

THE 14TH ANNUAL ESTATE PLANNING CONFERENCE

A TWO-DAY CONFERENCE ORGANISED BY
TELEVISION EDUCATION NETWORK PTY LTD

SHERATON MELBOURNE HOTEL
THURSDAY 19 & FRIDAY 20 MARCH 2020

Perils and pitfalls of older trust arrangements

Options for managing a trust about to vest

Tidying up tax nasties in the estate plan

Main residence and death

Business succession and the estate plan

Asset protection and contractual arrangements

Factoring superannuation in the estate plan

Strategies for managing parent to child loans

Factoring inheritance rights of other children

International considerations in estate planning

Dealing with capacity, cognitive decline and ageing clients

Uses and abuses of enduring powers of attorney



The professional development specialists

DAY 1 THURSDAY 19 MARCH 2020

**CHAIR: PAUL SOKOLOWSKI,
PARTNER, ARNOLD BLOCH LEIBLER,
MELBOURNE**

**MORNING THEME: TRUSTS AND TAX ISSUES
IN ESTATE PLANNING: FIXING THE MESS**

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Bad Deeds: The Perils and Pitfalls of Older Trust Arrangements

Family trusts and testamentary trusts have been a well-used tool for asset protection and income management for many years. However, as a result of the impact of new legislation, case law and changing family or other circumstances, the instrument may not meet current needs and could expose the trust or beneficiaries to unwanted financial and other consequences. This practical session examines some of the problems in older trust deeds and provide practical strategies for rectification, including:

- Why might the trust deed need variation? Identifying reasons for change
- Reviewing key clauses – death or incapacity of appointors and guardians, beneficiaries and variation
- Power to vary - the deed and State legislation
- When to seek the assistance of the courts
- Common law restrictions on variation and how they might apply
- Changing trustee - Corporations Law requirements
- Drafting a deed of variation - tips and traps
- ATO rulings and recent cases

Speaker: Matthew Burgess, Director, View Legal

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: A Ticking Time Bomb: Options for Managing a Trust About to Vest

The issue of trust vesting has become particularly important in recent years, especially for those about to reach their vesting date with the associated obligations such as distribution of the assets. There may be a number of reasons to delay this date, including for financial and estate planning reasons. This session will look at the key considerations around trust vesting and the steps that can be taken to minimise or avoid potential liabilities, including:

- Auditing the trust deed and preparing for the future
- The concepts of perpetuity and vesting
- What happens on the vesting date?
- CGT and duty liabilities - how and when do they arise?
- Other reasons for delaying the vesting date
- Extending the vesting date under the terms of the trust deed
- Court applications for extension - relevant legislation and cases
- Rulings TR 2017/D10 and TR2018/6 - how the ATO will view trust vesting and date extensions
- The South Australia solution - availability and practicalities
- What to do when vesting is the only option

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

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 THURSDAY 19 MARCH 2020

11.25am - 12.10pm

Session 3: Tidying Up Tax Nasties in Your Clients' Estate Plans

Despite the best of intentions, sometimes a deceased can leave behind a number of messy tax affairs. This troubleshooting session explores how to clean up tax liabilities and other nasties in a deceased estate, as well as how to avoid these tax nasties from occurring in the first place. It covers:

- Tax strategies pre-death:
 - Tidying up Div 7A loans and application of debt forgiveness rules
 - Should you forgive UPEs and soak up carry forward losses now?
 - Should you bring forward CGT events?
- Tidying up tax nasties post-death:
 - Section 109RB - applying for the Commissioner's discretion
 - Tax obligations of executors and other legal personal representatives
- ATO guidance in PCG 2018/4 Income tax - liability of a legal personal representative of a deceased person
 - Case study: Troubleshooting a Div7A breach identified post-death

Speaker: David Hughes, Partner, McCullough Robertson, Brisbane

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: A Place to Call Home: Main Residence and Death

The main residence is often the most valuable asset in an estate, and sometimes the only asset. Special tax treatment applies on death, and thought must go into planning where one spouse survives the other. With further reforms on the horizon, it's never been more important for advisers to understand how to factor in the main residence in the estate plan. It covers:

- What constitutes the main residence/dwelling?
- The effect of title arrangements in estate planning: joint tenancies and joint proprietors
- What to do where one spouse survives the other and what are the most beneficial options:
 - Title and ownership
 - Life Interest
 - Right to occupy
 - Impact of holding and sale on pension and aged care fees— Replacement residences - tax implications
- Death, CGT and the main residence exemptions:
 - What are the relevant dates and time limits? Pre and post CGT considerations
 - Full and part exemptions - when do they apply?
 - Extension of exemption and Commissioner's discretion
 - Cost base
 - Main residences in a testamentary trust
- Impact of Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2019
- Case study
- Tips for preservation of asset value

