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LIVE SESSION

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STARTING SOON...

How and when to use...
TESTAMENTARY TRUSTS

with Grant Abbott

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“Testamentary Trusts are a big key to successful estate planning. They hold taxation, asset protection, family law and a range of other benefits. But they are not a catch all solution for families and many clients don’t understand exactly what they are getting into.

There are so many different types of testamentary trusts and each are impacted differently by family provisions claims. Who would have thought that many are established for asset protection to see them destroyed in a family provisions claim. We need to be realistic.”

Here is a Trust in action –
it can be brutal.

The question is whether a Living Trust such as a Leading Member Discretionary Trust is better than a Testamentary Trust.

Elizabeth Hurley's son cut from father's family trust

Bang Showbiz · 14 hrs ago

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Elizabeth Hurley's son has been cut from his father's family trust.

© Bang Showbiz Elizabeth and Damian Hurley

Before Stephen Bing took his own life last year, he won a court battle overturning his father's attempt to exclude his children, Damian Hurley, 19, and Kira Bonder, 23, from a family trust but that decision has now been overturned on appeal.

Key Testamentary Trust Structures

- What is a Testamentary Trust
- Is a Leading Member discretionary trust a Testamentary Trust?
- Discretionary Trust v Leading Member Discretionary Trust v Living Trust v Estate TT
- Testamentary Trust v SMSF Proceeds Trust v Super Proceeds Trust
- Insurance Trusts
- Split Trusts v Cloned Trusts
- Family Allowances

The Income Tax Laws

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INCOME TAX ASSESSMENT ACT 1936 - SECT 102AG

Trust income to which Division applies

(1) Where a beneficiary of a trust estate is a prescribed person in relation to a year of income, this Division applies to so much of the share of the beneficiary of the net income of the trust estate of the year of income as, in the opinion of the Commissioner, is attributable to assessable income of the trust estate that is not, in relation to that beneficiary, excepted trust income.

(2) Subject to this section, an amount included in the assessable income of a trust estate is excepted trust income in relation to a beneficiary of the trust estate to the extent to which the amount:

(a) is assessable income, of a kind covered by subsection (2AA), of a trust estate that resulted from:

(i) a will, codicil or an order of a court that varied or modified the provisions of a will or codicil; or

(ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;

(v) directly as the result of the death of a person and out of a provident, benefit, superannuation or retirement fund;

(viii) as the result of a family breakdown (see section 102AGA);

(d) is derived by the trustee of the trust estate from the investment of any property:

(i) that devolved for the benefit of the beneficiary from the estate of a deceased person;

(ii) that was transferred to the trustee for the benefit of the beneficiary by another person out of property that devolved upon that other person from the estate of a deceased person and was so transferred within 3 years after the date of the death of the deceased person; or

Case Study – TT Smash Out – Ready?

John is 63 and is married to Sally who is 60. They have been happily married for 40 years and have two children Ben aged 35 and Simon aged 32. Ben works in John's business which produces safety gloves and operates through a company SF Pty Ltd with John as the sole shareholder and director.

Simon is a problem child and has an alcohol and drug problem. He has caused his parents grief and stolen money from them. At this time they want to limit any money going to him if something happens to them. They don't want to leave him dry but give Ben control as he loves his brother but is not stupid.

Case Study – TT Smash Out – Ready?

John has a family home worth $1.2M and no mortgage, an investment property worth $600,000 with a $250,000 mortgage and a SMSF.

The SMSF has two members – John who is the sole director of the trustee company as he holds Sally's special purpose EPOA. His account balance is $1M which consists of a $950,000 factory which is rented to his company and some cash. Sally has an account based pension which was commenced in 2019 when she retired from work. Her current balance is $750,000 and there is no reversion.

They have two grandchildren from Ben – Alice and Sophia aged 5 and 3.

Case Study – Option One

John and Sally

- Life interest in the Property or put into a testamentary trust
- Look at the alternative of using testamentary trusts instead of Smith Family LMDT and make a comparison
- It is all about providing safe and secure options within the framework of Family Wealth Protection
- Let’s see how traditional testamentary trust works using the LightYear Docs simple Will then the Will with a TT to show the base line
- Then pull apart

Case Study – Option Two

John and Sally

- Company is exposed. So what to do?
- Use the Protector to transfer share value to the Smith Family Leading Member Trust with John as Leading Member followed by Ben and Sally jointly
- Corporate trustee is a Leading Member discretionary trust company – LMDT Pty Ltd
- The Trustee - LMDT Pty Ltd has a call option over the shares and also the business – depending on which is cleaner at the relevant time
- Same strategy for the investment property
- Consider using the Business Protector – transfer and lease back of core company assets in the Smith Family Leading Member Trust
- Commence a pension for John and consider reversionary options

How to Split – Very Important!

- Living Trust (LM variation) with sub trusts or even break out clones
- Companies – can separate share classes
- SMSF split to Living Trust or separate TTs or pensions
- For Wills – you will need to bolster but it's a problem as there will be a family provisions claim – three years +++ and 20% of the estate at minimum

LightYear Docs 2.0
Coming soon!

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