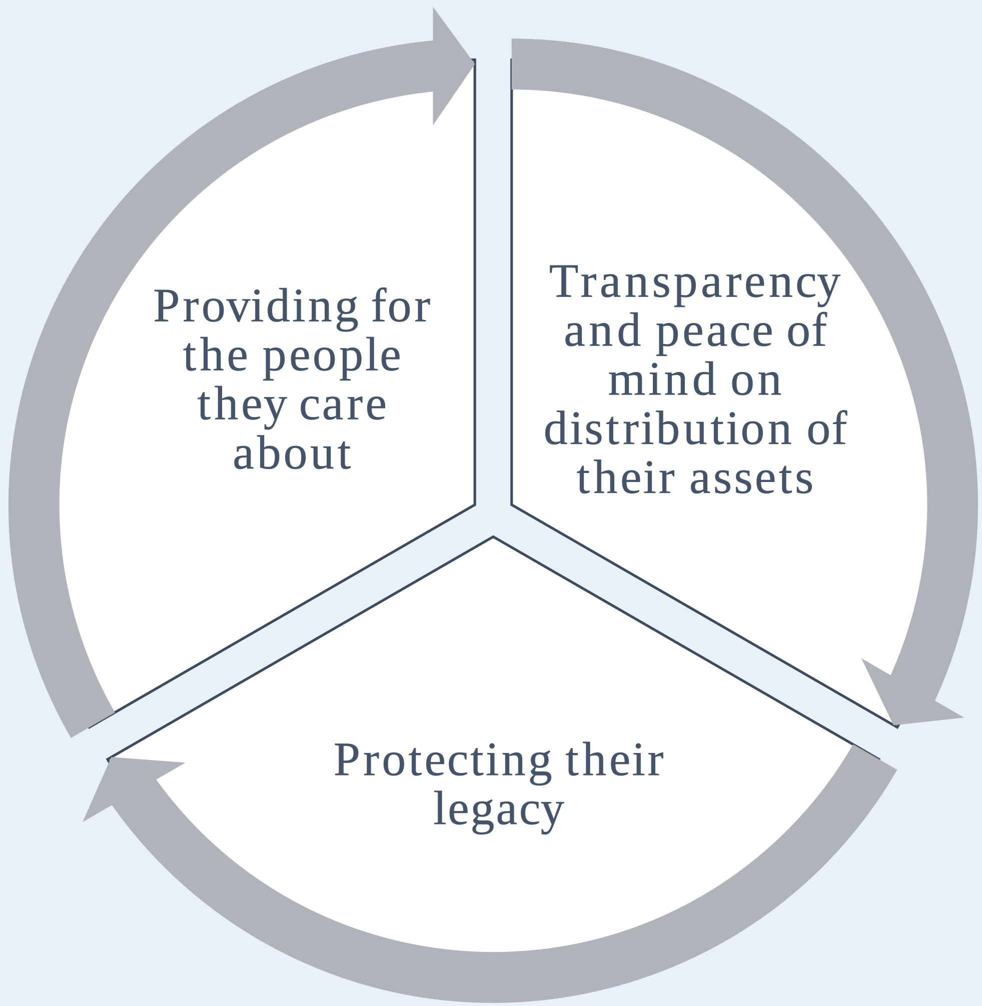
ESTATE PLANNING WITH INTEGRITY COMPLIANCE

