

THE 5TH ANNUAL SEPTEMBER ESTATE PLANNING CONFERENCE

Loan Management Strategies in Estate Planning

Heading the Outlaws Off at the Pass in Estate Planning

Conflicts of Interest and Risk in Powers of Attorney

Taxing Times for Non-Resident Beneficiaries in the Estate Plan

Control Dilemmas in Family Trust Management

Challenges in Trust Deed Variation

Protecting Vulnerable Family Members through Trusts

Second Spouses, the Family Home and the Estate Plan

Cryptocurrencies and other Digital Assets in the Estate Plan

Designing an Estate Plan for the Family Business

6 Member SMSFs: Opportunities with Intergenerational Funds

Superannuation Trustees and Death Benefit Decisions

A Two-day Conference

Thursday 8 & Friday 9 September 2022

Sheraton Grand Mirage Resort, Main Beach, Gold Coast

Feedback from the March 2022 Melbourne conference:

- “Excellent informed presenters sharing relevant practice information. A useful update as to current issues in the respective areas.
- “An impressive two days filled with great content.
- “My first Annual estates Conferences- so much interesting content- thanks.
- “The conference ran on time and very relevant information and excellent speakers.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 8 SEPTEMBER 2022

MORNING THEME: IMPACT OF FAMILY DYNAMICS ON THE ESTATE PLAN

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Paying It Forward: Loan Management Strategies in Estate Planning

Inter-generational loans from the bank of mum and dad are now a common feature as a result of the increasing costs of housing, education and life in general. This session will look at the implications of family loans on estate planning and strategies for accounting for loans through the estate plan, including:

- Loan or gift? Ascertaining intentions on both sides
- Loan documentation essentials pre and post the event
- Protective strategies for lenders including taking security, charging interest, requiring regular repayments and other conditions
- Tax consequences of receiving interest payments including impact on pensions
- Updating wills and other instruments to factor in loan arrangements and future intentions - what should be included?
- Tips for drafting equalisation clauses and other loan management clauses
- Managing loan obligations in the event of the death of the recipient
- Dispute resolution strategies for family fallout associated with loans and agreement non-compliance

Speaker: Bryan Mitchell, Principal, Mitchells Solicitors, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Heading the Outlaws Off at the Pass in Estate Planning

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:

- What does the FCFCOA look for in assessing assets available for property claims?
- How effective are family trusts in protecting property from third party claims?
- Strategies for drafting trust deeds and managing distributions to fend off former partner claims
- Structuring testamentary trusts for asset protection
- Can a Binding Financial Agreement effectively prevent claims against trust assets and wider family property?
- Cases including *Rigby & Kingston (No 4) [2021] FamCA 501*

Speaker: Matthew Burgess, Principal, View Legal

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 - THURSDAY 8 SEPTEMBER 2022

11.25am - 12.10pm

Session 3: Power Without Glory: Conflicts of Interest and Risk in Powers of Attorney

In theory, powers of attorney provide a useful and important means for decision-making when the appointor is unable to act. However, the issues that can arise when giving a family member this power are significant, and the courts have been very active in dealing with cases of attorney's acting badly. This session provides practitioners with a guide to the perils and pitfalls of powers of attorney appointment and decision-making, including:

- What limitations and conditions, if any, should be imposed on attorneys? How can conflicts of interest be avoided?
- Are attorney's bound to act in accordance with an appointor's intentions? *Reilly v Reilly* [2017] NSWSC 1419
- Can attorneys make gifts and change a will? *Olsen v Mentink* [2019] NSWCA 1299; *Meiners v Gunn* [2022] WASCA 95; *Grant v Grant (No 2)* [2020] NSWSC 1288 and other cases
- What role does an attorney have in the superannuation of the appointor member? Tips for drafting specific authority and dealing with super funds: *Re Narumon* [2019] 2 Qd R 247; *Re SB*; *Ex parte AC* [2020] QSC 139
- Who has standing to challenge decisions and/or seek removal of an attorney?
- Strategies for protection of clients and the estate from wrongful decisions of an attorney

Speaker: Edward Skilton, Principal, Sladen Legal, Melbourne

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Border Crossing: Taxing Times for Non-Resident Beneficiaries in the Estate Plan

With so many Australians either living outside the country or having broader overseas family connections, a new frontier has opened up for revenue raising by both the Commonwealth government and the states. This session will provide a deep dive into financial considerations in estate planning for trusts and assets with foreign or non-resident owners and beneficiaries, including:

