

ESTATE PLANNING FOR SME OWNERS



1. ESTATE PLANNING - OVERVIEW



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*Making sure the right people get the
right assets on your death*

WHO ARE THE RIGHT PEOPLE

Wrong

- Beneficiary's creditors
- Tax Office
- Former or potential future spouses
- Lawyer fees

Right

- Spouse
- Lineal descendants
- Family
- Related entities

WHAT ELSE IS ESTATE PLANNING

- Ensuring appropriate people care for minor children
- Ensuring liabilities are dealt with appropriately
- Includes assets held in various manners and jurisdictions

WHY CONSIDER ESTATE PLANNING (GENERALLY)

- Personal assets:
 - Letters of administration
 - Intestacy
 - Guardianship
 - Joint assets
 - Family provision applications
- Non-personal assets:
 - Control of structures
 - Superannuation

WHY SME OWNERS MUST CONSIDER ESTATE PLANNING

- Divide between personal and business assets
- Balance between various children
- <https://youtu.be/lpAMi2lwjo0>

OWNERSHIP STRUCTURES

Personal

- Will
- Intestacy

Joint assets

- Joint tenants
- Tenants in common

Companies

- Directorship
- Shareholding
- Constitution
- Shareholders agreement

Superannuation

- Death benefit nominations
- Pension documents
- Trust deed (if self-managed)

Trusts

- Trustee/appointor
- Trust deed
- Unitholders agreement (if relevant)
- Trust legislation

Partnerships

- Partnership deeds/agreements
- Other documents depending on structure of partnership

OTHER ISSUES

- Loan accounts – *Nemeke v Fischer*
- Personal guarantees
- Life interests
- Overseas assets
- Business succession documents
- Binding financial agreements

2. ESTATE PLANNING PROCESS



THREE SIMPLE QUESTIONS



PERSONAL ASSETS

Directly

Gifts asset directly to relevant beneficiaries

Lack of protection against beneficiary creditors

Lack of control over asset

No tax planning

Testamentary trusts

Assets given to trustee to hold for beneficiaries

'Asset protection' and succession planning benefits

Tax planning benefits

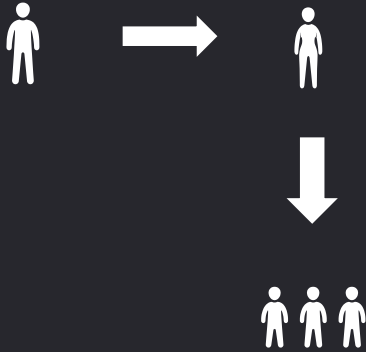
Adds complexity for the beneficiary

Life tenancies/right to occupy

Adds complexity for the beneficiary

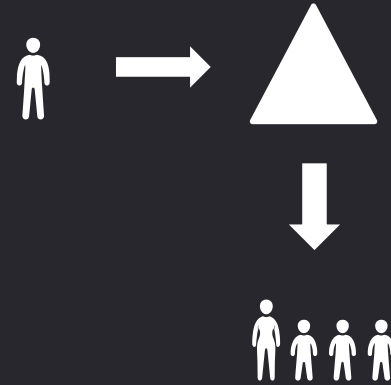
PERSONAL ASSETS

I love you approach



Assets to beneficiary to utilise
for self and others

Testamentary trust approach



Assets to trust to be managed
for beneficiary and others



WHAT IS A TESTAMENTARY TRUST

- It is a relationship:
 - Somebody (the legal owner, i.e. the **trustee**)
 - Holds something (trust property, i.e. assets owned by the 'trust')
 - For others (the beneficial owner, i.e. the **beneficiaries**)
- Testamentary just means established on death
- Lasts 80 years in all jurisdictions other than South Australia

TESTAMENTARY TRUSTS

- Many types
- Discretionary, fixed, hybrid, bare
- Anything can be tailored
- Flexibility v being fixed
- Single v multiple