UNPACKING ESTATE PLANNING

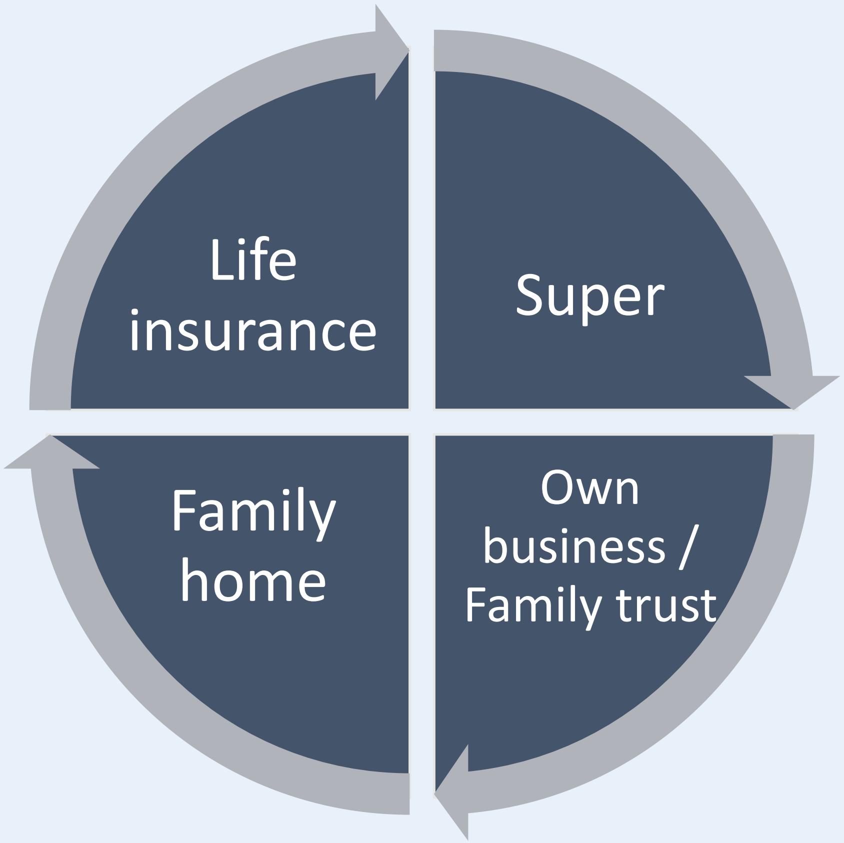
4 Qs

1. WHY
2. WHAT
3. WHO
4. HOW

WHY #1: Why is this important for the client?



WHY is it important for the client #1: Providing for the people they care about



- Your typical client may have the following goals.
- If something was to happen to them, they would like to:
  - Be debt free;
  - Make sure we place to live;
  - Make sure the kids are provided for;
  - Make sure there is enough money to meet living expenses.
- Effective estate planning is the final piece of the puzzle that gives effect to the client's goals because it puts a plan in place to make sure the client's goals are executed in accordance with their wishes.

INTEGRITY COMPLIANCE

Binding Nominations

A binding death benefit nomination allows a member to direct the trustee of a fund to whom the death benefits should be paid on death, which the trustee must follow

- Only beneficiaries who are classified as such under the SISA can be nominated
- The nomination must be inwriting and signed by two adult witnesses
- It must dispose of the whole benefit
- It may lapse every three years

INTEGRITY COMPLIANCE

WHY #1 (Client): Transparency and peace of mind on distribution of their assets

Degree of Control

No – DBN/ Will

If client dies without a Will: Estate assets get distributed according to legislative formula (might not be what the client would want).

If client dies without binding DBN: Superannuation assets gets distributed per trustee's discretion

If client dies with a Will: Estate assets get distributed according to client's wishes.

If client dies with a binding DBN: Superannuation assets gets distributed per client's instruction.

Yes – DBN/ Will

INTEGRITY COMPLIANCE

WHY #1: What happens if you die without a will (intestacy)?

If you die without a Will, your estate will be distributed according to the state based intestacy laws. In Victoria, this means:

If a person dies with...	then...
one partner and no children OR	that partner takes the whole of the estate of the deceased.
one partner and child/ren of that relationship	the partner will benefit from the whole of the estate.
one partner and children born of a different relationship	the partner will receive all the personal chattels, the 1st $451,909 and 50% of the balance with the remaining 50% amongst the children.
no partners	the estate is divided equally amongst children and if a child of the deceased has already passed away, that deceased child's children take equally.
no partners, nor children	the estate is divided equally between parents of the deceased and if no parents then equally between siblings and if none there is a pattern of distribution thereafter "down the line".