- An update on relevant federal and State legislation including capital gains tax, stamp duty and land tax liability
- Tests for determining residency
- Tips and traps for establishing trusts with non-resident beneficiaries - who should be the trustee?
- Strategies for minimising liability in distribution of Australian property to non-resident beneficiaries under a will
- Reviewing and updating trust deeds to manage the rules and minimise impact
- Limitation on asset purchases by foreign entities
- Where to from here? Practical advice for clients

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

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1 - THURSDAY 8 SEPTEMBER 2022

AFTERNOON THEME: THE ROLE OF TRUSTS IN THE ESTATE PLAN

2.15 - 3.00pm

Session 5: 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:

- Assessing the current arrangements for the next generation
- Key factors in trustee selection and how involved should the family be in the decision?
- 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?
- Cases update and examples, including the Rinehart family trust control dispute

Speaker: Greg Russo, Partner, Featherbys Lawyers, Melbourne

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Act in Haste Repent in Leisure: Challenges in Trust Deed Variation

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:

- Lessons from *Re Owies Family Trust* [2020] VSC 716:
 - rules of trust construction
 - what are the obligations of a trustee?
 - why compliance with variation requirements in the trust deed is essential
 - financial impacts and other unintended consequences of non-compliance
 - invalid appointments and decision-making
 - the importance of proper record-keeping
- Consequences of failure to comply with the technical requirements in trustee appointment and removal: *Advanced Holdings Pty Ltd as trustee for The Demian Trust & Ors v Commissioner of Taxation* [2020] FCA 1479
- Can a trust deed be amended after the vesting date? *Re McGowan and Valentini Trusts* [2021] VSC 154

Speaker: George Kolliou, Director, AG Tax Lawyers, Melbourne

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: 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

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 9 SEPTEMBER 2022

MORNING THEME: ESTATE PLANNING MECHANISMS FOR SPECIFIC ASSETS

9.00 - 9.05am

Introduction and Welcome

9.05 - 9.50am

Session 8: Second Spouses, the Family Home and the Estate Plan

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:

- Life interests in the family home:
 - when are they appropriate?
 - should any limitations or restrictions be placed on a life interest?
 - how can a life interest take ageing and health into account?
- Characteristics of a right to reside
 - what conditions can be attached to a right to reside?
 - when does a right to reside end?
- Who pays for maintenance of the property?
- Navigating the tax consequences of life interests and rights to reside
- What happens if the surviving spouse later goes into aged care?
 - can the property be used to fund aged care?
- Case studies

Speaker: Steve Grant, Director, Merthyr Law, Brisbane

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: The New Frontier: Cryptocurrencies and other Digital Assets in the Estate Plan

As digital assets increase in prevalence and importance, planning for what happens to them on incapacity or death is essential. This session provides a guide to practitioners on advising clients to recognise, manage and prepare for digital asset disposition as part of the estate planning process, including:

- Advising client what will happen to digital assets when they die
- Recognising and preparing an inventory of digital assets
- Determining value and importance from personal to commercial
- Assessing and identifying essential information including private keys, digital wallets, passwords and other security measures
- Spotlight on cryptocurrency forming part of the asset pool:
 - ensuring the executor knows where to find it
 - practical issues relating to the control over cryptocurrencies
 - transferring cryptocurrency to beneficiaries - what do you need to know?
 - selecting an executor when crypto in the asset pool - should they have particular skills?
 - inheriting cryptocurrency and tax implications
- Digital asset laws in foreign jurisdictions - lessons for Australia?
- Australia's possible solution considering digital records, authorised persons and custodians.
- Drafting for the future of access to digital records in wills, powers of attorney and trust deeds.

Speaker: Daniel Smedley, Principal, Sladen Legal, Melbourne

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 9 SEPTEMBER 2022

11.15 - 12.00pm

Session 10: 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

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: SUPERANNUATION

1.10 - 1.55pm

Session 11: 6 Member SMSFs: Challenges and Opportunities with Intergenerational Funds

After much anticipation, 6 member SMSFs are finally here. This session looks at, including:

- Navigating the new rules
- When will a six member fund or intergenerational fund be appropriate for your client? Unpacking the advantages and disadvantages using various factual scenarios
- What new strategies does it open up?
- Key control and administration issues to consider
- Are amendments to the trust deed required? When should you consider/must you have a corporate trustee?
- How will the expansion to 6 members impact the investment strategy?
- How to best mitigate the risk of elder abuse in 6 member intergenerational funds

