Nexia Australia

Estate Planning & Super

Sylvia Liang

Associate Director of Financial Services

Darren Chinnappa

SMSF Specialist

31 January 2017

Disclaimer

Material contained in this presentation is a summary only and is based on information believed to be reliable and received from sources within the market. It is not the intention of Nexia Court Financial Solutions Pty Ltd ABN 88 077 764 222 Australian Financial Services Licence Number 247300 that this presentation be used as the primary source of readers' information but as an adjunct to their own resources and training. No representation is given, warranty made or responsibility taken as to the accuracy, timeliness or completeness of any information or recommendation contained in this publication and Nexia Court Financial Solutions will not be liable to the reader in contract or tort (including for negligence) or otherwise for any loss or damage arising as a result of the reader relying on any such information or recommendation (except in so far as any statutory liability cannot be excluded). This presentation has been prepared for general information and not having regard to any particular person's investment objectives, financial situation or needs. Accordingly, no recommendations (express or implied) or other information should be acted upon without obtaining specific advice from an authorised representative. Please note past performance may not be indicative of future performance.

Nexia Australia

Agenda

- What is estate planning?
- Common factors to consider
- What is a testamentary trust?
- Estate vs non-estate assets
- How and to whom can death benefits be paid?
- Taxation of death benefits
- Binding death nominations and reversionary pensions
- Control of the fund after death
- Importance of EPOAs

Nexia Australia

Statistics

> "$46m has been transferred to the NSW Trustee & Guardian over the past 5 years due to unclaimed states or individuals who dies intestate."
>
> **NSW Trustee & Guardian NSW**

Nexia Australia

What is estate planning?

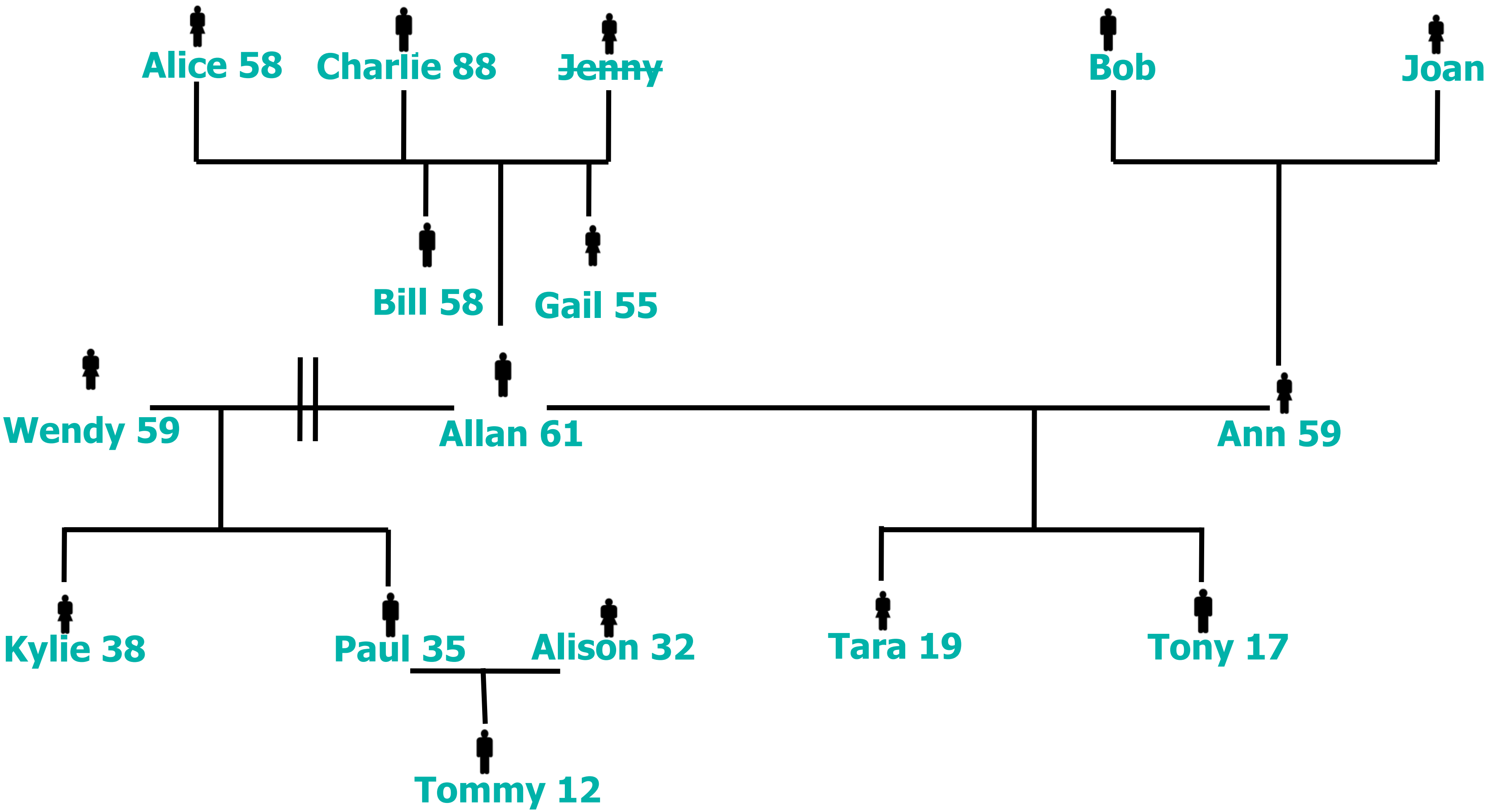
- To ensure your wealth passes to the right beneficiary, at the right time, in a tax effective manner

- Wealth is held in a variety of ownership forms and each person’s estate planning objective is different

- Failure to plan well may result in…
  - A reduction in the wealth passed onto intended beneficiaries
  - Unnecessary tax liabilities
  - Benefits passing to the wrong beneficiaries

Nexia Australia

Family tree – blended family



Nexia Australia

What happens if you don't have a will?