WHY #1: Who are ‘partners’?

The following people are ‘partners’ for the purposes of estate planning:

1. Spouse
2. Registered domestic partner under *Relationships Act 2008*
3. Unregistered domestic partner
   - living with the deceased at the time of the person's death as a couple on a genuine domestic basis (irrespective of gender); and either
     - had lived with the person in that manner continuously for a period of at least 2 years immediately before the person's death; or
     - is the parent of a child of the person, being a child who was under 18 years of age at the time of the person's death.

Important: This means if you’ve moved in as a couple with someone for at least 2 years and they are living with you at the time of your death, they get 100% of your estate if you die without a will.

Decisions of the SCT - Determination Number D16-17\149

- The decision under review is the Trustee's acceptance of the validity of the Member's non-lapsing nomination 100% in favour of the Sister as an interdependent

- The SCT did not affirm the Trustee's decision and set it aside. The Trustee was ordered to pay its benefit to the Complainant. Interest was also payable as the Complainant did not have the benefit of the money in the interim.

Decisions of the SCT - Determination Number D16-17\149

- The Complainant argued the Deceased and his sister were not interdependent and lived in different countries
- The Trustee argued the Deceased had been supporting the Sister and husband financially
- The SCT disagreed and found for the Complainant

WHAT: Understanding key concepts in estate planning

Estate Assets

Things that below to you that you can give away in a will

- Specific gifts/jewelry/Heirloom
- Your superannuation death benefits - if nominated to pay to the will (ie. legal personal representative)
- Cars and property solely owned by you
- Cash in bank account under your name

Non Estate Assets

Things you can't give away under your will

- Your superannuation/insurance death benefits if you haven't nominated LPR as your beneficiary
- Jointly owned assets – eg. Jointly owned bank accounts, property, vehicles
- Trust property (eg. shares/investments owned by a family trust)

INTEGRITY COMPLIANCE

WHAT: Non Estate Assets – what can you do with your interests in 'Non estate assets'?

Jointly owned properties	• If owned as '**joint tenants**' then ownership automatically passes to the surviving owner. If owned as '**tenants in common**', then each owner can deal with their interests under their will.
Assets in a family trust	• If you are a **beneficiary** – you relinquish your rights as a beneficiary under the trust on your death. • If the trust is the shareholder of a company – need to consider shareholders agreement and company constitution on how this can be dealt with
Positions of control in trusts/companies	• If you are a **trustee/appointor** – need to review trust deed to see how succession of the trustee/appointor role can be dealt with. • If you are a **director** – need to consider the company constitution/shareholder agreement on succession of directors are dealt with (buy/sell agreements)
Superannuation	• **If no BDBN** - the trustee decides who to pay the death benefits to. • **If yes BDBN** – trustee bound to pay the death benefits to your nominated person. **If nomination is LPR**, the death benefits are paid to the estate for distribution under your will.

Decisions of the SCT - Determination Number D15-16\106

- The Complainant was the eldest Daughter of the Deceased
- The eldest Daughter complained that the decision of the Trustee was not fair and reasonable
- The Deceased and his Partner began living together in 1995. In 2009 the Deceased took a 12 month lease on a separate property

Decisions of the SCT - Determination Number D15-16\106

- The SCT found the deceased Member and his partner were partially financially dependant and emotionally dependant on each other within the definition of a marital couple