Speaker: Laura Hanrahan, Special Counsel, Holding Redlich, Brisbane

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.50pm

Session 12: A Matter of Discretion: Superannuation Trustees and Death Benefit Decisions

Superannuation trustees can have a significant discretion in determining the payment of death benefits, a power which can cause a lot of angst and disappointment to potential beneficiaries who miss out. This session will provide a guide to practitioners on minimising the risks of disappointment and empowering members and their intended beneficiaries of both SMSFs and APRA regulated funds to achieve their desired outcomes, including:

- The legislative framework governing super death benefits
- Trustee discretion in the context of fund rules
- What can a member do to determine allocation of his/her fund on death?
- Understanding binding and non-binding death nominations and lapsing of nominations
- Is it ever in the interests of the member to not have a binding death nomination?
- What are the obligations of a trustee on the death of a member? Are trustee's bound to follow case law in their decision-making?
- Determining what is "fair and reasonable" in all the circumstances - what should the trustee take into account?
- Why might a trustee decide an outcome against the wishes of the member?
- What options are there for challenging the discretion of the trustee and who has standing to bring them? How different is the situation for an industry fund and a SMSF?
- Case update

Speaker: Neal Dallas, Principal, McInnes Wilson Lawyers, Brisbane

2.50 - 3.00pm Panel Comments and Questions

3.00pm 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 those attending the conference in person.

TEN will be live streaming the conference. Delegates have the option of attending the conference in person or attending it online.

All delegates will receive recordings of all sessions regardless of registration type.

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 as they come available in the lead-up to the conference.

CPD

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

WA Lawyers: 6 CPD points (substantive law). WA practitioners can claim 6 CPD points being the maximum allowable by the LPBWA per event. TEN is an accredited QA provider.

Accountants: 11 CPD/training hours.

CPD Certificate

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

The Conference Venue

Sheraton Grand Mirage Resort

71 Sea World Drive, Main Beach (Gold Coast), Qld

Phone: (07) 5577 0000

Website: <https://www.marriott.com/en-us/hotels/oolgs-sheraton-grand-mirage-resort-gold-coast>

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).

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. "Plan" means the COVID-Safe Plan for the conference described below.
 - d. "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).
 - e. "live conference" means a conference other than a recorded conference.
 - f. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - g. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - h. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
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COVID SAFE PLAN – FACE TO FACE CONFERENCES

What happens if you are diagnosed with COVID-19 or you are otherwise unwell?

5. If the conference is held face to face, TEN will conduct the conference in accordance with a COVID Safe Plan. You agree to comply with that Plan at the conference. If you fail to comply with the Plan, you agree to leave the conference immediately at the request of a TEN staff member or venue staff member. If you leave under these circumstances, you will not be entitled to a refund of any part of the registration fee. TEN will not be responsible for any travel or accommodation costs or fees incurred by you in relation to the conference or as a result of you leaving the conference early.
6. The COVID safe plan will prevent your attendance at a face to face conference if you are diagnosed with COVID-19 prior to or during the conference and the infection has not been cleared by two negative PCR tests, if you have a fever (ie raised temperature) at the time of registration or if you have a respiratory illness (including a cold or cough) at the start of or during the conference. In these circumstances:
 - a. You will be entitled to attend the live online version of the conference and/or recorded online version if that is offered; or
 - b. If not, you will be entitled to a full refund of the registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Conversion of face to face conferences to live online conferences

7. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
8. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
9. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Copyright

10. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
11. You are entitled to use those materials for private study and research only.
12. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
13. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

14. TEN reserves the right to cancel a conference for any reason.
15. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

16. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

17. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

REGISTRATION FORM TAX INVOICE*

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 Jenna Pickrell (03) 8601 7729
Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **Fifth Annual September Estate Planning Conference** – a 2-day conference to be held at the Gold Coast on Thursday 8 & Friday 9 September 2022 [conf code: GEPSEP22]

- Discount Registration** – for registrations made on or before 31 August 2022 - **\$2013** (\$1830 + \$183 GST)
 Full Price Registration – **\$2178** (\$1980 + \$198 GST)

Multiple registration discount? Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by registering using the “multiple registrations” option online, or contact our Conference Manager, Jenna Pickrell, to organise your registrations. jenna@tved.net.au or phone (03) 8601 7729.

- 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-day only? We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

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. The papers are \$198 (\$180 + \$18 GST) (code: PGESEP22).

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