Estate plans on agenda

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THE need for effective structuring of business and personal assets has been brought into sharp focus for farming families over the last few years and more recently as a side-effect of the global financial crisis.

A significant driver of the changing face of estate planning is the transfer of wealth from Australia's 'baby boomer' generation.

Statistically, this segment of the population is the wealthiest and best educated in Australia's history, and consequently requires sophisticated estate planning strategies to minimise the ability for wealth to be attacked by creditors, former spouses, business associates and disgruntled beneficiaries. It is this generation that makes up a significant proportion of Australia's rural property owners.

Sophisticated will arrangements incorporating testamentary trust structures may be used to manage the protection and distribution of the underlying wealth of an individual's estate. Testamentary trusts are trusts contained in a person's will, which come into existence on that person's death. Testamentary trusts are structured to:

[a] provide a person (or people) with ultimate control of the trust and the discretion to distribute the income and capital of the estate to a broad range of beneficiaries; and

[b] ensure that only a will maker's lineal descendants can benefit from the trust.

This type of trust is also known as a lineal descendant trust (LDT) and allows for tax effective income distribution and a high level of asset protection. Separate LDTs can be established under the one will for different beneficiaries.

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Asset protection

If property is left to beneficiaries via a LDT, then an individual can receive the benefit of the assets without those assets being in the individual's own name, which affords a level of protection to the assets against bankruptcy, litigation and the division of assets on a relationship breakdown.

Tax planning

LDTs also allow for very effective tax planning. In particular, tax legislation permits LDTs to distribute income to minors at adult tax rates rather than the tax penalty rates usually imposed on family trust distributions to minors. The following table highlights the taxation benefits of distributions to children or grandchildren under the age of 18 via a LDT compared to distributions from a family trust:

LDT family trust

Tax treatment of minors: Distributions are taxed at adult rates. Distributions are taxed at penalty rates - ie, higher than adult rates.
Tax-free limits of payments to minors $14,000.

In conjunction with comprehensive wills (incorporating LDTs), additional structures are now being used to ensure both on-farm and off-farm wealth passes efficiently to the intended recipients and that the transfer takes place at the intended time.

Some additional techniques to achieve appropriate asset protection levels include:

(a) binding death benefit nominations for superannuation entitlements to ensure distribution of superannuation benefits cannot be challenged or altered;

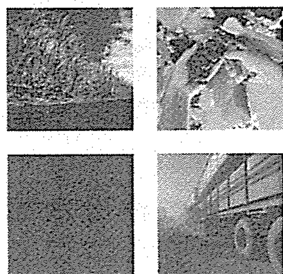
(b) pre- and post-death trust arrangements structured to limit the ability to access lump sum capital amounts;

(c) special purpose structures that use independent or professional 'management teams' to administer and control wealth transfers; and

(d) structured agreements between family members, regulating the manner in which wealth is to be divided in the event of a relationship breakdown such as the new financial agreements available before, after or during a marital or de facto relationship.

In many estate planning exercises for farming families, serious attempts to devise and implement a plan are often not made until a triggering event occurs. Often the triggering event, for example financial or matrimonial misfortune or life-threatening illness, may jeopardise the ability to implement appropriate strategies, so it is vital to implement appropriate arrangements as a priority.

● Matthew Burgess is a partner and Tara Lucke is a lawyer in the Food and Agribusiness Group of leading Australian commercial law firm, McCullough Robertson. Both Matthew and Tara specialise in providing comprehensive estate planning solutions for agribusiness.



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