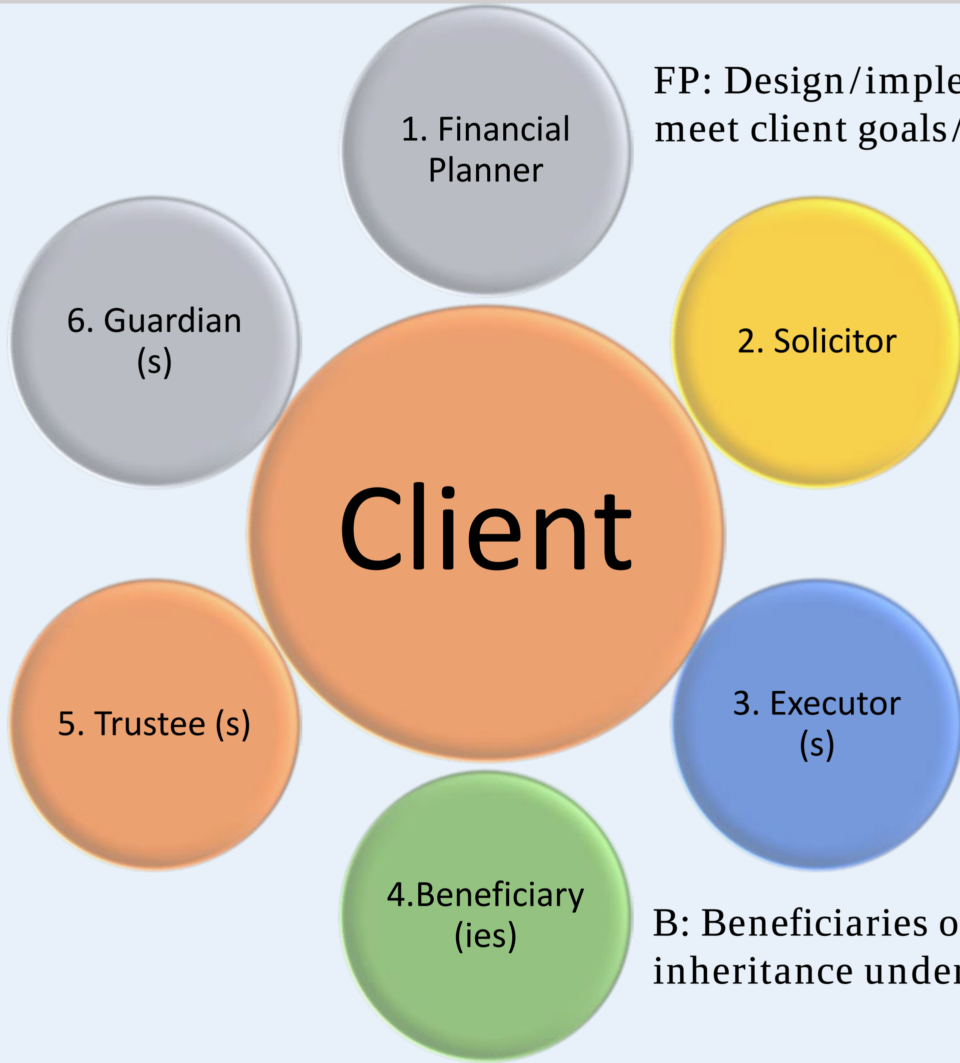
- **Had the client wanted to get money to his daughters what could he have done?**

WHO: Who plays what role in an estate plan?

FP: Design/implement financial strategy to meet client goals/objectives.

G: If there are minors, responsible for the care and welfare of the minor

S: Implements the strategies client's estate planning objectives – Type of Will/POA



T: If a trust is set up, responsible for managing the trust assets in accordance with the Will

E: Carries out the instructions in the Will

B: Beneficiaries of the inheritance under the Will

WHO: Who should be appointed the roles?

Executor

- Need to be able to trust this person (18+) implicitly and they should have the time and competence to carry out this critical role.
- Typically, executors are surviving spouse, a beneficiary, family members, close friends or trusted advisers.
- Executor/Trustee/Guardian can all be one person if circumstances are the case.
- Usual to nominate a primary executor and alternate executors.

