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REGISTRATION
OPTIONS

FACE TO FACE
OR ONLINE

19TH ANNUAL ESTATE PLANNING CONFERENCE

Structuring a Testamentary Trust to Minimise Future Risk

Dealing with Aged Trusts and Ageing Trustees

The Role of Enduring Attorneys In Family Trusts

Interim Distributions by Executors:

A Quick Solution for Beneficiaries During Tough Times?

The Complexities of Super Estate Planning

The Implication of Loans and UPEs in the Estate Plan

Avoiding Tax Nasties in the Estate Plan

Creative Estate Planning Solutions for Blended Families

When Family Law and Estate Planning Collide

Structuring the Estate to Protect Vulnerable Beneficiaries

The Many and Varied Definitions of Foreign Residency and

How They Impact Estate Planning

Knowing When to Continue (and When to Cease)

Acting for the Estate Across the Generations

A Two-day Conference

Thursday 20 & Friday 21 March 2025

Crown Melbourne

Feedback from last year's conference:

- Excellent topics, well researched and presented.
- The calibre of the speakers was excellent and it was a truly safe space to ask questions. I don't think I have ever asked so many questions at a conference. I was fully engaged with the content of every presentation. The array of topics was relevant to issues arising in everyday practice, and the speakers were all engaging. I formed several new important connections with interstate practitioners, only possible by attending in person. A VERY worthwhile experience all round!
- It was my first attendance and I thoroughly enjoyed it. The information shared was extremely helpful and relevant. Thank you!



Your Trusted CPD Partner for 50 years

DAY 1: THURSDAY 20 MARCH 2025

MORNING THEME: TRUSTS AND DISTRIBUTIONS IN THE ESTATE PLAN

MORNING CHAIR: *Sophie Cohen, Director, Aintree Group Legal, Melbourne, Vic.*

9.00 - 9.15am

Introduction and welcome

9.15 - 10.00am

Session 1: Avoiding a World of Hurt: Structuring a Testamentary Trust to Minimise Future Risk

A properly structured testamentary trust can be an effective mechanism for a family estate plan. Get it wrong, however, and everyone (including the adviser!) may be in for a world of hurt. There are many factors to consider and balance when advising clients in relation to the best structure for their testamentary trust. To assist estate planners, this practical session will explore:

- When is a testamentary trust an appropriate arrangement and why have one?
- When is a capital reserved trust appropriate?
- Key clauses in testamentary trust deeds:
- What powers do appointors need to properly discharge their duties?
- What mechanisms need to be in the trust deed to change the appointor or trustee?
- Determining levels of decision-making and consents required
- Examples of different levels of trust control and consequential outcomes
- Taxation and other financial considerations in testamentary trusts
- Tales from the courts on testamentary trust failures

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

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

Session 2: Nothing Lasts Forever: Dealing with Aged Trusts and Ageing Trustees

Many trusts were established in the 1970s and 1980s by financially prudent mums and dads. Fast forward to the present day and those trusts are now worth millions. With many of those trusts nearing their vesting date (and many of those original office holders starting to lose capacity), there is an increasingly urgent need to deal with such trusts as part of prudent estate planning. To assist estate planners consider the options in a holistic manner, this session shall examine:

- When it may be prudent or appropriate to seek to vary to extend the vesting date of the trust, and how to do so if trust lacks variation power
- When it may be preferable to bring forward the vesting of the trust - what are advantages and disadvantages of vesting during testator's lifetime and how should you go about this
- Has *Owie's* case made it preferable in some instances to seek the winding up of a family discretionary trust pre-death rather than pass control down to the next generation?
- The tax outcomes of vesting the trust and transferring assets

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

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

DAY 1: THURSDAY 20 MARCH 2025

11.30am - 12.15pm

Session 3: Keeping on the Straight and Narrow: The Role of Enduring Attorneys in Family Trusts

Over the last fifty years, discretionary trusts have been a popular long-term structure through which many wealthy families chose to manage their assets for the future benefit of their families. But whether or not these benefits can be realised often depends on the trustee and whether they understand, and comply, with the obligations and responsibilities of that role. With more and more trustees reaching an age where capacity is an issue, attorneys are increasingly needing to step into the role of trustee in a family trust. Unfortunately, this is often to the detriment of the trust and beneficiaries - particularly if the said attorney goes rogue. To some extent, many of these issues can be avoided with proper and robust family planning. To help estate planners consider the intersection between family trusts and powers of attorney in more detail, this session examine:

- The circumstances in which an attorney can step in to a family trust, what they can and can't do and the potential issues which can arise for the trust when an attorney is involved
- An update on the key trust principles regarding the obligations owed by a trustee, and recourse when they are breached, including when their costs will be borne personally in light of recent cases including Cardaci
- Hypothetical examples which workshop the potential issues the estate plan can face with poor choices of attorney, including how this may play out when the trustee, guardian or appointor loses incapacity
- Practical tips for managing the difficult conversations to have with clients and their families

Speaker: Ed Skilton, Principal Lawyer, Sladen Legal, Melbourne, Vic.

