

Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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Upcoming Estate Planning Seminars

By now, you should have received an invitation to attend our Estate Planning seminars in Sydney and Wollongong. Lindsay Stoddart will be presenting on the topic of the essentials of Estate Planning. In addition, Lindsay will give two recent estate plans, one complex and one simple.

Acorn Lawyers have again invited Mr Frank Smith, our visiting presenter, to provide a workshop on "preparing" the clear, concise and ASIC compliant statement of advice. Numbers are strictly limited, please RSVP to attend.

Wollongong: 8th August 2014
Sydney: 15th August 2014



Superannuation – An Often Overlooked Area of Estate Planning Advice

The Growing Importance of Super

I recently attended a conference where the speaker stressed the growing importance of superannuation (**super**), saying she had funds with up to \$20 million. To my disbelief, a woman stood up at the front and said "\$20 million that's nothing, last week I got a private fund with \$200 million". To me this underlines the fact that for many of us super is often our largest asset. However, it is often overlooked in Estate Planning. Reviewing how super passes on death may be more important than any provision drafted within the Will itself!

The Reversionary Pension and BDBN

Last month I raised the topic of what takes priority, a Binding Death Benefit Nomination (**BDBN**) or a Reversionary Pension?

Firstly, a valid BDBN has two requirements:

1. the fund deed must require the trustee to accept a direction to pay benefits to a person mentioned in a notice; and
2. the direction must be in favour of the estate, certain dependents or persons.

Where a valid BDBN exists and certain sub-regulations are satisfied, the trustee of a fund must pay super benefits in accordance with the BDBN. However, the Australian Taxation Office (**ATO**) **does not** apply this rule to self managed superannuation funds (**SMSFs**). The ATO's view appears to be that under an SMSF, a reversionary pension is payable to the reversionary beneficiary. It is only where the trustee has discretion that a BDBN can override the pension. This is not necessarily the legal effect, but reflects the ATO's current position. As always, the super fund deed is paramount and facts may direct otherwise.

Changes to Pensions and Deeming of Assets – The Reversionary Pension

Currently, the Centrelink income means test only includes income from Account Based Pensions (**APBs**) that exceeds the deductible amount. From 1 January 2015, APBs will be subject to the deeming rules which could adversely affect pensioner entitlements that are determined by the income test. However, if an APB commenced on or before 1 January 2015, it will continue to be assessed for income test purposes under the current rules.

Estate Planning wise, your elderly beneficiaries could also benefit from an APB commenced prior to 1 January 2015 if death benefits pass under a reversionary pension. For a beneficiary of a reversionary pension commenced prior to 1 January 2015, who is already receiving some income support, the reversionary pension will continue to be assessed under current income test rules, which could preserve current income support or help future assessments. Each client's circumstances must be considered, but nearly always keep the reversionary pension on foot.

Super Death Benefits and Tax

In Australia, there is a myth that there is no tax on death. Did you know that super benefits paid to adult children of the deceased may be taxed at up to 31.5%? Two key planning issues arise:

Firstly, while no tax is payable on death benefits paid to dependents, adult children (over age 18) not financially dependent on the deceased are not dependents for tax purposes. In contrast, the spouse of the deceased is a tax dependent. But on the death of the spouse, care should be taken to minimise super tax. Our Testamentary Trust Will has a super trust that permits a dependent to take some or the entire taxable component at no tax, while adult dependents receive other estate assets to equalise their gift.

Secondly, while there is no tax on death benefits paid to minors, many people are uncomfortable with the idea of minors inheriting large financial windfalls. Provided the children are dependents at the deceased's death, a super trust receives the death benefits tax free to be held by a trustee for the children's future benefit on maturity.

Acorn Lawyers Flexible BDBN

In addition to the standard BDBN, Acorn Lawyers have developed a complex BDBN that provides the super fund trustee with added flexibility. Our complex BDBN has additional non-binding clauses that permit the trustee, with the consent of the designated beneficiary, to pay some or all of the death benefit to another beneficiary or the estate. For example, a complex BDBN made in favour of a spouse, gives the trustee flexibility to stream 50% of the benefit (with spouse consent) to the estate Will trust for investment purposes.

- Lindsay Stoddart, Director