Trustee

- Trustee has powers to manage the assets held under the testamentary trust.
- Can nominate more than one trustee.
- Trustee's powers are set out under the testamentary trust will and owes a fiduciary duty to the beneficiaries for as long as they hold that office.

Guardian

- Steps into the shoes of the parents and can make decisions about the care, accommodation and education of the minor children.
- Nominated guardian should not suffer any financial burden or loss whilst acting in the role. It is therefore common that the guardian will have access to the child's share of the estate, at the discretion of the trustee of the child's trust.

HOW: What tools are available to effect the estate plan?

'Do you have a will?' - Can no longer just be the question that is asked.

- A **will** only deals with a person's estate assets.
- What about the persons' other assets?
    - Super
    - Interests in family trusts
    - Interests in businesses?

HOW: Death benefits nomination – when to pay to the estate and when to pay to direct to the dependent?

	Yes	No
Paying direct to dependant	1. When you want to avoid a potential challenge to your estate. 2. When the estate is likely to be insolvent.	When the will maker wants to give money to someone who is not a ‘dependant’ under SIS Act (eg. sibling/friend/charity).
Paying to estate (estate asset)	1. When the will maker wants to give money to someone who is not a ‘dependent’ under SIS Act (eg. sibling/friend/charity). 2. Tax planning for children over 18.	1. When the estate may be challenged 2. When the estate is likely to be insolvent (ie. the willmaker has more debt (tax/loans) than assets)

Testamentary Trusts

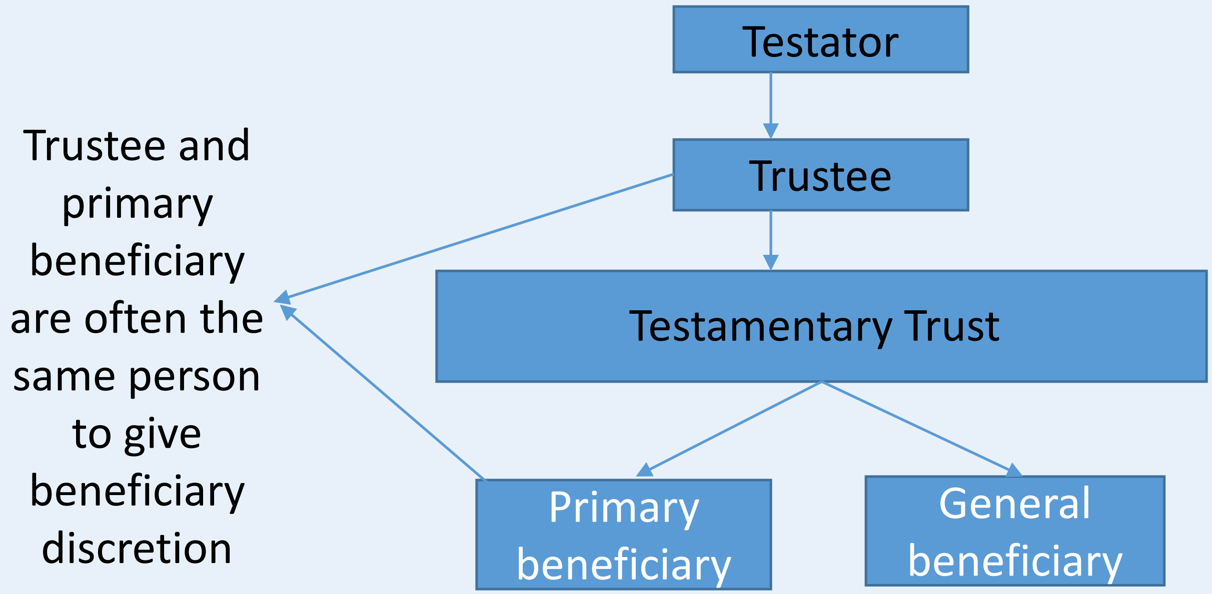
Created by a will and there are two commonly used types and they have benefits

- **Discretionary Testamentary Trusts** - The executor gives the beneficiary the power to appoint themselves or another trustee to manage the inheritance

- **Protective Testamentary Trusts** – the beneficiary must take their inheritance via the trust and has no option to remove or appoint trustees

FOCUS: Testamentary trusts overview

- What is a testamentary trust?
  - A trust set up by the testator in their will.



