LightYear DOCS

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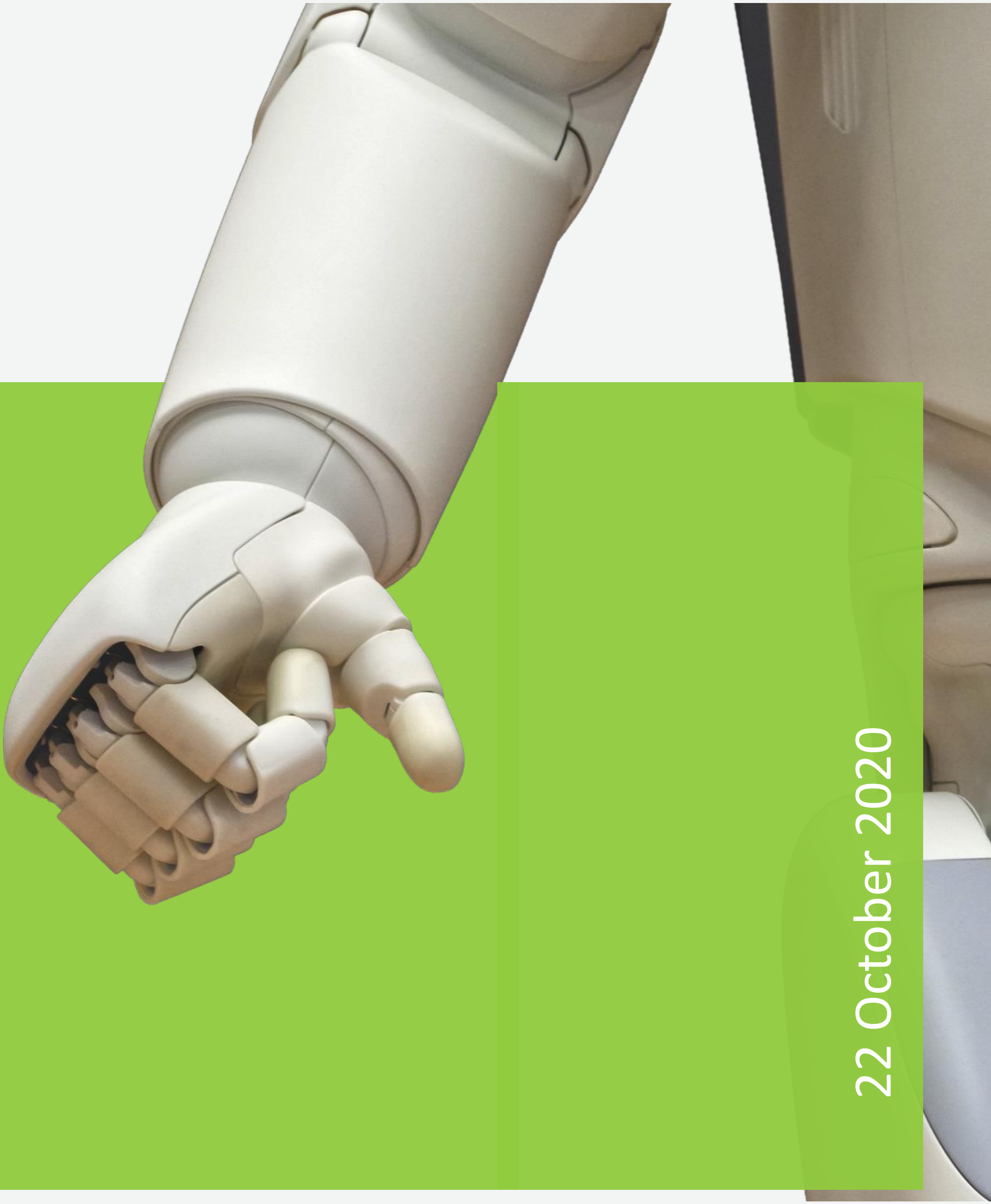

The Ins and Outs of Testamentary Trusts

With Grant Abbott and Tony Anamourlis from Abbott & Mourly lawyers

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Testamentary trusts are trusts that are created on the death of a person by another person for the benefit of one or more of the deceased's intended beneficiaries being spouse, children or the broader bloodline.