- Different intestacy rules apply in each state:
- Here is an example of what can happen:
  - If passes away, leaving only…

1.	Spouse	Spouse gets entire estate.	Laws in every state are different.
2.	Spouse & children	Spouse gets first $350K and; 1. Interstate's personal effects, and 2. Half of the balance of the estate Children share the remainder of the estate between them.	
3.	Children	Children share the estate equally.	
4.	Parents	Parents share the estate equally.	
5.	Siblings	Siblings share the estate equally.	

Nexia Australia

Estate planning is not just about what happens when you pass away

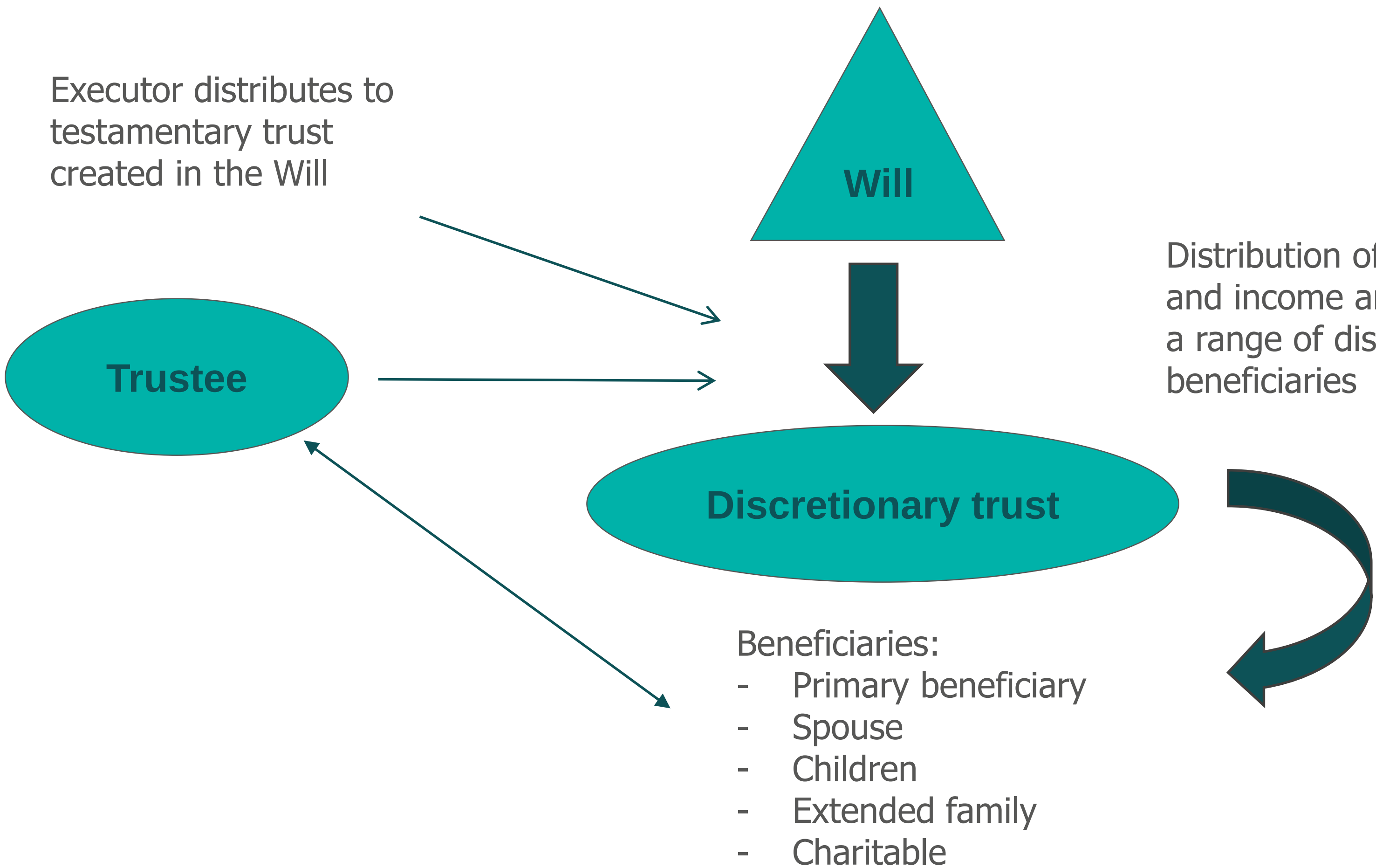
- By then it’s too late to change things
- Estate planning is also about the right ownership of assets today
- Review your estate plan if there is change in circumstances e.g. marriage, child birth, divorce, death of beneficiary, change in property etc.
- Estate planning is the fundamental principal about financial planning
  - Achieving goals and objectives
  - Maximising wealth
  - Having the right level of control
  - Passing your wealth to the right people at the right time
  - Protecting your wealth