12.15 - 12.25pm Panel Comments and Questions

12.25 - 1.10pm

Session 4: Interim Distributions in Estate Planning: When Beneficiaries Want Their Money Now

It is easy to talk about 'managing client expectations' but once the application for probate is filed, administering a deceased estate can be a lot like sitting in the doldrums after a large storm. After the initial flurry of arranging the funeral and finding the will there comes a period of relative calm as the trauma of death is dealt with. As the trauma subsides, an equally powerful feeling arises: where's my money?! The beneficiaries often begin thinking of the executor as the goose sitting on their golden egg. What's taking so long? Why can't we have our money now? But you were granted probate, what's the hold up? This session will cover:

- Legal considerations and requirements for making interim distributions
- The risks to the executor of making interim distributions
- Tips for smooth and efficient interim distribution processes
- Strategies for managing beneficiaries' expectations
- Case studies: lessons from real-world examples

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

1.10 - 1.20pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

DAY 1: THURSDAY 20 MARCH 2025

AFTERNOON THEME: SUPER, LOANS AND TAX

AFTERNOON CHAIR: *Ed Skilton, Principal Lawyer, Sladen Legal, Melbourne, Vic.*

2.15 - 3.00pm

Session 5: Binding (and Not So Binding) Death Benefit Nominations: The Complexities of Super Estate Planning

For those with retail superannuation interests, it is only too common for members to “set and forget” when it comes to completing their binding death benefit nomination forms. Many members fail to consider the complexities which can arise if a superannuation interest is not properly taken into account in an estate plan. Failure to properly plan for superannuation interests can result in costly consequences for the intended beneficiaries and greatly reduce the size of the estate. This session shall seek to unravel the complexities of superannuation estate planning and discuss:

- The definition of SIS dependant versus tax dependants and who may claim against superannuation interests, and strategies for managing or limiting these
- The exercise of trustee discretion and the payment of death benefits post death - the range of discretion, the process of finding out information from trustee and challenging their decision
- The circumstances in which a BDBN may not be binding on a superannuation trustee and what happens when a BDBN is either not completed, invalid or not followed by the trustee
- The lessons from recent cases

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

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: More Than Just Division 7A: Exploring the Wider Implication of Loans and UPEs in the Estate Plan

Despite recent efforts by the ATO to clarify the issues, the treatment of inter-entity loans and unpaid present entitlements is still proving to be a big issue impacting estate plans. To unpick the problem and understand what steps should and could be taken to minimise the risk of issues at the estate planning stage this session shall examine:

- An overview of Division 7A, Section 100A and the drivers for their treatment inter-vivos - why and how clients use them to manage tax during their lifetime and the problems this can create for the estate after they have died
- Examples from practice to illustrate the impact on an estate plan from poorly managed UPEs and tips for how to better manage this in the transition towards end of life and estate planning
- Issues which have arisen in practice from applying the ATO's interpretation of section 100A - how has the practical guidance been applied in practice and what should practitioners be doing to limit risk of non-compliance
- Practical case studies

Speaker: Daniel Smedley, Principal, Sladen Legal, Melbourne, Vic.

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Avoiding Tax Nasties in the Estate Plan

The process of estate planning can cover a number of different aspects and objectives. One of those should be how any potential tax issues are addressed. This session looks to identifying the tax issues that may require careful consideration when putting the plan into place to assist in avoiding any adverse tax consequences when the estate plan is put into practice, including:

- Identifying the type of tax issues that could arise relating to the main residence
- Identifying potential tax issues for investments held individually or as tenants in common
- How potential tax issues for assets held in a trust or company may impact on respective beneficiaries and future shareholders
- Practical worked examples

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

5.10 - 5.20pm Panel Comments and Questions

DAY 2: FRIDAY 21 MARCH 2025

MORNING THEME: FAMILY DYNAMICS SHAPING THE ESTATE PLAN

DAY 2 CHAIR: Naomi Guyett, Partner, AccS(Wills&Estates), Danaher Moulton, Kew, Vic

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Keeping it all in the Family&but which Family? Creative Estate Planning Solutions for Blended Families

Estate planning for blended families comes with additional complexities, particularly when navigating significant age gaps between spouses or children from former relationships. It is unsurprising therefore that many contested estate claims occur in the context of blended families when the life stages and needs of family members from different families of the testator differ. To help manage competing beneficiary interests in the estate plan of blended families, this session examines:

- Common strategies within blended families and the advantages, disadvantages and issues that can arise with each, including mirror wills, mutual wills, and life interests
- How to determine what is adequate and proper provision to each beneficiary, depending on their needs and relationship with the will-maker and beneficiary, along with the size of the estate
- Potential alternative strategies including life insurance, use of superannuation proceeds, child pension and trusts to fund lifestyle, property, education for younger children etc
- How to ensure the second spouse is looked after when of similar age to adult children
- Lessons from recent cases
- Practical examples

Speaker: Justine Taylor, Principal Director, Uther Webster & Evans, Sydney, NSW

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: When Family Law and Estate Planning Collide - Planning with Both in Mind

