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| |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | |  | | --- | | September 2016 Newsletter  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/f210d230-6960-454b-bd43-e4a9b6329860.jpg    Wills and Intergenerational Transfers of Wealth    In the next 10 to 20 years a transfer of wealth from the Baby Boomers generation to Generations X and Y will take place of unparalleled and staggeringly huge amounts of money.   That wealth will pass from one generation to the next in one of the 2 following ways:   1. in a relatively straightforward, timely, inexpensive and tax-effective way; or      1. by way of lengthy, stressful, costly and non-tax effective means.   As to whether scenarios 1 or 2 will apply to the estates of those near and dear to you will depend largely upon whether the deceased has a valid and up-to-date Will which is appropriate to their circumstances and, importantly, the circumstances of their beneficiaries.   Whilst there are schools of thought to the effect that not enough tax is paid by Australian citizens, particularly at the polarities of the social and income earnings scales and, from that perspective, perhaps it would be as well for Australian society as a whole that testators do not pass on all of their wealth with tax-effective Wills in place, from a potential beneficiaries point of view, however, the possibility of a testator leaving a tax inefficient Will or, even worse, no Will at all, can be extremely costly, distressing and disappointing.  ***Simple Wills***  Simple Wills are the most common type of Will prepared by solicitors. These types of Wills make what are known as *“absolute gifts”* to beneficiaries where gifts are received by beneficiaries in their personal name and capacity. Whilst these types of Wills are cheaper and quicker to implement, they offer no tax effectiveness or potential asset protection for beneficiaries.   If a Testator were to die with a simple Will in place, their beneficiaries would take their inheritance in their personal name and any income generated by the beneficiaries on their inheritance (such as rental returns on property, interest or dividends), would require their beneficiaries to pay their marginal rate of tax.   In addition, if their beneficiaries were to marry and subsequently get divorced, under a Simple Will, their inheritance would be vulnerable and open to dissipation in the subsequent divorce settlement.   A complex Will including testamentary trusts would be able to address both of these issues by giving a testator’s beneficiaries both tax effectiveness and, potentially asset protection over their inheritance.  ***Complex Wills***  A complex Will which includes discretionary testamentary trusts *(“DTTs”)* can achieve a tax-effective and asset protective distribution of assets. In summary, the trusts would operate as follows:  1.    Where a beneficiary has reached the *‘preservation age’* (this is the age at which the testator considers their beneficiary capable of responsibly managing their inheritance), they have the option of taking their inheritance outright *(as a simple gift)* or taking their inheritance *(or part thereof)* in a discretionary testamentary trust structure *(a ‘discretionary trust’);*and  2.    Where a beneficiary is under the preservation age, their share of the testator’s estate is automatically held in a testamentary trust with a trustee appointed by the testator’s executor managing the trust until that beneficiary has attained the preservation age (at which time the beneficiary can take control of their trust or vest it as they choose).       Clive Mills | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/dcbf210f-3f21-4bbb-9a10-4a383dd243f2.jpg    **Training Wheels**    ***Introduction***  In New South Wales, law graduates must undertake 75 days of work experience, and an approved course in Practical Legal Training (“PTL”), before they can be eligible for admission as a solicitor.  Once admitted, they also must practice under the supervision of a solicitor who holds an unrestricted practising certificate. This mandated system of further practical study and experience after university, sometimes known as “articles” in other jurisdictions, protects the public, to some extent, from inexperienced legal practitioners.  At Clive Mills & Associates, we  have PLT students who assist us from time to time with legal research, drafting correspondence, and filing documents.  It is our duty to assist the next generation of lawyers to become professionals worthy of the public’s trust, and we find that the students can be quite helpful too!  ***Tyson Ginn***  Tyson commenced his PLT work experience placement with Clive Mills & Associates in late June, whilst undertaking his full-time PLT coursework at the College of Law campus nearby in St Leonards.  He brings substantial business experience to the practice, with 6 years’ experience as a business management trainee and contract negotiator at a large oil & gas company in Perth.  *“I completed a Commerce/Law double degree at university, but thought that business management in natural resources was a better bet than law given the downturn in the sector.  Once I got into the business management area though, I kept finding that I wanted to use my legal skills, and that some of the most interesting problems faced by the business, such as contractor insolvency, native title, contractual disputes, and competition law, were legal in nature.  I started applying for legal jobs about a year ago, but I had a hard time getting law firms to take me seriously due to my time working in business.  Finally I got to the point where I decided that for me to really be able to give it a proper shot, I had to give the legal area my full focus and take a leap of faith, so I decided to leave my previous job and start full-time PLT.”*  *“I am impressed by Clive’s team’s dedication to their clients, legal expertise, and attention to detail.  This is exactly the kind of firm where a young lawyer should build their understanding of the legal services environment.”*  Some of Tyson’s greatest learning is gained by assisting with a small portion of the drafting, research, and communications carried out by the practice.  *“I don’t think I fully understood just how many legal documents, letters, telephone calls, and emails are created by solicitors until I got here.  The number of letters alone created by the firm each week must number in the hundreds!”*  The reputation of all of our work here at Clive Mills & Associates, and the quality of our service to you, our clients, depends on clear communication and attention to detail, in every document, and in every conversation.  *“One of my tasks is to go through Clive’s documents and transcripts, and I am always impressed by the thorough and systematic approach that Clive and his solicitors take.  Though it was hard for me to appreciate when I first started here, every question they ask has a purpose, and draws from the experience of the firm and its solicitors.”*  Of course, while finding a good mentor and firm during PLT is a fantastic learning experience for any student, the question on every Australian law student’s lips is whether they will be able to land a legal job at the end of their training.  *“I’m under no illusions about the market, but perhaps, given the success of Clive’s firm, and, hopefully, the good work that I’ve been doing (acknowledged and thanked for), there might be room for me here,”* Tyson said.  Ashley Rihak is one such former PLT intern employed by the firm in the Wills & Estates area.  His practice provides a good role model for other young lawyers to follow. | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/a83bcd8d-992a-4906-832f-d4a46046cc6c.jpg | | | |