Common factors to consider

- Will
  - Legal document that deals with estate assets
- Power of attorney
  - Legal document which allows you to appoint a person to make financial decisions on your behalf
- Enduring guardianship
  - Legal document which allows you to appoint a person to make personal and lifestyle decisions on your behalf should you lose mental capacity
- Advance health directives
  - Legal document which you can express your wishes about medical treatment and how you like your body to be dealt with in the event of an accident
- Testamentary Trust

What is a Testamentary Trust?

A testamentary trust is establish by a Will that comes into effect upon the death of the will maker.



Nexia Australia

Why should I consider having a Testamentary Trust?

Key advantages are:

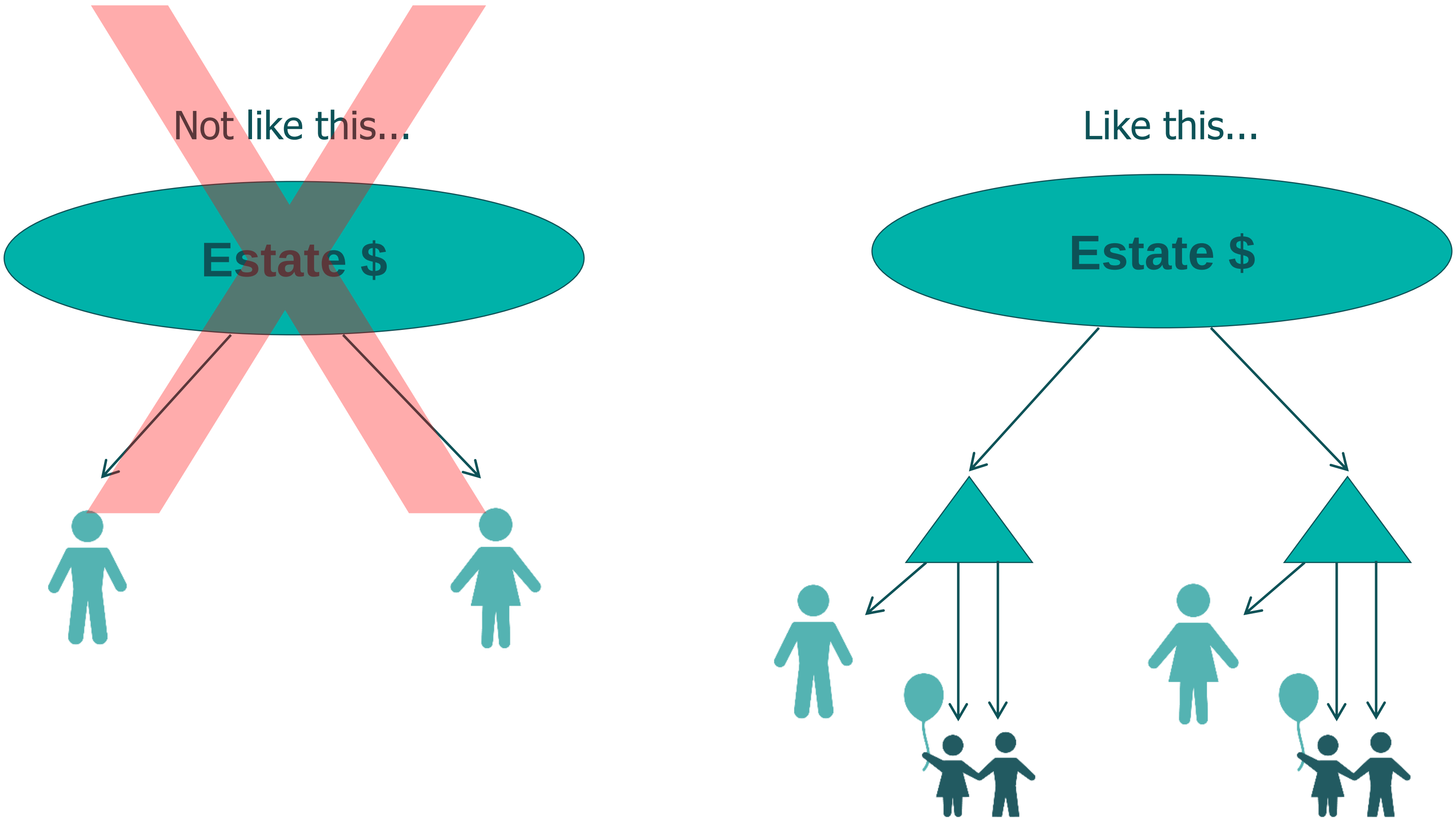
- Asset protection – assets in a testamentary trust are not owned by beneficiary therefore protected from creditors (therefore unable to access the assets in the trust), and protects the assets from erosion due to possible family law property proceedings