Speaker: Craig Spink, Principal, Spink Legal, Brisbane

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1 THURSDAY 19 MARCH 2020

AFTERNOON THEME: ESTATE PLANNING TECHNIQUES

2.15 - 3.00pm

Session 5: Passing on the Baton: Business Succession and the Estate Plan

Business succession planning is complex. It involves bringing people into and out of business, shareholder considerations, asset protection and a range of tax implications. This session explores some of the key issues involved with taking care of business in the estate plan, including:

- Bringing on new shareholders
- Franking credits for the departing shareholder
- Buy-sell funding and insurance
- Dealing with retained earnings prior to exit
- Using the small business CGT concessions
- Business succession and the next generation:
 - Dividing up the estate when only some of the kids are interested in the family business
 - Contributing value back into the family
 - Option agreements
 - Ways to pass control

Speaker: Patrick Ellwood, Director, Clover Law, Brisbane

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Asset Protection and Contractual Arrangements: Worth the Paper They're Written On?

When it comes to preserving a client's assets, there are a number of contractual arrangements which can potentially provide some protection. However, mutual wills, binding financial agreements and contractual wills come with a number of risks and limitations. This session explores how these contractual arrangements can be used as an estate planning strategy and how you can best navigate the risks. It covers:

- Binding financial agreements:
 - How much reliance can be placed on them to determine asset ownership and intentions in the future?
 - Do they preclude a subsequent challenge to the Will of one party by the other party?
- Mutual and Contractual Wills:
 - Advantages and disadvantages
 - What if one party changes or revokes their Will?
 - Enforcement issues - Can a surviving spouse avoid a mutual will?
- The role of statement of wishes
- Use of family agreements

Speaker: Edward Skilton, Special Counsel, Sladen Legal, Melbourne

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Factoring Superannuation in the Estate Plan

Superannuation now forms the second most valuable asset in many people's wealth, yet is often overlooked in the estate planning process. Recent reforms have impacted the benefits of holding assets in superannuation and clients may need to consider other options for holding their assets. This session will look at a number of topical issues that estate planners need to be aware of when advising their clients, including:

- Control of the super fund on death - ensuring the deed is structured to avoid stress and challenges after death
- Factoring in the 2017 reforms: bringing the SMSF deed up to date and assessing the impact on estate planning
- Managing the consequences of exceeding the transfer benefit cap and other pension implications
- Asset classes in superannuation, particularly real estate - estate planning considerations including tax and duty consequences
- Where should life insurance be held? Financial implications for distribution of proceeds
- Creating a testamentary trust using super funds

Speaker: Jennifer Dixon, Principal, Moores, Melbourne

5.10 - 5.20pm Panel Comments and Questions

DAY 2 FRIDAY 20 MARCH 2020

**CHAIR: BERNIE O'SULLIVAN, PRINCIPAL,
SLADEN LEGAL, MELBOURNE**

**MORNING THEME: ESTATE PLANNING FOR
SPECIAL SITUATIONS**

9.00 - 9.45am

Session 8: Strategies for Managing Parent to Child Loans

Parents and grand-parents are commonly helping their adult children and grand-children through the provision of financial assistance. This session will look at how those making the loan can best protect their asset and ensure it is taken into account in the estate planning process, including:

- Loan or gift? Considering intention on both sides
- Documenting the arrangement - paper trails and loan agreement necessities
- Appropriate conditions and restrictions
- Taking security, charging interest and other protective strategies
- Updating wills and other instruments to take loans into account
- What happens if a loan is left owing to the estate?
- Dealing with the family fallout when things go wrong - options for dispute resolution
- Statute of limitation issues for loans "repayable on demand"

Speaker: Nathan Yii, Director, Nathan Yii Lawyers, Melbourne

9.45 - 9.55am Panel Comments and Questions

9.55 - 10.40am

Session 9: Yours, Mine and Ours: Factoring in the Inheritance Rights of "Other" Children

The right of children to inherit from their parents is well accepted at law, but practical issues can make the application of the law complex. In an age of blended families, adopted children and children born from assisted reproductive technologies, what can practitioners advise their clients on potential claims to their estate and how to best structure to manage these? This session will provide a guide on claims by "other" children and how they can differ depending on State law, including:

- Can foster children make a claim from the estate? What is the nature of the relationship and does the length of care affect rights?
- What are the rights of adopted children? Can adopted children make a claim on their biological parents' estate?
- Do step children have the same rights as biological children?
- Where a child is born by assisted reproductive technology can the child make a claim against a sperm or egg donor's estate? Case study of *Masson v Parsons* [2019] HCA 21
- Tips for estate planning to manage potential claims

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

10.40 - 10.50am Panel Comments and Questions

10.50 - 11.10am Networking Break and Morning Tea

DAY 2 FRIDAY 20 MARCH 2020

11.10 - 11.55am

Session 10: I Still Call Australia Home: International Considerations in Estate Planning

The world is shrinking, immigration is growing and increasingly Australians have assets and families around the world. Estate planners need to understand the risks in managing “global” connections in the estate planning process, and this session will cover some of the complexities, including:

