

Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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St Vinnies CEO Sleepout

On 23 June 2016 firm Director James Govan will be braving the cold winter's night to sleep homeless for one night to get a first-hand experience of what the 1000 people who are homeless in Wollongong go through each night. This is a great cause and all the money raised from the sleepout will go directly back into the Illawarra community by supporting the St Vinnies food van. You can sponsor James via this [link](https://www.ceosleepout.org.au/ceos/nsw-ceos/james-govan-)



Election 2016 – We have a plan

The Election

2nd July is just around the corner. Whether it is Liberal or Labor either party is threatening to savage the taxation and capital benefits of superannuation. The Liberals draft legislation and announcements suggest that each member will have a maximum fund of \$1.6 million at standard tax rates. (More to come.)

There are so many large funds

I took a seminar for the Rainmaker Group some time ago. The attenders were managers of large superannuation funds. Some were advisers and others were technical consultants.

I advised this group that I had several clients who had total member funds in excess of \$20,000,000. One very well accredited young woman said that over the past month she had just assumed responsibility for a private SMSF with funds in excess of \$240,000,000.

I now have a client who informs me that with the potential rezoning to high density of a large Sydney industrial property, the SMSF will have member funds in excess of \$200,000,000 for three members.

Clearly these are the extra ordinary. However there are many individuals, couples etc. who have superannuation member funds well in excess of the prescribed forthcoming limit.

New Wealth Creation Vehicles

For over 25 years the private SMSF has been the favoured wealth creation vehicle for many. This now appears to have had its day. The family discretionary trust may come back into its own viability and favour.

A number of wealth creation advisers are now reinvestigating this vehicle. However extreme caution will need to be exercised for Estate Planning purposes. Family discretionary trusts are exactly what they say they are and that is both income and capital are discretionary in the hands of the trustee.

Clients will be well advised to have a corporate trustee. Whether a corporate trustee or individuals it is vital to ensure that the trust fund passes to the proposed beneficiary in accordance with the Willmaker's wishes, hopes and aspirations for beneficiaries (especially children) and other persons.

If there are only two beneficiaries, a minimal amount of Estate Planning work is needed. But if there are more than that this then the discretionary deed must provide for a number of exigencies:

- all beneficiaries taking under the deed and the Will must be either directors of the trustee company or individual trustees;
- all beneficiaries taking under the deed and the Will must be joint appointors with specific provision that unanimous decisions are required; and
- an appointors' agreement (similar to a shareholders' agreement) may be required.

This is general advice only. We are currently reviewing these ideas.

Complex Binding Death Benefit Nomination (BDBN)

Acorn Lawyers BDBN is not widely available from many lawyers. It has been created with the large superannuation fund in mind. It will be particularly helpful where the proposed limits are imposed. It allows the nominated beneficiary to leave all or part of the fund to an individual such as a surviving spouse. But it also allows all or part of the fund to be allocated to a lawful third-party or the Legal Personal Representative (LPR) by that nominated beneficiary.

Caps may be minimised. Funds can be allocated to a testamentary trust for asset protection and tax minimisation. The testamentary trust is one of Australia's best vehicles for tax minimisation and asset protection. This may be the appropriate vehicle for allocation for investment.

Summary

Acorn Lawyers practices extensively in this sort of work and are happy to advise either generally or for the particular client.

- Lindsay Stoddart, Director