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# estate planning seminar series

Seminar One: Estate Planning - Tax and Strategic Issues

Seminar Two: Superannuation Death Benefits

11 December 2007

**Hilton**

Melbourne

12 February 2008

**Sir Stamford**

Brisbane

11 March 2008

**Duxton**

Perth

Seminar Three: Drafting Testamentary Trusts

Seminar Four: Drafting to Rule From the Grave

24 June 2008

**Stamford Plaza** Melbourne

12 August 2008

**Sir Stamford** Brisbane

5 August 2008

**Rydges Hotel** Perth

Presented By:

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ESTATE PLANNING  
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## SEMINAR 1

8.30

### Seminar 1 Registration

9am-12.00

#### Estate Planning – Tax and Strategic Issues

If a person's estate planning intentions are to be achieved, the plans made needs to encompass the entirety of the estate and should consider all familial circumstances. Superannuation, life insurance, family trusts, geared investments and asset protection strategies are of critical importance, as are the circumstances that potential beneficiaries might be facing. Given this, estate planning needs to be addressed in the light of all of these issues if there is to be an effective transfer of wealth.

##### Ownership – 4 key types of assets

- Superannuation (account balance v defined benefits)
- Family/hybrid trust assets
- Joint tenancies
- Personally owned assets
- Decision making consequences of each form of ownership

##### Key planning issues

- Guarding against beneficiaries' relationship breakdowns
- Providing for both a surviving spouse and children
- Protecting against vulnerability of a beneficiary
- Bankruptcy – avoiding leaving assets to a beneficiary's creditors
- Income tax minimisation
- CGT, State duty and land tax
- Means tested pension eligibility

##### Superannuation death benefits

- Estate planning and family/hybrid trusts
- Problems with 2nd Generation family/hybrid trusts
- Vesting a trust – CGT and State duty considerations
- Sharing control between family members – difficulty in controlling via Will
- Cloning or splitting a trust
- Family trust elections for 2nd generation family trusts

##### Key attributes for Wills and testamentary trusts

- Adjustment clauses
- "Tax" and "non-tax" dependants
- Dependants choosing to take pensions
- Unallocated reserves in self managed superannuation funds
- Geared assets – preserving or substituting the gearing
- Menu of options for different types of testamentary trusts
- Executor and beneficiary controlled testamentary trusts
- Special disability v all needs protective trusts
- Fixed, fully flexible and partly flexible life interests

##### Vulnerable beneficiaries

- Special disability trusts – care and accommodation
- Pensions and annuities
- Child death benefits pensions – cashing rules
- Capital protected trusts
- Splitting income with dependants

##### Means tested pension eligibility – operation of deeming rules

- Source/Deprivation/Control
- Potential benefit, e.g. of and from companies and trusts

##### Income tax concessions

- Criteria for excepted income for beneficiaries under 18
- Accumulation of deceased estate income during initial administration
- When and when not to pay superannuation to an estate
- Superannuation death benefits received by an estate

##### Capital Gains Tax

- Preserving main residence exemption
- Discounts, e.g. 50% for individuals and trusts
- Preserving small business CGT concession eligibility
- Fixed, defeasible & contingent testamentary trusts
- Capital gains taxed as income
- Company profits
- Special rules for deceased estates and testamentary trusts

##### Enduring powers of attorney

##### 5 Types of charitable trusts

- Prescribed private funds – deductible and exempt
- Australian charitable trusts – exempt, but not deductible
- Specific purpose deductible gift recipients
- Prescribed exempt
- World-wide – exempt only on Australian distributions

12.00

Close of Seminar 1 and Networking Lunch for Delegates attending both Seminars

## SEMINAR 2

12.30

### Seminar 2 Registration

1pm-4pm

#### Superannuation Death Benefits

With a steadily increasing proportion of Australia's wealth and life insurance now in the hands of trustees of superannuation and pension funds, much of the wealth that will be moving into pensions and annuities on retirement and/or be transferred on death to spouses and succeeding generations, the latter most commonly not under the terms of a Will. The choice of a superannuation fund, an income stream on retirement and the decision of the trustee of a fund and the terms of advisory and binding nominations have become critical estate planning issues.

Unlike personally owned assets, death benefits are often taxed, but if well structured can often generate tax free death benefits and concessional income. This seminar looks at the estate planning implications of Australia's superannuation "wealth shift":

##### Background – income streams commenced at or post retirement

- Account based pensions
- Life office annuity funded pensions
- Lifetime pensions/annuities (from 50+ member funds and life offices)
- Maximising the tax free component

##### Superannuation and insurance advice

- AFS licence requirements
- Limitations on exceptions for accountants, lawyers and generic advice.

##### Asset protection – bankruptcy clawback powers

##### Payment of superannuation death benefits – options

- 3 definitions of "dependants"
- Status of adult children in the 3 definitions
- Definition of dependants – "financial" and "interdependent"
- Lump sum payments to dependants
- Refunds of contributions tax
- Lump sum payments to deceased estates
- Use of pensions and annuities for surviving spouse and other adults
- Importance of for adjustment (equalisation) clauses in Wills
- Protecting death benefits from subsequent relationships
- Impact on means tested pension eligibility
- Spendthrift and vulnerable beneficiaries

##### Death benefit pension options

- Death benefit pensions (where permitted)
- Adult v child pensions
- Reversionary v non-reversionary
- Death benefit lump sums

##### Life insurance & superannuation

- Only death & total and permanent disability cover
- Deductibility of premiums
- Role for business insurance, e.g. equity and debt clearance insurance
- 31.5% income tax on lump sum payments to non-dependants