The power of the family courts is significant and its reach wide. Understanding just how the family court deals with inheritances, binding financial agreements, interests in trusts and superannuation assets is absolutely critical for any estate planning practitioner to ensure estate planning structures are not inadvertently undone by family law litigation down the track. This session examines:

- The definition of property vs a financial interest in family law and how this impacts how the family court deals with inheritances, interests in trusts (fixed vs discretionary), testamentary vs inter vivos, superannuation, and equitable interests
- The powers of the family court to deal with attempts to “quarantine” assets, including setting aside and clawing back assets intended to defeat family law claims
- The requirements for a BFA, what they can include, when are they enforceable, grounds for setting aside and the value they can have in an estate planning context, even if not enforced
- Lessons for practitioners arising from recent decisions including *Hill v Schwartz* [2008] QCA 159

Speaker: Barry Berger, Principal, AccS(Fam), Dignity EDR, Melbourne, Vic

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 21 MARCH 2025

11.15 - 12.00pm

Session 10: Structuring the Estate to Protect Vulnerable Beneficiaries

People come in all shapes and sizes and each with varying needs. For an estate planner, understanding the options available to protect vulnerable beneficiaries is central to providing a valuable estate planning service focused to the needs of your individual clients. There are many specific types of vulnerabilities family members may face and a range of additional supports they may require for their lifetime once the testator has passed. To assist estate planners consider which vehicle may be suitable for specific clients, this session examines:

- The common vulnerabilities and types of disability that require special consideration (e.g. physical, intellectual/developmental disability, substance abuse, harmful behavioural addictions, poor financial management etc) and the types of support which may be needed
- The options available to provide for each type of need and the circumstances in which an option may be appropriate, including special disability trusts
- Practical issues which need to be addressed as part of planning, including ability to move assets exempt of duty and CGT, preserving entitlements to NDIS and social security benefits, identifying and quantifying future financial needs and appropriate control mechanisms etc) and how best to develop and communicate plans with relevant family members
- The extent to which a testator can validly exert control over beneficiary behaviour and/or use of funds after death in light of recent cases including Mead & Lemon

Speaker: Jennifer Dixon, Practice Leader, Moores, Melbourne, Vic.

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: CONTEMPORARY CHALLENGES

1.10 - 1.55pm

Session 11: Calling Australia Home: The Many and Varied Definitions of Foreign Residency and How They Impact Estate Planning

It is well understood that it is important to determine whether or not an individual, corporation or trust is a foreign resident for tax purposes. What is less well understood is the extent to which the definition and test for foreign residency varies as between laws, and in the context of property transactions as between state and federal law. Knowing which definition to apply and understanding the potential impact of this on an estate plan is vital to ensure compliance with all relevant notification obligations and prevent unintended adverse financial consequences for the estate. This session shall look at:

- The tests which determine residency under state and federal law (for individuals, corporations and trusts) and the impact on the estate
- The circumstances in which an Australian citizen could still be regarded as a foreign resident
- The relevant notification and associated obligations imposed on foreign residents, corporations and trusts under both State and federal law and the impact of deeming provisions
- Spotlight on recent 99B guidance by the ATO - key learnings for estate planners
- Practical worked examples and case studies

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

1.55 - 2.05pm Panel Comments and Questions

DAY 2: FRIDAY 21 MARCH 2025

2.05 - 2.55pm

Session 12: Knowing When to Continue (and When to Cease) Acting for the Estate Across the Generations

Like most professions, estate planners are heavily reliant on referrals through word of mouth. Having a good rapport and working relationship with a client and their family often leads to requests to act or advise other members of the client's family. While referrals can be a successful and sound business practice, they can lead to the ethical dilemmas for estate planners, particularly when they have acted for, or been involved professionally with, a family across multiple generations. A good estate planner is one who understands their ethical obligations. Being able to identify an ethical conflict and knowing when to continue acting (with appropriate safeguards) and when to cease acting is key. This session will:

- Summarise the ethical obligations which are enlivened in an estate planning practice, including confidentiality, bias, conflict of interest
- Explore the ethical issues that arise for estate planners when assisting successive or multiple generations of a family (i.e. what the estate planner knows about the next generation of family members, maintaining confidentiality, identifying potential conflicts etc);
- Discuss the practical issues that can arise when an estate planner is appointed in specific roles for the estate (including payment for services rendered, retirement of professional, prohibition in professional firm on taking on such roles etc);
- Share tips for managing potential issues involved with clearly identifying your client
- Look at disciplinary cases in an estate planning context where breaches of duty were found

Speaker: Greg Russo, Principal, AccS(Wills&Estates), Greg Russo Law, Melbourne, Vic

2.55 - 3.05pm Panel Comments and Questions

3.05pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

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

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

Lawyers: 11 CPD units/points (10 substantive law units and 1 ethics unit (Session 12))

Accountants: 11 CPD hours (including 1 CPD hour of ethics (Session 12))

CPD Certificate

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

The Conference Venue

Crown Towers Melbourne

8 Whiteman Street, Southbank

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You can book directly using the Crown Direct website:

<https://www.crownhotels.com.au/crown-direct/login>

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

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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