10 - 11.30am Morning Tea

# DAY 2: FRIDAY 22 MARCH 2024

11.30am - 12.20pm

## Session 8: Mis-Deeds, Irregularity and Deficiencies: The Estate Planner's Nightmare

Nothing strikes fear into the heart of estate planning practitioners quite like the discovery of problems in the family trust document chain. This session will explore the implications for neglected, incorrectly followed or missing family trust deeds through recent cases and options for rectification, including:

- The impact of non-compliance and invalid process on a trust
- What to do if trust documents cannot be located
- Common problems and potential solutions
- When to seek the assistance of the courts
- The nuclear option, new trusts and the consequences of triggering a resettlement
- Practical tips for reviewing and checking the chain of trust documents
- Cases and examples including *Vanta Pty Ltd v Mantovani* [2023] VCA53; *Application by Ellasil Pty Ltd* [2023] VSC 69; *M & L Richardson Pty Ltd* [2021] NSWSC 105; *Re McGowan & Valentini Trusts* [2021] VSC 154; *Owies & Owies v JJE Nominees Pty Ltd* [2022] VSCA 142; *Re Narumon Pty Ltd* [2018] QSC 183

*Speaker: Matthew Burgess, Director, View Legal, Australia*

12.20pm - 12.30pm Panel Comments and Questions

12.30pm - 1.30pm Lunch

THEME: SUPERANNUATION AND THE ESTATE PLAN

*Afternoon Chair: Sophie Cohen, Director, Aintree Group Legal, Melbourne*

1.30 - 2.20pm

## Session 9: Be Alert and Alarmed: Superannuation Tax Update

The Government continues to tinker with superannuation in an effort to extract its share of the value, leaving advisors and members to assess and potentially restructure investments to retain more advantageous control. This session will examine in detail some of the developments over the past year in superannuation rules and administration and provide proactive advice on implications for estate planning, including:

- Imminent death super withdrawal - are there taxation consequences?
- What is the situation if the member dies between requesting withdrawal and receipt? A discussion of the ATO guidance statement
- Factoring the tax concession reductions for super funds with over \$3 million of assets into estate planning
- How will unrealised gains be calculated?
- Strategies for re-structuring real estate-rich super funds
- Potential reversionary pension changes and their impact
- Recontribution strategies and estate planning.

*Speaker: Peter Crump, Senior Consultant, BDO, Adelaide, SA*

2.20pm - 2.30pm Panel Comments and Questions

# DAY 2: FRIDAY 22 MARCH 2024

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**2.30 - 3.20pm**

## **Session 10: The Devil in the Detail of Binding Death Benefit Nominations**

The consequences of invalid or lapsed binding death benefit nominations (BDBN) can be dire, not only for superannuation beneficiaries but also for the advisors involved. This session provides a guide to keeping the BDBN in compliance with the statutory and other requirements and examines the significant consequences of failure, including:

- The nature, benefits and statutory requirements of a BDBN
- Distinguishing BDBNs in SMSFs and in other funds
- When does the three-year lapsing rule apply?
- BDBN formalities and trust deed consistency - when will a BDBN be invalid and what can be done about it?
- Auditing and regular reviews of super trust deeds for invalidity or being out of date
- Drafting tips for clauses supporting indefinite non-lapsing BDBNs and avoiding risks of ambiguity or complexity
- Can a BDBN have a secondary nomination if the primary nomination fails?
- Cases including *Hill v Zuda* [2022] HCA 21; *Walter William Nespolon v Lindy van Camp* [2022] NSWSC 1190; *Williams v Williams* [2023] QSC 90; *Munro & Anor v Munro & Anor* [2015] QSC 61; *Cantor Management Services Pty Ltd v Booth* [2017] SASCFC 122

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

**3.20pm - 3.30pm** Panel Comments and Questions

**3.30pm** Conference Close

# GENERAL INFORMATION

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## Conference Registration Fee

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The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days are included for delegates attending the face to face event.

## Conference Papers

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TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

## CPD

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**Lawyers (except WA):** 10 CPD units (substantive law).

**WA Lawyers:** 6 CPD points (substantive law) - being the maximum allowable per event by the LPBWA.

**Accountants:** 10 CPD/Training hours

## CPD Certificate

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

## The Conference Venue

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### Crown Towers Melbourne

8 Whiteman Street, Southbank

## Travelling to the Conference Venue

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Delegates are advised to make their own travel arrangements.

## Conference Dress

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Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

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# TERMS AND CONDITIONS

1. In these terms,
  - a. "TEN" means Television Education Network Pty Ltd
  - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
  - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
  - d. "live conference" means a conference other than a recorded conference.
  - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
  - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
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  - b. Otherwise, no refund.

## Governing Law – all conferences

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Registration is simple; complete the form below and fax or post your registration to us or register online.  
 Television Education Network Pty Ltd (ABN 19 052 319 365) trading as TEN The Education Network.  
 GPO Box 61, Melbourne, Victoria 3001  
 Phone (03) 8601 7700 Enquiries Hayley Williams-Cameron (03) 8601 7730  
 Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **18th Annual Estate Planning Conference** – a 2-day conference to be held in Melbourne on Thursday 21 & Friday 22 March 2024

Delegates have 2 options for attending the 2024 conference – both cost the same.

- Registration type 1:** Attend in person [code: MEPMAR24]  
 **Registration type 2:** Attend online [code: MEPMAR24LO]  
 **Early Bird Registration** – for registrations made on or before 9 February 2024 – **\$1584** (\$1440 + \$144 GST)  
 **Discount Registration** – for registrations made on or before 1 March 2024 – **\$1705** (\$1550 + \$155 GST)  
 **Full Price Registration** – **\$1848** (\$1680 + \$168 GST)

Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by contacting our Event Coordinator, Hayley Williams-Cameron, to organise your registrations – email [hayley@tved.net.au](mailto:hayley@tved.net.au) or phone (03) 8601 7730.

- 3 registrations – **5% discount** for each delegate
- If you register 4 people at the same time you are entitled to a **10% discount** for each delegate
- If you register 5 people or more people at the same time you are entitled to a **15% discount** for each delegate.

**One-part only?** We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Hayley: [hayley@tved.net.au](mailto:hayley@tved.net.au) or phone (03) 8601 7730.

## Conference Papers

The papers from this conference will be available in electronic format approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au). The papers are **\$198** (\$180 + \$18 GST) (code: E/PMEPMAR24).

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