##### Generating excepted income for minor dependants

- Child pensions and annuities
- Commutable v non-commutable
- 15% income tax offset + excepted income concessions
- Compulsory cashing of most child pensions at age 25 years
- Special rules for permanent incapacity
- Impact of conversion of capital into income
- Comparison with the various death benefits trusts

##### Control issues – non-self managed funds

- "Advisory" nominations
- Extent of trustee's discretion
- Superannuation Complaints Tribunal
- S59 binding nominations – advantages and pitfalls
- Renewing binding nominations if there is a loss of capacity
- Express confirmation powers in financial EPAs

##### Control issues – self managed funds

- Implications of Katz v Grossman
- Exclusion of Complaints Tribunal
- Binding nomination options – section 59
- Power of surviving members, e.g. children
- Extent of power of executor of deceased fund member
- Potential abuse of trustee power
- Amending Deed to fetter trustee's discretion
- Limitations on control of access by dependants – portability

4.00

Close of Seminar 2

## SEMINAR 3

8.30

### Seminar 3 Registration

9am-12.00

#### Drafting Testamentary Trusts

This seminar focuses on the creation of the most frequently established testamentary trusts, i.e. for people whose aim is not to rule from the grave, at least once their intended beneficiaries are sufficiently mature, but instead want to enhance the value of an inheritance. Other types of executor controlled testamentary trusts are also considered. A clause by clause summary of the clauses that are usually included in a Will creating (single or staggered release) beneficiary controlled testamentary trusts is provided to participants.

##### Types of testamentary trusts

- Beneficiary controlled
- Executor controlled – defined period, e.g. until age 30
- Executor controlled – lifetime or longer

##### Lifetime executor controlled testamentary trusts

- Protecting vulnerable beneficiaries
- Special disability v all needs protective trusts
- Fixed and flexible life interests/capital protected trusts
- Rights of occupation
- Education and other special purpose trusts

##### Release of funds to control of primary beneficiary

- Single release
- Staggered release
- Ongoing crisis provisions
- Bankruptcy
- Loss of capacity
- Relationship breakdown

##### Clause by clause summary of provisions

##### Minimising taxation liabilities, e.g. the excepted income concessions

##### Anticipating family trust elections

##### CGT and land tax exemptions and concessions

- CGT – ownership interest
- CGT – right of occupation
- Land tax – Beneficial or equitable interest
- Asset protection implications

##### Linking of Wills (where appropriate) to sources of funding

- Superannuation
- Insurance
- Family trust loan accounts and unpaid allocations

##### Adjustment/equalisation of benefit – estate and non-estate sources

##### Executor discretion

- Menu of options for type and/or use of trust
- Eligibility for small business CGT concessions
- Discretionary beneficiaries and means tested pensions
- Eligibility for main residence exemption

##### G geared assets

##### “Standard” beneficiary controlled testamentary trust establishment options

- Separate beneficiary testamentary trusts for each primary beneficiary
- Superannuation death benefits testamentary trusts
- Prospective beneficiary trusts
- Parallel testamentary trusts
- Capital and income reserved trusts
- Split fixed testamentary trusts

##### Executor’s Guidelines

12.00

### Close of Seminar 3 and Networking Lunch for Delegates attending both Seminars

## SEMINAR 4

12.30

### Seminar 4 Registration

1.00-4.00

#### Drafting To Rule From The Grave

Estate planning takes on greater significance for parents (and other relatives) of children who are vulnerable because of:

- Intellectual disability, whether congenital or acquired
- Drug addictions or gambling problems
- Susceptibility to undue influence or financially inept

To provide best for these vulnerable beneficiaries, parents and other relatives need to consider a range of issues, many of which require an appreciation of the circumstances of the beneficiary and of guardianship, taxation, special disability trust, Centrelink means tested pensions and other laws.

This seminar looks at some of the issues that need to be addressed, including:

- Likely needs and circumstances of the vulnerable beneficiary
- Sources of funding
- Means tested pension eligibility
- Health card limits
- Assets in family trusts
- Excluded assets
- Special disability (protective) trusts
- Personally owned homes
- Planning issues
- Tax and legal considerations
- Rights and needs of other children
- Wills and lifetime funding for vulnerable beneficiaries – 2 options for protective trusts
- Special disability trusts
- Centrelink concessions, e.g. health card, for
- Principal beneficiary
- Donor
- “Severe disability”
- Administrative requirements, e.g. audit, and restrictions
- Planning issues
- All needs protective trusts
- Asset protection issues
- Consequences of next of kin rules
- Who is to have control
- Need to provide for a beneficiary’s lifetime
- Conflict of interest
- Guardianship, administration and powers of guardianship and attorney
- Duties of trustee; accountability and costs
- Superannuation nominations and pensions
- Binding v advisory nominations
- Types of death benefit pensions
- Adult pensions
- Child pensions – compulsory cashing exception for severe disability
- Reversionary v non-reversionary
- When should superannuation be paid to an estate
- Challenging wills and superannuation death benefit payments

4.00

### Close of Seminar 4

#### WHO SHOULD ATTEND?

These seminars have been designed to meet the needs of:

- Estate Planning Lawyers
- Will and Probate Lawyers
- Lawyers responsible for private clients
- Accountants
- Fund Managers

**ABOUT YOUR SEMINAR LEADER**



Allan Swan is an Estate Planning and Structuring Principal with the firm MOORESLEGAL and a Principal of its associated training arm MOORESTRaining. He holds degrees in law and economics and a diploma in financial services.

Allan's background in taxation and trusts law gives him a practical perspective when proving training to lawyers, accountant and financial advisors.

Allan lectures at FINSIA and at Leo Cussen Institute and has written extensively for professional journals. He is accredited by the SPAA as an SMSF Specialist Advisor and is a fellow of the Taxation Institute of Australia.

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