- Preserve capital - parents of a child with a mental health issues, drug and alcohol dependency, gambling and other addictive behaviours, questionable social associations

- Tax minimisation - minors beneficiaries under 18, have access to the tax free threshold at normal adult rates

Nexia Australia

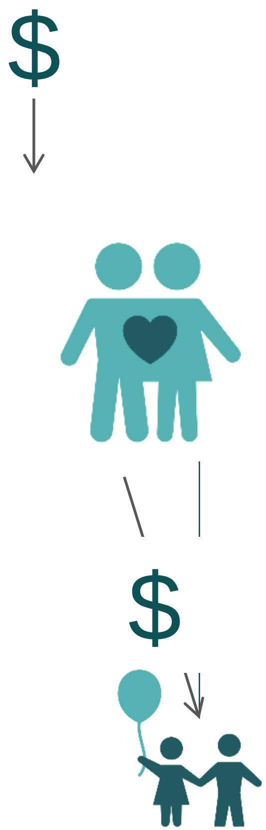
Testamentary Trust



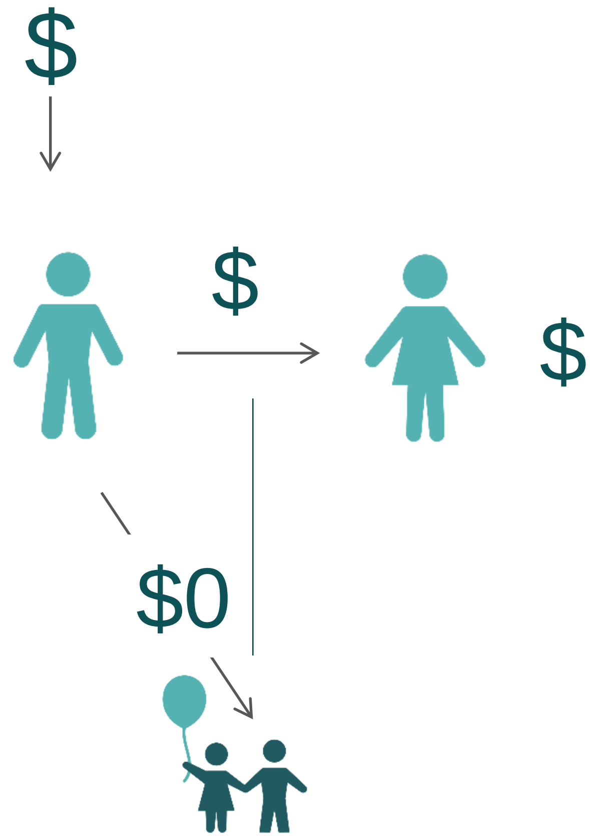
- $ don’t pass directly to beneficiaries
- $ pass to a trust controlled by a trustee for your beneficiary’s benefit

