

GHS

LEGAL

Lawyers

ABN 621 346 488 38

OUR REF: GHS
YOUR REF:

Mr & Mrs John Smith
1 Smith St
Smithville NSW

Dear John and Jane,

RE: ESTATE PLANNING - WILLS

Thank you for asking me to assist you in this matter.

I confirm your instructions as follows:

Assets

XXXXXXXXXXXXXXXXXXXX (family home) \$1,000,000

XXXXXXXXXXXXXXXXXXXX (commercial property - rented) \$900,000

XXXXXXXXXXXXXXXXXXXX(residential rental property) 150,000

Family Business - Goodwill and stock 250,000

Savings/other investments 45,000

I will assume these are held in joint names and you wish your spouse to receive the full proceeds in the event of your death

Superannuation \$83,000

Debts

Commercial loan \$400,000

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Liability limited by a scheme approved under Professional Standards Legislation

Life Insurance

NIL

Children

Lisa aged 20 single

Bart aged 19 single

Maggie aged 12 single

Objectives

- 1 To payout debt on death of one of you.
- 2 To protect assets for your children
- 3 To take advantage of tax planning opportunities.

In the discussion below I have used the example where John dies before Jane but both wills will be identical.

Proposal to Achieve Objectives***Objective 1 Debt***

- Each of you arrange life insurance with a lump sum payout sufficient to pay out the debt of \$400,000.
- You may wish to arrange this cover under your Superannuation so as to enjoy a tax deduction for the premiums.
- On the payout of the debt, the survivor could terminate the remaining policy or continue it for the benefit of the children .
- Optional trauma cover or Total disability cover will pay a lump sum in circumstances where the person insured does not die and should be considered as well. I understand that the premiums for this additional cover would not be tax deductible, however.

Cost premiums paid annually .

Objectives 2& 3 Asset Protection & Tax Planning

- I enclose copies of searches of the titles of the various property assets held by you.
- Each is held in joint names AS JOINT TENANTS.
- To be able to leave the ½ share you each hold in these assets to the TDT (see below) the nature of the tenancy needs to be changed to TENANTS IN COMMON.
- If left as it is, the ½ share of each property will automatically pass to the survivor and asset protection will not be possible.

Cost \$92.00 filing fee

GHS costs \$150 +GST

- The CBA bank does not need to be involved in this transaction.

Will Alternative 1: In his will John leaves his ½ share of the properties to the 3 children with provision for Jane to live in the family home as long as she wishes provided she pays the rates, insurance etc .

As Jane is NOT the owner of the ½ share of total assets gifted in the will to the children there is NO risk to those assets if she

- a) runs a business in her own name and/or personally guarantees a debt; or
- b) remarries / forms a defacto relationship on
 - i) end of that marriage/relationship; or
 - ii) on her death (ie the widower/defacto makes a claim on her estate)
- c) is declared bankrupt.

There are some tax advantages if you adopt Alternative 1 ie the income will be split between each of the 3 children equally but any such income received by Maggie before she turns 18 will be taxed at the highest marginal rate .

Asset protection is achieved to some extent in that any new personal or business relationship Maria enters into cannot risk the ½ passing on John's death.

Alternative 2: Instead of John leaving his ½ of the assets to the children, a family trust (TDT) is created on his death by his will . The TDT is controlled by Jane and the children jointly. A TDT increases asset protection as the children do not individually own the trust assets so if any of them marry then divorce or get into debt their share of the estate is not at risk .

Also, there is the potential for greater tax savings via use of TDT. For example, Maggie can receive the first \$6,000 of income tax free, saving about \$2,400 if the income was otherwise paid to Jane on 40% tax rate.

Disadvantages are

- a) that on John's death , extra tax returns need to be filed (ie 1 for each child + trust) so there are higher accounting fees
- b) if distributions declared are not actually paid to or on behalf of the beneficiary , the TDT creates a debt owed to that beneficiary for the unpaid amount and that beneficiary can sue for that debt like any debt. This is overcome by good record keeping.

Conclusion

To achieve any asset protection, the properties must be changed so that you hold them as TENANTS IN COMMON. There are no stamp duty or CGT problems in doing this and it is relatively inexpensive.

Alternative 2, while costing more when the wills are done and involving higher ongoing accounting fees for tax returns in the years while the TDT operates, MAXIMISES ASSET PROTECTION and TAX PLANNING opportunities.

I look forward to speaking with you as to which of the alternatives you wish to use.

Yours faithfully

Gregory Smith

MRN 0214017

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