WESTMINSTER ESTATE PLANNING EVENT — ADELAIDE

HOW HWL EBSWORTH CAN HELP YOU PLAN FOR YOUR FUTURE

HWL Ebsworth’s Wealth Management and Succession team provides solution-based strategic advice that minimises risk and opens up opportunities. Their innovative solutions ensure personal and business succession and asset protection objectives are achieved tax effectively and efficiently.

The HWL Ebsworth Estate planning team’s deep understanding of litigation arising from estates including inheritance (family provision) claims and other beneficiary disputes enables them to provide strategically sound advice that focuses on ensuring estates are planned tax effectively with the minimum risk of dispute.

ABOUT THE SPEAKERS

Matthew Allan, Partner, HWL Ebsworth

Matthew practises in the areas of taxation and superannuation law, specialising in self-managed superannuation funds and private wealth management. Matthew provides advice to individuals, trustees, accountants, financial planners, administrators and financial institutions in relation to the application of taxation and superannuation law, and provides a full suite of document preparation services in relation to the establishment and operation of self-managed superannuation funds and associated structures.

Rachel Sinclair, Senior Associate, HWL Ebsworth

Rachel practises exclusively in the area Wealth Management & Succession. She has experience in all aspects of Estate work from tax and estate planning, estate administration and estate disputes. She regularly advises and helps clients to prepare Wills, Testamentary Trusts, Enduring Powers of Attorney, Advanced Care Directives and Superannuation Death Benefit Nominations. Rachel has expertise in Probate matters and specialises in complex estates, including contested estates. Rachel also has many years of Family Law experience including family law property settlements, children’s matters, de facto property settlements and financial agreements.

ABOUT HWL EBSWORTH

HWL Ebsworth is an integrated, full service commercial law firm, providing market leading legal services at competitive rates. We operate offices across Australia in Adelaide, Brisbane, Canberra, Melbourne, Norwest (North West Sydney), Perth and Sydney.

The firm currently comprises 905 staff, including 187 Partners, 425 professional staff and 293 support staff.

Our offering is built on delivering value for money, technically outstanding advice, responsiveness and a focus on the commercial practicalities of each situation. We are proud that the majority of our work comes from strong ongoing client relationships and recommendations.

For further information please contact a member of our Wealth Management Team:

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Westminster Estate Planning Event

Introduction
- Key areas of estate planning
- Consequences of inadequate estate planning
- Intestacy
- Testamentary Trusts
- Enduring Powers of Attorney
- Advance Care Directives
- Letters of Wishes
- Superannuation and Tax
- Trigger points for review of an estate plan
- Taxation of superannuation death benefits

What is a Will?
- A Will is a document which records your testamentary Intentions and provides written instructions and powers to your executors regarding the distribution of your assets and liabilities after your death
- Nomination of executors
- Distribution of personal items
- Specific Bequests
- Guardianship of minor children
- Passing on control of trusts and businesses
- Impact of marriage and divorce
Why should you have a valid Will?

- The distribution of your assets when you die according to your wishes, can only be achieved by making a valid Will.
- When a person dies without making a valid Will they die "intestate".
- There are laws which govern the way in which intestate estates are distributed.
- Even if the intestacy rules give effect to the way a person wants their property to be distributed, the estate will be dealt with quicker, cheaper and more efficiently if there is a Will.

Consequences of inadequate estate planning

- Intestacy
- Inheritance (Family Provision) Act
- Unintended, unequal or unfair distributions
- No directions for guardianship of minor children
- Invalid Wills: the danger of Home Wills Kits
Intestate estates – Order of Distribution

- If the deceased leaves a spouse and no children, the whole of the estate passes to the spouse. A spouse may be either a lawful spouse, a de facto partner or separated spouse, but not a divorced spouse.
- Where the deceased leaves a spouse and a de facto partner each is entitled to an equal share of the property, including any personal belongings of the deceased.
- Where there is no surviving spouse but there are surviving children of the deceased, those children receive equal shares of the estate.

Intestate estates – Order of distribution (continued)

- If the deceased leaves a spouse or de facto partner and children the estate will be distributed as follows:
  - Estates less than $100,000
    - The spouse or de facto partner are entitled to the whole estate, including the personal belongings of the deceased.
  - Estates more than $100,000
    - The spouse or de facto partner are entitled to up to the sum of $100,000 and half of the balance of the estate, plus the personal belongings of the deceased.
    - The children of the deceased will subsequently be entitled to the balance of the estate in equal shares.
Inheritance (Family Provision) Act
- 6 months from date Probate is granted to make a claim
- People entitled to claim:
  - Spouse
  - Child
  - Parents and siblings
  - Grandchild
  - Child of the deceased's spouse or former spouse (including de facto)
- Adequate provision for the proper maintenance, education or advancement in life
- Costs
- Therefore, get advice!