FOCUS: Why use a testamentary trust?

INTEGRITY COMPLIANCE

FOCUS: Why use a testamentary trust? - Tax

TTs are ‘discretionary trusts’. Trustees can therefore decide which beneficiary will receive the trust income. Normally, income streamed to beneficiaries under 18 in a trust are taxed at a ‘penalty rate’. **Why are TTs different?** Income streamed to beneficiaries under 18 in a TT are taxed at the adult marginal tax rate.

Tax rate for beneficiaries under 18 in ordinary family trusts

Eligible taxable income	Tax rate if beneficiary is a resident
$0–$416	Nil
$417–$1,307	Nil + 68 cents for every dollar over $416*
$1,308 and above	47 cents in the dollar of the entire amount*

Tax rate for beneficiaries under 18 in testamentary trusts

Taxable income	Tax on this income
0 – $18,200	Nil
$18,201 – $37,000	19c for each $1 over $18,200
$37,001 – $87,000	$3,572 plus 32.5c for each $1 over $37,000
$87,001 – $180,000	$19,822 plus 37c for each $1 over $87,000
$180,001 and over	$54,232 plus 45c for each $1 over $180,000

Example: How a young working family would benefit from having a testamentary trust (TT for minors).

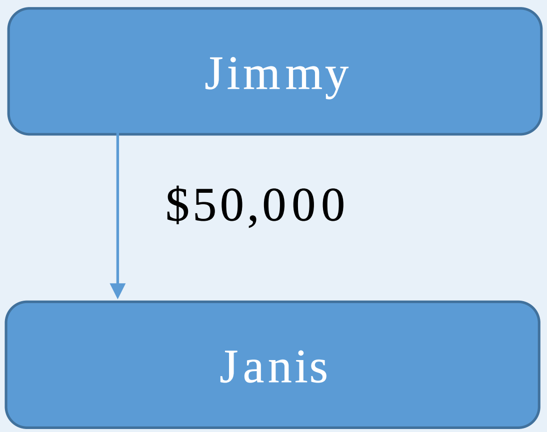
Scenario A: Jimmy is 35 and Janis is 32. They have 3 young children.

Advantage	How
More money for living and education	See following example re the tax savings from setting up a TT.
Leave money for the children but also provide for the surviving spouse in the event of remarriage	Stipulate in the TT that the children are entitled to capital and income and the wife is entitled to income only.

HOW: Why use a testamentary trust? - Tax

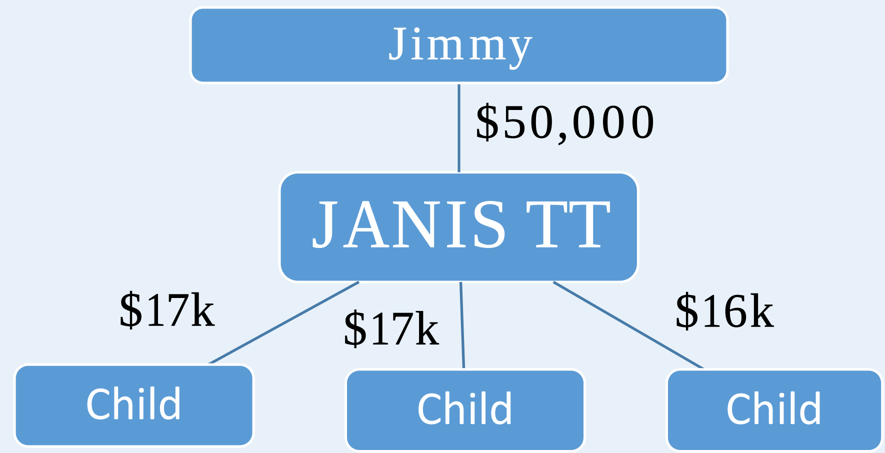
Worked example: Jimmy passes away and leaves $700k in assets to Janis to care for their children. The assets generate approx. 50k in income a year when invested. Janis works and earns $50,000 a year herself.