Divorce

Ideal Scenario

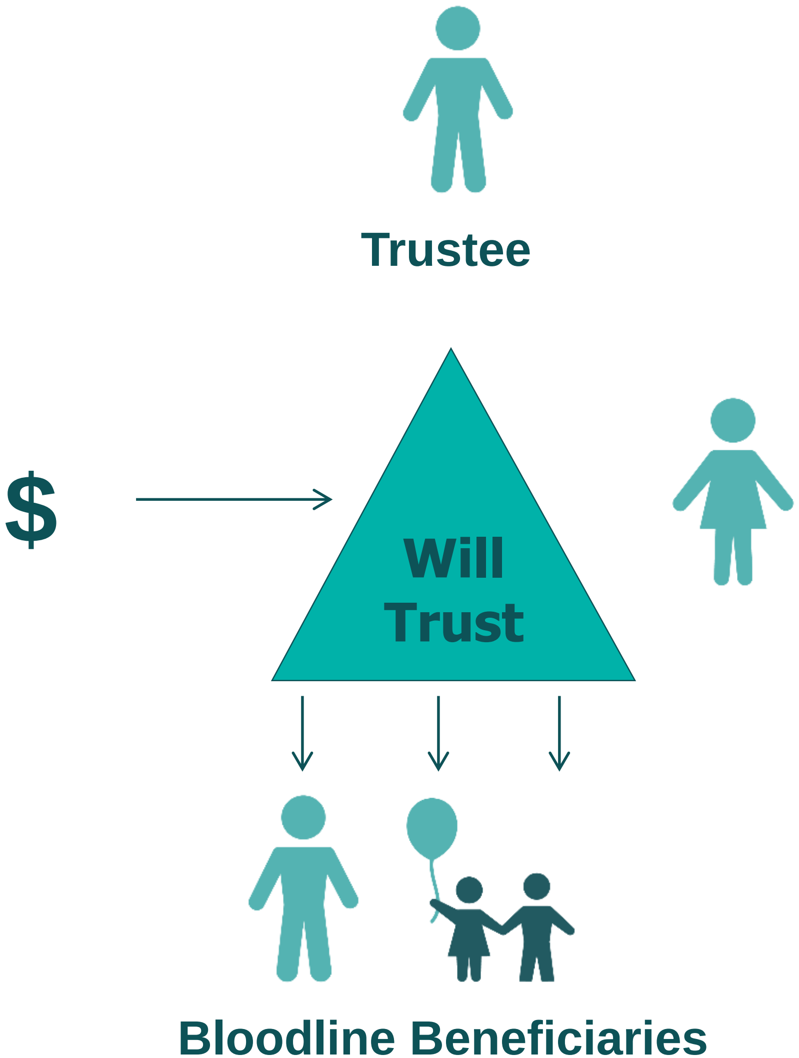


What They're Afraid Of

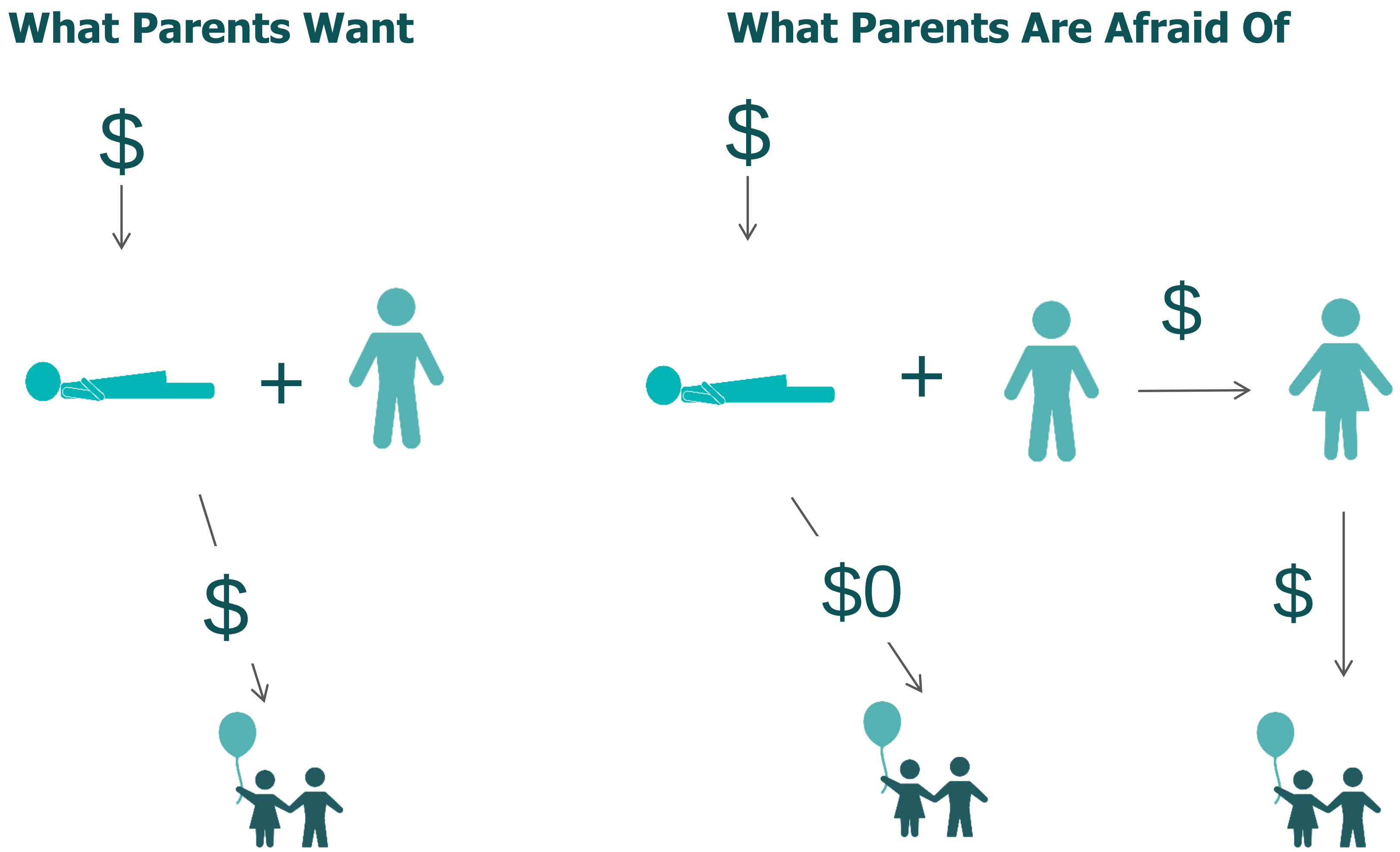


Divorce

A better solution



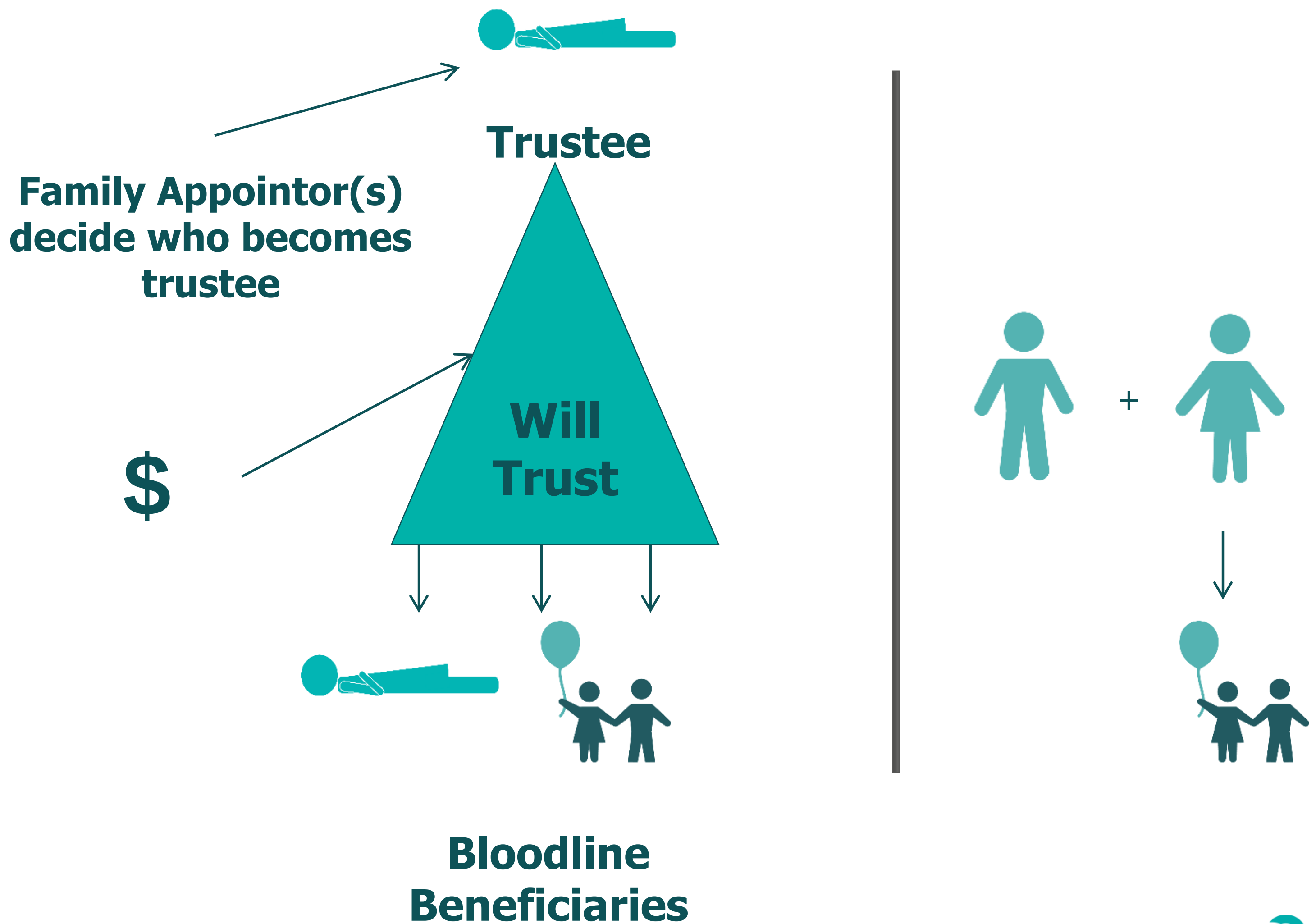
Re-partnering in the event of death



Nexia Australia

Re-partnering in the event of death

A better solution: What Parents Want