Unintended, unfair and unequal distribution
- Assets owned as joint tenants – automatic survivorship
- Debts attaching to land
- Pre-CGT assets cost base deemed to be market value at the DOO
- Post-CGT assets retain the deceased's cost base
- Section 36 of the Wills Act
- Nominations in favour of non-dependents

Testamentary Trusts
- Established by terms of Will and activated by death
- TTs are used for a variety of purposes, namely:
  - Minimising income tax and capital gains tax
  - Protecting spendthrift beneficiaries from themselves
  - Caring for children and the physically or mentally disabled
  - Protecting an inheritance from the Family Law Courts
  - Protecting an inheritance from a beneficiary's creditors
- No CGT or stamp duty on transfer into trust
- Assets managed by trustee
- Appointor(s)
Testamentary Trusts - Advantages

- **Flexibility**
  - Flexibility given to the trustees to allocate income and capital
  - Considers relevant facts as time passes
  - Removes need to predict or "crystal-ball gaze"
  - Also allows trustees to make greater distribution for members of the family unit with a special need (ie. disability)

- **Asset protection**
  - Allows testator to protect beneficiaries
  - If estate left to beneficiaries absolutely, it is "their" property
  - Therefore can be jeopardised by their financial and matrimonial position at the time of death or after
  - TTI can also provide facility to protect assets from new relationships – that is, keeping assets in the "bloodline"

Testamentary Trusts - Advantages

- **Tax benefits**
  - Benefits of income splitting
  - Allows income each year allocated to minor children not to be subject to penal tax rates but ordinary adult tax rates
  - Allows cheap funding of school fees and education expenses
  - Main residence concession - section 118-210 of the ITAA97 provides CGT exemption for dwelling acquired by trustee under deceased’s will for occupation by individual
  - ATO provides more liberal approach
  - Extends availability of exemption to TTI not just executors
  - Need not strictly require acquisition provided trustee has general powers

Enduring Powers of Attorney

- Not usually subject to loss of capacity but can be if required
- Will endure beyond usually subject to loss of capacity, but can be if required
- Will endure beyond any loss of capacity
- Legal, business, financial and property related decisions
- Must be registered to deal with land
- Very wide powers
Advance Care Directives

- New law which commenced on 1 July 2014
- Replaces Enduring Power of Guardianship, Medical Powers of Attorney and Anticipatory Directives
- Subject to loss of capacity
- Lifestyle decisions such as care, diet and clothing
- Medical and dental decisions
- Office of Public Advocate
- Guardianship and Board

Letter of Wishes

- Non-binding
- Personal possessions distribution
- Administration of family trust and/or testamentary trust
- Instructions regarding care of and provision for children
- Key advisers names and numbers
- Passwords, pin numbers etc
- Assets and liabilities
- Instructions regarding business ie, succession plan
- Burial / cremation / funeral wishes
Trigger points for reviewing your estate plan

- You change your name or anyone in the Will changes their names
- If an executor dies or becomes unwilling or unsuitable to act
- If a beneficiary dies
- If specific property left to a specific beneficiary is sold
- If the family situation of yourself or any beneficiary changes (i.e. defacto relationship, marriage, separation and/or divorce)
- If you become involved in a new business, company or trust
- If you take up residence in another state or overseas
- You haven’t reviewed your estate plan for a few years

Superannuation Death Benefits

- Tax implications (generally)
- Potential tax saving strategies

Tax implications

- If the recipient of your death benefit is a ‘death benefits dependant’, the recipient will receive the death benefit tax free

- Otherwise, the recipient may pay tax on the ‘taxable component’ of the death benefit at the rate of 15% plus Medicare levy (now 2% from 1 July 2014)
Tax implications

- Who are your ‘death benefits dependents’?
  - Spouse
  - Children < 18 years of age
  - Interdependency relationships
  - Financial dependents

  Note: Adult children will generally not receive your death benefits tax free unless they are financially dependent on you at the time of your death.

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Tax implications

- Example 1
  - Your superannuation balance is $1 million (all ‘taxable component’)
  - You die leaving:
    - Spouse
    - Child 1 – 17 years of age
    - Child 2 – 25 years of age and financially independent

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Tax Implications

Possible recipients of your death benefit...

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Death benefits dependency</th>
<th>Tax rate</th>
<th>Tax liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse</td>
<td>Yes</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Child 1</td>
<td>Yes</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Child 2</td>
<td>No</td>
<td>17%</td>
<td>$171,000</td>
</tr>
</tbody>
</table>
Potential tax saving strategy

- If you wish for each of your children to receive 50% of your death benefits (tax free):
  - Distribute 50% of your death benefit to Child 1 (death benefits dependant)
  - Distribute 50% of your death benefit to Spouse (death benefits dependant) for 'gifting' to Child 2 (saving tax of $45,000)
- NB: This strategy requires your spouse to follow your non-binding instructions.

Tax implications

- Example 2
  - Your superannuation balance is $1 million (all 'taxable component')
  - You die leaving:
    - No spouse
    - Child 1 = 25 years of age and financially independent
    - Child 2 = 27 years of age and financially independent

Tax Implications

Possible recipients of your death benefit...

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Relationship to deceased</th>
<th>Death rate</th>
<th>Tax liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child 1</td>
<td>No</td>
<td>17%</td>
<td>$170,000</td>
</tr>
<tr>
<td>Child 2</td>
<td>No</td>
<td>17%</td>
<td>$170,000</td>
</tr>
</tbody>
</table>
Potential tax saving strategy

- If you die without taking action, your death benefit will be taxable to the
  recipients (as the recipients would not be ‘death benefits dependents’)

- Alternatively, if you withdrew 100% of your superannuation benefits prior to
  your death and ‘gifted’ the amount equally to your adult children, your
  children would not be taxed on the death benefit (saving $170,000)

- NB. The above assumes that you are over age 60 when you withdraw your
  superannuation benefit. If not, you may be taxed on the withdrawal.

What to do with the tax savings?

- Westminster School Foundation Building Fund
- Westminster School Foundation Education Fund
- Westminster School Foundation Library Fund

Summary

- Death and taxes are life’s two greatest certainties. Be prepared.
- Everyone needs a Will regardless of what they own/owe
- Specialist estate planning advice during your lifetime saves time and
  money for your loved ones in the future
- Store and execute your Will carefully!
Disclaimer

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