



# Testamentary Trusts – quite a range plus new Book and Data Capture

With Grant Abbott, Tony Anamourlis, Michael Jeffriess and Tim Munro

3 June 2021

# LightYear Group Update

- Won: Australian Digital Technology Awards: Wealth and SMSF start up of the year
- Sixth Place: Australian Digital Technology Awards: Wealth and SMSFs beating some very major players
- Finalist: Telstra Small Business Awards: Innovator of the Year
- Finalist: our partner group I Love Accounting: top three in the start up section of the Australian Accounting Awards



A screenshot of a social media post. The main text is in a green box: 'SUCCESSION, ASSET PROTECTION AND ESTATE PLANNING ADVISER ACCREDITATION'. Below that, in a white box with a black border: '19-21 July 2021'. Underneath: '3 DAY COURSE. 14 MODULES. 1 ACCREDITATION to become a leader in the financial advisor industry.' There are logos for 'LIGHT YEAR TRAINING GROUP' and 'SAPEPAA'. A photo shows a hand pointing at a digital interface. On the right, it says 'JUL 19', 'Succession, Asset Protection and Estate Planning Adviser Accreditation', 'by ILoveSMSF Follow', and '\$1,995'. At the bottom right is a green 'Tickets' button. At the bottom left are share and heart icons.

# New Document Wizard

- Clean interface
- Auto predict address and company details
- Load information from integrations (open API), previous interviews, CSV etc
- Preview document as it is built
- Attach internal notes
- Alert other members of organisation to review prior to finalising
- Contact support/legal at any stage
- Upload logos
- Access support videos and resources as you go

The screenshot shows the 'ABC ACCOUNTING' interface. The top navigation bar is green and contains the logo, 'CATEGORIES', a 'Manage' dropdown, a search bar, and a user profile icon. Below the navigation bar, there are three buttons: 'Load Information', 'Save Information', and 'Preview'. A breadcrumb trail shows '> Complete the Interview'. The main content area has three tabs: 'First Party', 'Second Party', and 'Agreement Details', with 'Agreement Details' being the active tab. The title 'Partnership Agreement' is displayed, followed by a descriptive paragraph and a link for more information. Below this, there are four text input fields: one for the full name of the first party, one for the short name, one for the address line 1, and one for the address line 2.

ABC ACCOUNTING CATEGORIES Manage Search Search

> Complete the Interview Load Information Save Information Preview

First Party Second Party Agreement Details

## Partnership Agreement

A simple partnership agreement that may be used for mums and dads and other parties holding property as tenants in common. Also useful for simple joint ventures and partnerships. It is not for business partners – go to the LightYear Docs business partnership.

[Click here for more information on Partnership Agreements](#)

Enter the full names of the **first** party

What will the first party be known as throughout this agreement? [Short name]

Address of first party

Address Line 1

Address Line 2

© 2021. All rights reserved. Powered by LightYear Docs

# A Testamentary Trust Case Study

- John Smith is 45 years old, a plumber working as a sub-contractor and is married to Sally who is 40 years old
- They have three children – Ben, Wills and Mary – aged 15, 13 and 7 respectively
- They own a family home in Cronulla that is worth \$2.5M with a small mortgage
- They each have a \$1M insurance and TPD policy in the other's names and their children if they are not alive
- John also has \$350,000 in Australian Super and Sally has \$150,000 in Host Plus
- The Guardian of their children is Sally's sister Anne Brown



# The Issues

- Start with the worst case and build up from that
- What happens if the parents die
- Who is the Guardian and what do they get
- Trusts are beneficial for:
  - Asset protection
  - Family law protection
  - Tax minimisation
  - Litigation protection
  - Family provisions claims
  - Limiting to bloodline beneficiaries only

# The Issues

- A testamentary trust (TT) is a trust created on the death of a person
- Will can have terms and conditions of the TT or include the TT document – not a trust yet as not settled
- Can be completed by:
  - the Executor to the estate
  - the beneficiary of a death benefit
  - the beneficiary of an insurance benefit
  - up to three years post death to set one up
  - **MUST** be completed with your help and administration

# Let's look at the taxation – section 102AG - excepted trust income for minors

- (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;

# Let's look at the taxation – section 102AG – new anti-mixing rules

- (2AA) For the purposes of paragraph (2)(a), assessable income of a trust estate is of a kind covered by this subsection if:
- (a) the assessable income is derived by the trustee of the trust estate from property; and
  - (b) the property satisfies any of the following requirements:
    - (i) the property was transferred to the trustee of the trust estate to benefit the beneficiary from the estate of the deceased person concerned, as a result of the will, codicil, intestacy or order of a court mentioned in paragraph (2)(a);
    - (ii) the property represents accumulations of income or capital from property that satisfies the requirement in subparagraph (i);
    - (iii) the property represents accumulations of income or capital from property that satisfies the requirement in subparagraph (ii), or (because of a previous operation of this subparagraph) the requirement in this subparagraph.



# Let's look at the taxation – section 102AG – three year rule

- (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

# Let's look at the taxation – section 102AG(2)

- (c) is derived by the trustee of the trust estate from the investment of any property transferred to the trustee for the benefit of the beneficiary:
  - (iv) directly as the result of the death of a person and under the terms of a policy of life insurance;
  - (v) directly as the result of the death of a person and out of a provident, benefit, superannuation or retirement fund;
  - (vi) directly as the result of the death of a person by an employer of the deceased person;
  - (vii) out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances; or
  - (viii) as the result of a family breakdown (see section 102AGA);
  
- (2A) Paragraph (2)(c) or subparagraph (2)(d)(ii) does not apply unless the beneficiary of the trust concerned will, under the terms of the trust, acquire the trust property (other than as a trustee) when the trust ends.

# ESTATE PLANNING WITH ABBOTT & MOURLY LAWYERS

## TIER 1

**No AM Charge**

- ✓ Preparation by Adviser
- ✓ No PI Coverage from AM except for documents
- ✓ Client is responsible
- ✓ Client to seek its own advice
- ✓ Letter of instructions will be provided to the client as to how to execute the Will and EPOA

**No Storage of Wills**

## Tier 2

**AM Mentoring  
\$795 – Family  
\$995 – Moat and Castle**

- ✓ Preparation by Adviser
  - ✓ AM PI Coverage
- ✓ Simple Wills, Wills with TTs and EPOA's
  - ✓ 2 client Zooms
- ✓ Review of documents
- ✓ Legal Signoff by AM
- ✓ Customisation

**Storage of Wills**

## TIER 3

**AM advises clients  
on referral with  
30% administration fee**

- ✓ AM prepares all documents
  - ✓ AM PI Coverage
- ✓ The MOAT – Wills & TTs, EPOAs  
SMSF Wills and Deed Upgrades
  - ✓ 3 x Client Zooms
- ✓ Review of Documents
- ✓ Legal Signoff by AM
- ✓ Customization

**Storage of Wills**



Email:  
[support@lightyeardocs.com.au](mailto:support@lightyeardocs.com.au)



Skype:  
smsfbuddha



Facebook:  
[@ILoveSMSF](#) [@LightYearDocs](#)



LinkedIn:  
[@GrantAbbott](#)



Web:  
[lightyeardocs.com.au](http://lightyeardocs.com.au)