

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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#### Estate Planning Seminars

Thank you to everyone who attended our recent estate planning seminars in Wollongong and Sydney. We would like to thank Mr James Govan, Acorn Lawyers Director, for presenting some interesting personal injury stories that was well received. More possible claims are being referred by advisors who are attentive to client needs

We have received positive feedback on our smaller, more intimate seminar groups. We intend to run more similar seminars in the near future. In the meantime, we are providing seminars free of charge on estate planning to our referrers and their clients. Please contact us for further information and to arrange a seminar.



## Testamentary Trust Wills – The Flexibility and Potential for both Tax Minimisation and Asset Protection

### Section 102AE ITAA36

Testamentary Trust Wills (TTWs) potentially provide large tax savings to beneficiaries with minors who are under 18 years of age. On the willmaker's death, assets of the deceased pass to a beneficiary on a discretionary type trust, of which the beneficiary is trustee. Once probate is obtained, the accountant arranges for a TFN and the trust is managed under the terms of the TTW, which acts as a trust deed.

Income earned by the trust can be distributed by the beneficiary as trustee to a wide class of other beneficiaries defined under the TTW. Under s 102AE *Income Tax Assessment Act 1936 (ITAA36)*, income distributed to minors is taxed at normal **adult rates** with the benefit of the low tax threshold. Without considering deductions, a minor could currently receive \$18,200 tax free! As you are probable aware, a minor who receives income under a normal discretionary trust can only currently receive \$416 tax free before penalty tax rates apply.

### Jeff's big tax break

Brian & Angela were happily married for thirty years. Sadly, after Brian died the grief was too much for Angela, who died soon after. Angela left her estate of \$700,000 to her son Jeff on a testamentary trust. In the first year, the trust earned \$35,000, a modest 5%. Jeff distributed the income equally to his two sons (\$17,500 each), Billy aged 15 and Brett aged 13. He fully expended the income on his sons' education and living expenses.

Pursuant to section 102AE ITAA36 and under the current tax free threshold, neither child paid any tax on the distributions. Assume Jeff only had a marginal tax rate of 31.5%. He has saved \$9,992.50 in tax in the first year alone! TTWs are not only for the rich, even in modest estates the additional costs may be minimal compared to potential tax savings.

### Flexibility - Creating Separate Trusts

You will recall from our June newsletter, the Violet and Henry story. Before Henry signed his new Will, we explained that the provision he previously made for his grandson James on a capital protected trust had been omitted. Instead the whole estate passed to his wife

Violet who could still use the flexibility under the TTW to set up a similar trust as Henry so wished.

We are now taking instructions from Violet to establish this trust. Under the TTW, Violet can create a separate trust using \$50,000 of capital out of her own testamentary trust for the benefit of James. Each year, Violet can stream tax free income from her trust to James to be reinvested in his trust. By the time he turns 18 years old (he is currently 8) James will have a significant trust.

### Flexibility – Splitting Trusts

Those who attended my last seminar would be familiar with this story. Probate was granted in the estate of Victoria for \$18,800,000 which was left equally on separate trusts to her daughters Dolly, Molly and Polly under our flexible TTW. Polly was sadly in a permanent vegetative state. She had two daughters, Milly and Tilly, who were to share her estate equally by will on her death.

Using a discretionary power provided by the TTW, Dolly's testamentary trust was split into two parallel testamentary trusts of equal value. In her vegetative state, Polly was ineligible under the TTW to be a trustee of each trust. The executors, being Dolly and Molly were appointed as trustees by default. Dolly and Molly then exercised their discretionary power to appoint Milly as trustee of one trust and Tilly the trustee of the other. As the money was of no use to Polly, our flexible TTW lawfully allows Milly and Tilly to take their future inheritance now, rather than wait for Polly to die.

### Asset Protection and Bankruptcy

A testamentary trust may also potentially protect a beneficiary's inheritance. The beneficiary acts as trustee of their inheritance, holding the legal title for the benefit of a wide class of beneficiaries under the TTW. Under s 116(2)(a) *Bankruptcy Act 1966* property held on trust for the benefit of others is not available to repay the creditors of a bankrupt. Returning to the story of Jeff, should Jeff become bankrupt due to a \$1 million unpaid business loan, the loan provider normally cannot access the \$700,000 held on trust for repayment. Whilst bankrupt, Jeff is replaced under the TTW as trustee. The additional cost of a TTW may possibly save a beneficiary's entire inheritance.

- Lindsay Stoddart, Director  
\*All names changed for privacy.