WHY WANT A TESTAMENTARY TRUST

Advantages	How	Disadvantages
'Asset protection'	Nature of ownership as well as limiting beneficiaries	More thought required for structure and next generation control
Flexibility and control over succession	Mechanisms able to be implemented determine successor	Ongoing administration costs
Offers tax planning opportunities	Ability to distribute to minors at adult rates	Tax can be tricky to understand
Reduce potential future transaction fees	Potential exemptions available	

WHEN HAVE A TESTAMENTARY TRUST (COUPLES)

Immediately	On death of spouse
Want spouse to receive benefit of testamentary trust	Spouse has no need for any of the testamentary trust benefits
Spouse will receive substantial assets under estate	Lack of assets forming part of estate
Useful if there are minors able to benefit	More common with older couples with adult children
If important in determining future control	

HOW MANY TESTAMENTARY TRUSTS

Single	Multiple
Unable to clearly split assets	Have a clear split of assets between beneficiaries
Commonly used when benefitting minors	Beneficiaries have increased autonomy
Beneficiaries are able to work together	Beneficiaries have different personal risk/tax profiles
Simple as only one trust required	Sufficient assets forming part of estate
Less autonomy but a greater sense of purpose	

TESTAMENTARY TRUSTS CONSIDERATIONS

- Who acts a trustee
- To have an appointor/principal or not
- Any special provisions required
- Hardwiring v verbal/non-binding directions

OTHER THINGS TO CONSIDER IN RELATION TO PERSONAL ASSETS

- Who administers the Will
- Any guardians to care for infant children
- Specific gifts
- Life tenancies and rights to occupy
- Loans
- Overseas assets
- Joint assets
- Mutual Wills

TRUST ASSETS

- Single asset in trust
- Multiple assets in trusts
- Who benefits
- How to pass

MULTIPLE ASSETS ON TRUST

- Transfer
- Tax consequences
- Trust splitting
- Trust cloning

TRUST SPLITTING/CLONING

TRUST ASSETS CONSIDERATIONS

- Read the trust deed
- Understand what happens with the control on default
- Confirm if there is sufficient power to nominate successor whether via Will or by deed
- Consider if there is sufficient power to vary the trust deed if necessary

COMPANY ASSETS

- Directorship
- Shareholding
- Same asset considerations as a trust
- Business considerations (may also be relevant for trust)

COMPANY CONSTITUTION

- Hardwiring relevant people to succeed the company
- Independent advisors
- Voting thresholds
- Still need to consider any shareholders agreement

SUPERANNUATION

- Superannuation does not automatically pass into your estate for distribution
- Nominations can be made (binding or non-binding)
- New superannuation cap
- Retail v self-managed superannuation fund stories
- Self-managed superannuation fund stories

SUPERANNUATION STORIES

SUPERANNUATION NOMINATIONS

- Read the deed
- Follow the procedure
- Some deeds require nominations in a particular format/form
- Others just have requirements to be followed

BUSINESS SUCCESSION DOCUMENTS

- Shareholders/unitholders/partnership agreements
- Buy sell deeds
- Read them

FAMILY PROVISION APPLICATIONS

- Two-step process:
 - Being an eligible person
 - Not being adequately provided for
- Note NSW notional estate rules

ESTATE CHALLENGES

- Only affects assets that pass into your estate
- Strategies to manage
 - Restructuring
 - Gift and loan back arrangements
 - Call options
- Declarations (formal and informal)
- Court will decide

OTHER ISSUES

- Power of attorney (both personal and for entities)
- Loans/unpaid present entitlements

3. THE CASE STUDY



THE CASE STUDY 1

THE CASE STUDY 2

CREDITS

Special thanks to all the people who made and released these awesome resources for free:

- Presentation template by [SlidesCarnival](#)
- Photographs by [Unsplash](#)

THANKS!

ANY QUESTIONS?

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