- Identifying that there is a global issue and understanding the consequences
- Does dual nationality have a bearing on estate planning issues?
- Establishing domicile: case study of *Re Tang* [2017] VSC 59
- What bearing will asset and beneficiary location have on the estate plans?
- Jurisdictional issues: which route to follow to achieve the greatest benefit
- Foreign Wills and International Wills - what is the difference and will these overcome any obstacles?
- Managing multiple wills and avoiding conflicts between them
- What happens where a beneficiary is a foreigner - which law applies to the distribution?
- The relevance of international conventions and treaties

Speaker: Anna Wilson, Barrister, Victorian Bar, Melbourne

11.55am - 12.05pm Panel Comments and Questions

12.05 - 1.05pm Lunch

AFTERNOON THEME: ESTATE PLANNING FOR AN AGEING POPULATION

1.05 - 1.50pm

Session 11: Now, where was I?: Dealing with Capacity, Cognitive Decline and Ageing Clients

Elderly clients and estate planning go hand in glove, even if the relationship commenced years before. As medical progress keeps people alive longer, cognitive function has become an issue, bringing control and decision-making capacity to the forefront of estate planning management. This session will look at how advisers can proactively establish an estate planning framework to minimise the risk of incapacity by a key decision-maker, and what to do if that happens without proper plans in place:

- Understanding the difference between testamentary capacity and decision-making capacity
- What are the obligations of estate planners to their clients when capacity is an issue?
- Medical testing and intervention - whose responsibility? How and when to approach your client's family
- Pre-planning: how to manage aging and capacity issues through relevant arrangements and succession planning in company constitutions, trust deeds and other instruments
- Statutory Wills - an alternative when all else fails?

Speaker: Stephen Lynch, Director, Somerville Legal, Sydney

1.50 - 2.00pm Panel Comments and Questions

DAY 2 FRIDAY 20 MARCH 2020

2.00 - 2.45pm

Session 12: The Uses and Abuses of Enduring Powers of Attorney

Having an enduring power of attorney (EPOA) is, in theory, an important part of overcoming the obstacles associated with loss of decision-making power. However, in practice, the exercise of powers of attorney can give rise to bigger issues and the powers given may be insufficient to fully manage the affairs of the appointor. This session will provide guidance on drafting enduring powers of attorney that are effective and comprehensive, and advise how to deal with unwanted consequences, including:

- Choosing the right persons(s) to be attorney - limits on eligibility and other considerations
- What should the EPOA cover? Personal and financial matters explained
- Attorney obligations at law, acting jointly and the role of the courts
- Statutory limitations and protections
- Drafting appropriate and clear special conditions - what matters might need to be included
- Duties of the person holding the EPOA - exercising powers in accordance with intentions: *McFee v Reilly* [2018] NSWCA 322
- Termination and revocation: the effect of the appointor's death on the attorney - *Dawson v Dawson* [2019] NSWCA 826

Speaker: Sam McCullough, Senior Associate, Simmons Wolfhagen, Hobart

2.45 - 2.55pm Panel Comments and Questions

2.55pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

CPD Units/Points/Hours

Lawyers (except WA): 7 CPD units (substantive law)

WA Lawyers: 6 CPD points (substantive law)

Accountants: 11 CPD/Training hours

The Conference Venue

Sheraton Melbourne Hotel,

27 Little Collins Street, Melbourne, Phone: (03) 9290 1000

Television Education Network Corporate Rate at the Sheraton Melbourne Hotel

Delegates can utilize Television Education Network's corporate rate to stay at the Sheraton Melbourne Hotel.

Traditional King Room	\$305
Pre-paid buffet breakfast (normally \$40)	\$25 per person

Conference Accommodation Discount Rate

This rate is strictly subject to availability. Delegates are advised to make their own accommodation arrangements directly with the Sheraton Melbourne Hotel.

You can make reservations via email to: res.sheratonmelb@sheraton.com.

This is the Sheraton's in-house reservations email. All bookings will be confirmed within 24 hours of receiving an email.

If you encounter any problems booking your accommodation please do not hesitate to contact our Conference Executive, Jenna Pickrell, on (03) 8601-7729 or email: jenna@tved.net.au

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 room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.*)

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.

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, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

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)

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Fax (03) 9670 0588 Phone (03) 9670 2055 Enquiries Jenna Pickrell

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **14th Annual Estate Planning Conference** – a 2-day conference to be held in Melbourne on Thursday 19 & Friday 20 March 2020 [conf code: MEPMAR20]

[] **Early Bird Registration** – for registrations made on or before 7 February 2020 – **\$1870** (\$1700 + \$170 GST)

[] **Full Price Registration** – **\$2145** (\$1950 + \$195 GST)

[] **Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a **10% discount** off the full registration fee – **\$1930.50** (\$1755 + \$175.50 GST)

The papers from this conference will be available in electronic form only 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: PMEPMAR20].

Multiple registration discount? If you would like to send more than one person from your company to this conference, please ask Jenna about the discounts available for multiple registrations: The more you send, the greater the discount. jenna@tved.net.au or phone (03) 8601 7729.

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).

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