If No TT is set up



Janis will pay tax on $100k ($50k in income from inheritance and $50k on income from wages). Tax payable pre deductions – approx. $25k.

If TT is set up



Janis will pay tax on her $50k wages. The $50k inheritance income is streamed to each child (<$18k) and as a result becomes tax free. Tax payable pre deductions – approx. $7800.

Net result: The family has $17,000 more education and living expenses

HOW: Superannuation Proceeds Trust – key concepts

Superannuation dependant	Tax Dependent
Spouse, de facto partner, same sex couple	Your spouse, former spouse, de facto partner or same-sex couple
Children (any age)	Children under 18
Interdependency relationship	Interdependency relationship
	Financial dependant

Superannuation dependant is relevant for determining: Who the money can be paid to from super.

Tax dependant is relevant for determining: How the super payment will be taxed.

If you are a tax dependant, you don't need to pay tax to receive the lump sum from Super.

When you die your non tax dependant (eg. adult children) usually pay 17% to 32% tax on the taxable components.

HOW: How does a Superannuation Proceeds Trust help?

SPT allows you to quarantine ‘tax dependants’ from ‘non tax dependants’ so you can save tax.

Why is quarantining important? The quarantining is important because if a trust has beneficiaries who are tax dependants as well as non tax dependants, ‘death benefit taxes’ will apply if the executor cannot show that only tax dependents will benefit from the proceeds.

Once all the tax dependants are ‘quarantined’ to receive the benefits under a superannuation proceeds trust, benefits paid into that SPT will then be tax free.

This could represent a substantial tax saving.

INTEGRITY COMPLIANCE

HOW: TTs can safeguard the client's legacy for the people they care about

Effective estate planning protect client's legacy and ensure their beneficiaries benefit from their estate

Eg #1: Require that the inheritance stays with the child in the event of child's divorce

Eg #2. Require that the inheritance is ultimately left to the children in the event the surviving spouse re-marries

Eg 3. Require that the inheritance is kept out of reach by creditors of the beneficiaries.

Eg #4. Require that the inheritance be set up for long term benefit of client's minor children

Eg #5. Require that the inheritance be used for a specific purpose (education, house)

Example: How a family with adult children would benefit from having a testamentary trust (Protective TTs).

Scenario B: Blue is 55 and Red is 52. They have 3 adult children – Violet (30), Amber (28) and Jade (27). Violet is a director of her own clothing company. Amber is a shopaholic/gambler. Jade just married to her high school sweetheart.

Advantage	How
Violet – TT protects her inheritance from being accessible by her creditors	Assets held under TT are not property of V personally. Creditors cannot access this money in the event of bankruptcy.
Amber – TT protects the inheritance from being spent too quickly by A.	TT can stipulate that the capital must only be used for a specific purpose (eg. property). Otherwise, A is only entitled to income.
Jade – TT protects the inheritance from being accessible by her husband in the event of divorce.	TT assets may not form part of the matrimonial property and therefore maybe disregarded in the overall calculations of assets.

BUSINESS INTERESTS: What about your shareholding/directorship in your business?

1. Often, company shareholding is held by a family trust in which case, the shareholding belongs to the trust and would not be your estate to give.
2. In any event, much will depend on the circumstance of the company:
    1. If you pass away, is your wife/husband equipped to take over? Is it better that the business buys out your shareholding/control and moves forward?
    2. Will the directors be comfortable to have a new board member whose skillset may not be the same as previous director?
3. Need to consider constitution, shareholders agreement, buy-sell agreements

FAMILY TRUSTS: What about your interests/position in a family trust?