Nexia Australia

Why should I consider having a testamentary trust?

Key disadvantages are:

- Cost
- Complexity
- Can be challenged under the family provision
- Potential loss of main residence CGT exemption

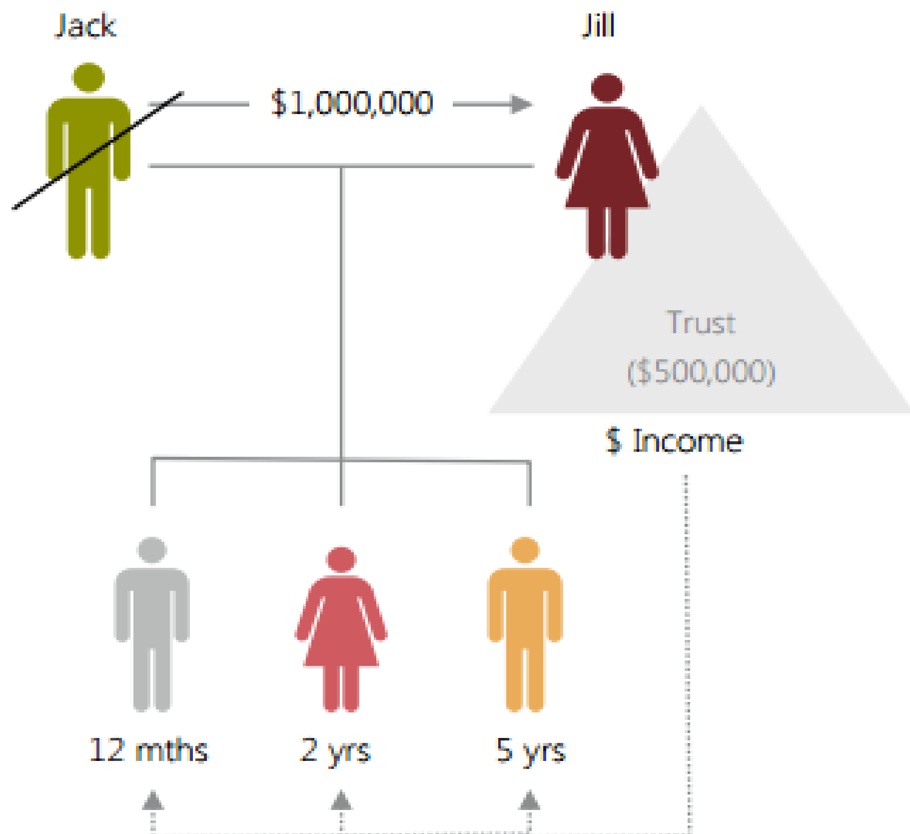
Nexia Australia

Post-death testamentary trust / Estate proceeds trust

Limitations:

- Beneficiaries are limited to your spouse and children
- Limitation on how much can be transferred to the trust
- Less flexibility in dealing with income and capital of a post death testamentary trust
- Can be expensive to establish

Post-death Testamentary Trust / Estate Proceeds Trust



Nexia Australia

Estate Proceeds Trust vs. Testamentary Trust

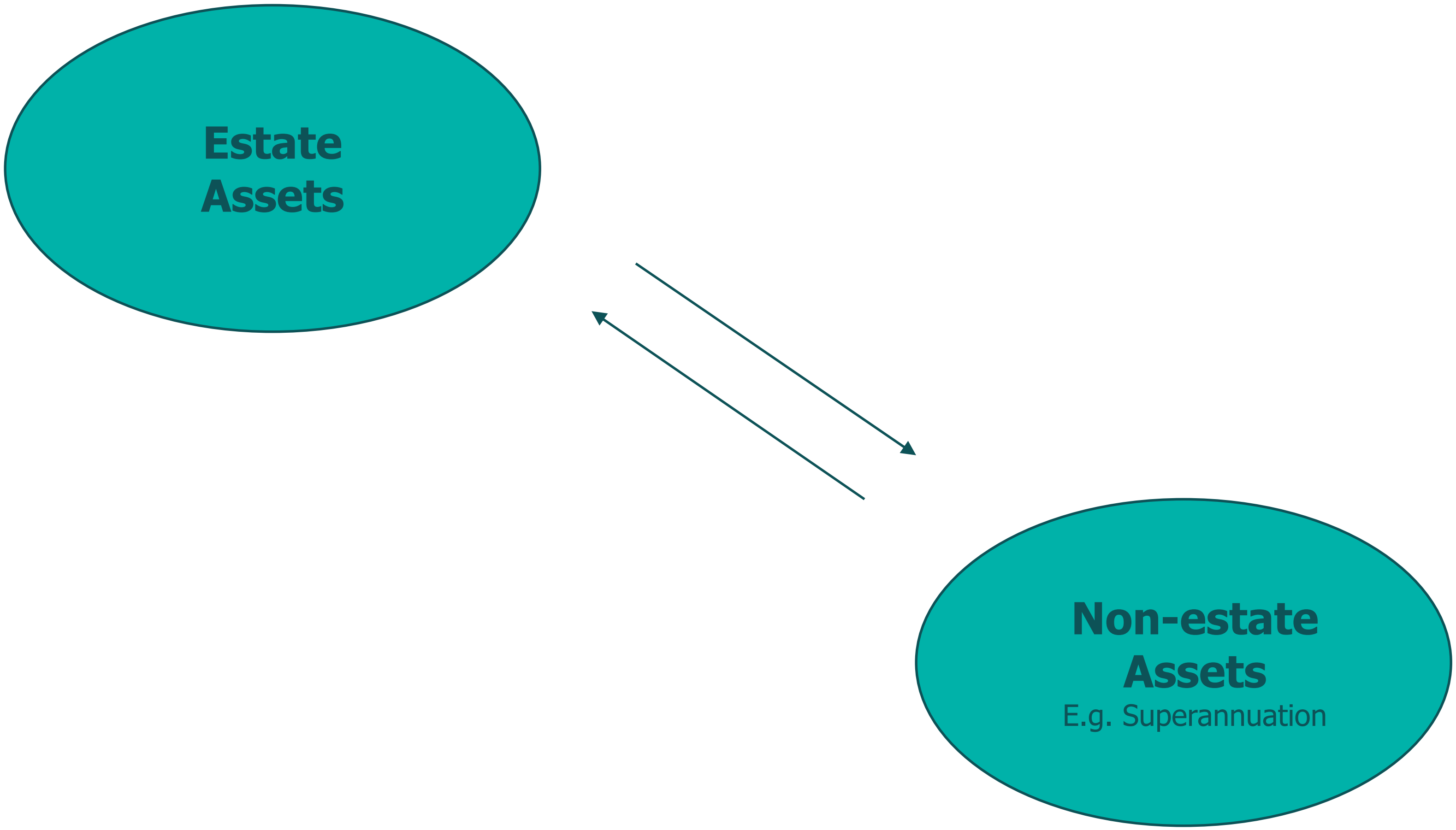
EPT	TT
Established by the beneficiary who has received the property directly via the will from the deceased person's estate within three years of their death.	Established by the deceased person's will
No Capital Gains Tax (CGT) exemption on transfer of assets from the beneficiary to the EPT	GCT exemption on transfer of assets from the estate to the TT
No Stamp Duty exemption on transfer of assets from the beneficiary to the EPT	Stamp Duty exemption on transfer of assets from the estate to the TT
Concessional rates of tax don't apply to grandchildren	Concessional rates of tax do apply to grandchildren
Only income generated by the portion of the capital which the deceased's children would have received on intestacy will be entitled to the concessional rates of taxation	All income entitled to the concessional rates of taxation

Nexia Australia

When should I consider using a testamentary trust?