They can be created by any person and in the old days included an employer creating one to look after the family of a deceased senior employee. We all know of the testamentary trust created by the Executor from the estate of the deceased but the trustee of a SMSF can create a testamentary trust as can the trustee of a discretionary trust or a company.

The key feature is *"where does the settlement sum come from?"*

The purpose of the trust, as is the case with most trusts is asset protection from bankruptcy, divorce and looking after beneficiaries when they are incapacitated, handicapped or not able to manage their own money. Plus we have special tax concessions for minors so that any income or capital distribution is taxed at marginal tax rates not the penalty rates for children.

BUT any testamentary trust that is created from a Will by the Executor will be subject to a potential family provisions claim.

Justice Jeremy Curthoys, who was scathing of lawyers' "indefensible" legal fees. Credit: WA News

Legal fee scandal: Lawyers 'feast' on Perth family estate

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

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
$495 – Individuals
$895 – Couples

- ✓ 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

ESTATE PLANNING ROADMAP F0R ADVISORS

Abbott & Mourly
Member
Moores Rowland in the Asia Pacific
LightYear GROUP

01 Preparation of Data Capture Sheet

Advisor collects the information from the client and then inputs that information via the LY Estate Planning platform. Cost agreements prepared any other ancillary documents

02 LY Generates the Estate Planning Documents

LY system produces the Will, EPOA & any other Estate Planning Documents as required by the client

03

Estate Planning Documents Reviewed by Abbott Mourly.

04 Zoom with Advisor & Client (45-60Mins)

Advisor arranges a Zoom Conference with the client to obtain any final instructions relating to any amendments to the documents.

05 AM finalizes the documents

AM finalizes the documents and documents are sent back to Advisor & client. Another Zoom is then arranged for signing and Witnessing

A Testamentary Trust Case Study

- John Smith is a 60 year old doctor with his own practice and also a locum at two local hospitals. He operates his business via a discretionary trust
- John and Sally are married and have three investment properties worth a total $2.2M with $300,000 in debt, a SMSF with $1.4M in his lump sum account and $1M in Sally's account with John and Sally as trustees
- They live in a $2M property in Manly in NSW with their disabled daughter and the house is owned with no debt. The property is in his own name.

- John and Sally have three children
  - Max aged 35 who is a successful stock broker and according to John “a chip off the block” – he lives in Sydney with wife Samantha and two children – Kathy and Janine;
  - Sarah who is a 32 year old doctor working in country NSW and is estranged from her father
  - Jodie who is 21 and John and Sally’s only child together who is disabled and still living at home
- John completed a Will with his family solicitor in 2010 giving all of his estate to his former wife and a BDBN directing the Trustee of the Fund to transfer all of his superannuation to his estate
- The Executor of the estate is his ex-wife

What John wants

- On a scale of importance in his life right now, family and looking after the family is 9 out of ten
- If something happened to him he would like:
  - Sally to remain in the house for life and then to go to the children
  - Max and Sarah to get $200,000 from super
  - Sarah is also to get the investment property at Birtinya Qld which may be put into a trust at her option
  - The remainder of the estate to go to Sally – 50%, Max 25% and Jodie -25%
  - His super to go to Sally as an income stream and then to go to Jodie for her life

Succession, Asset Protection and Estate Planning Advisers Association

- We have the not for profit public company set up
- Would like to get up and running in early December
- **Looking at establishing a working group to go through:**
  - **Membership options and requirements**
  - **Foundation membership**
  - **CPD requirements**
  - **On-line discussion groups**
  - **Other issues that evolve from the group**

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