1. The trust will carry on and endure until its vesting date.
2. Beneficiary in a trust will lose their entitlement on death.
3. If the person who passed away is the trustee/appointor of the trust, the key issue often is who will step in to manage the trust?
   - If corporate trustee – then will need to consider the constitution of the corporate trustee on appointment successor directors. If you are personally a shareholder of the corporate trustee, you can deal with the shares as part of your estate.
   - If individual trustee – then will need to consider how the trust deed deals with successor trustee? Does it allow appointment of successor trustees by the will of the previous trustee?

INTEGRITY COMPLIANCE

Pension Payments

- Pension payments can be reverted to a dependant on death
- Pensions to children cease when they turn 25 unless they are disabled

Tax treatment of superannuation pension payments	Tax Free Comportment	Taxable Component
Dependant and over 60	Tax Free	Tax Free
Dependant and deceased was over 60 at time of death	Tax Free	Tax Free
Dependant and deceased both under 60 at time of death	Tax Free	Assessable but 15% tax offset

PROCESS: Can lawyers take instructions from 3rd parties to prepare a will?

- In short – this would not be ideal.
- 2 main preconditions to making of a valid Will:
  - Need to have testamentary capacity
  - Willmaker cannot be under any influence in making their Will.
- If a lawyer takes instructions from a third party, there will be questions around how he/she was able to determine whether the above 2 criteria have been met.
- Lawyers have an obligation to the client and there is case law to suggest that taking instructions from a third party (eg. child or professional adviser) does not satisfactorily allow the lawyer to discharge their duties to the willmaker (ie. the lawyers's ultimate client).

Case Study 1

- Ned and Catelyn married 25 years ago and have 5 children together plus Jon who Ned fathered during a period of instability during their marriage:
  - **Rob** - 22, (no longer dependant and working in the security business)
  - **Sansa**- 18 - living out of home and engaged to the son Ned's business partners Robbo
  - **Arya** -15 who wants to work in the security business when she grows up but Ned is not sure about that
  - **Bran** – 12 is in a wheel chair after a climbing accident and now claims he is the three eyed raven
  - **Rickon** – 10 does not know what he wants to do

Case Study 1

- **Ned** and **Catelyn** have built up a very successful business developing property, providing business coaching services and running a private security business

- Catelyn never adopted Jon and it has always vexed her that Jon was born however, Ned insisted Jon was raised as part of the family, they paid for his schooling, took him on hunting trips and raised him like a son

Case Study 1

- **Jon** is 19 and is still financially dependant on Ned and Catalyn - Ned is not sure if Jon will join the priesthood, work in security or business consulting, he could do any however, if John becomes a priest he cannot own lands, have a wife or have children
- Due to the risky nature of Ned's work he knows he could die any day however, he wants to preserve the legacy of his family
- He is also aware if he dies, Catelyn will probably throw Jon out into the street (she has never adopted him) and Jon may have no choice but to become a priest, however Jon may be wasted in the priesthood. Ned wants to ensure Jon is protected

Case Study 1

- Ned has come to see you as he needs some estate planning advice
- His assets include:
  - Winterfell – (Jointly owned with Catelyn) worth $7 million
  - Security Business (100% owned by Ned)- $2,000,000
  - Business Coaching (100% owned by Ned) - $1,500,000
  - Property Development (Catelyn and Ned are 50% directors
  - Life insurance policy outside of super $2,000,000
  - Superannuation $1,000,000 –with a Life Policy of $1,000,000 and a binding nomination to Catelyn

Case Study 1

- Provide your estate planning advice to Ned
- Have regard to testamentary trusts and anything else at your disposal
- You can even look on the Internet for ideas
- You have 10 minutes to come up with your advice and we can have a discussion

QUESTIONS?