- If you are concerned that one or more of your beneficiaries may be at risk from a family law claim, bankruptcy or other legal misadventure
- If one or more of your beneficiaries has a physical or mental disability, is a spendthrift, has poor judgement or has an addiction
- If one or more of your beneficiaries is a child under 18 years, or has children under 18 years themselves
- If you have assets that you would like to remain in the family
- If you wish to include any special rules, requirements, restrictions or conditions in your Will

Estate vs. non-estate assets



Nexia Australia

Estate assets

- Estate assets include:
  - Assets owned in your own name solely
  - Assets owned with another as tenants in common
  - Super death benefit paid to your estate
  - Self owned life insurance policies

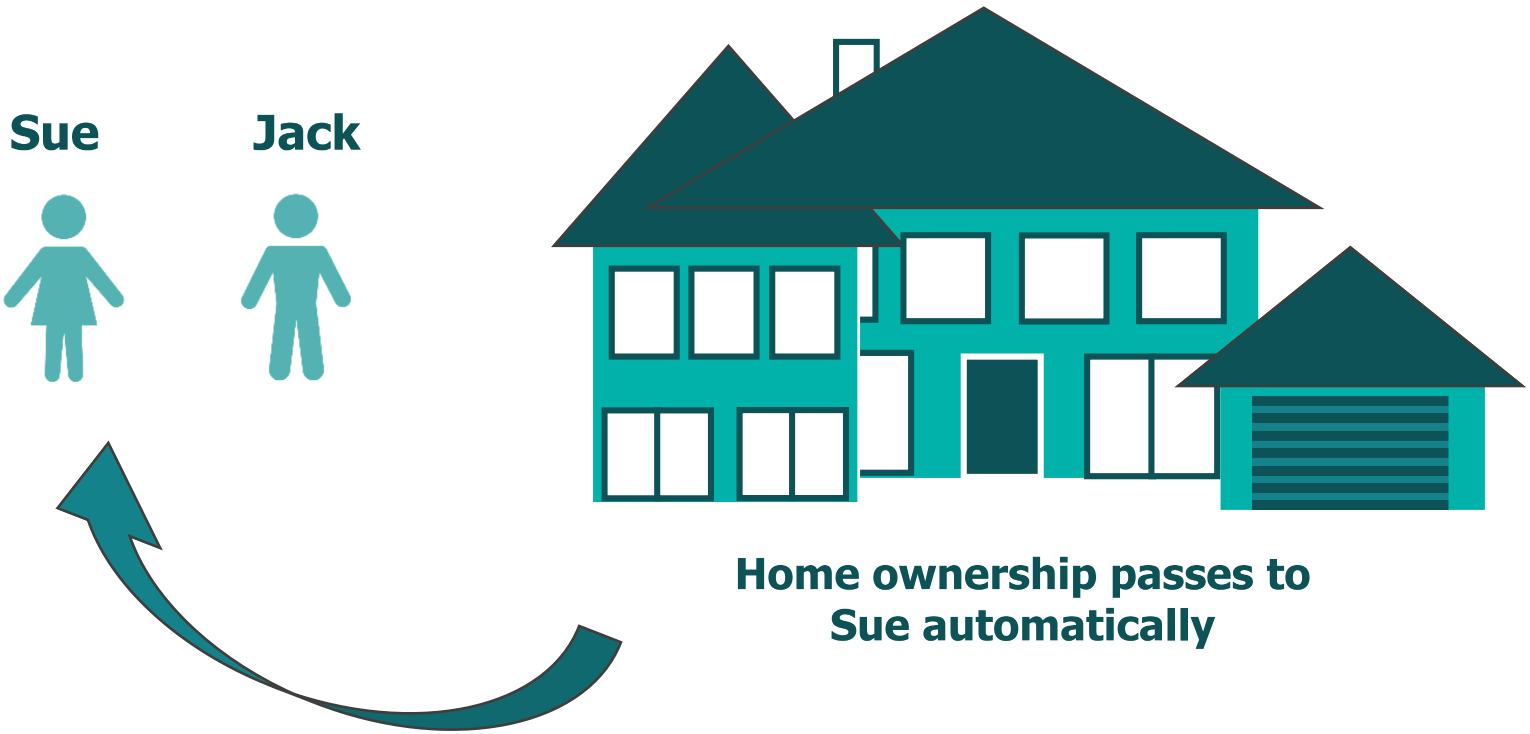
Nexia Australia

Non-estate assets

- Non-estate assets include:
  - Jointly held assets (joint tenants)
  - Life interest in assets
  - Assets owned by a company
  - Assets owned by a trust
  - Life insurance policy paid direct to a nominated person
  - Superannuation

Jointly owned assets

- Jack owns the family home jointly with Sue. In the event of his death, the ownership passes to Sue (the survivor)
- Governed by the "Laws of Survivorship"



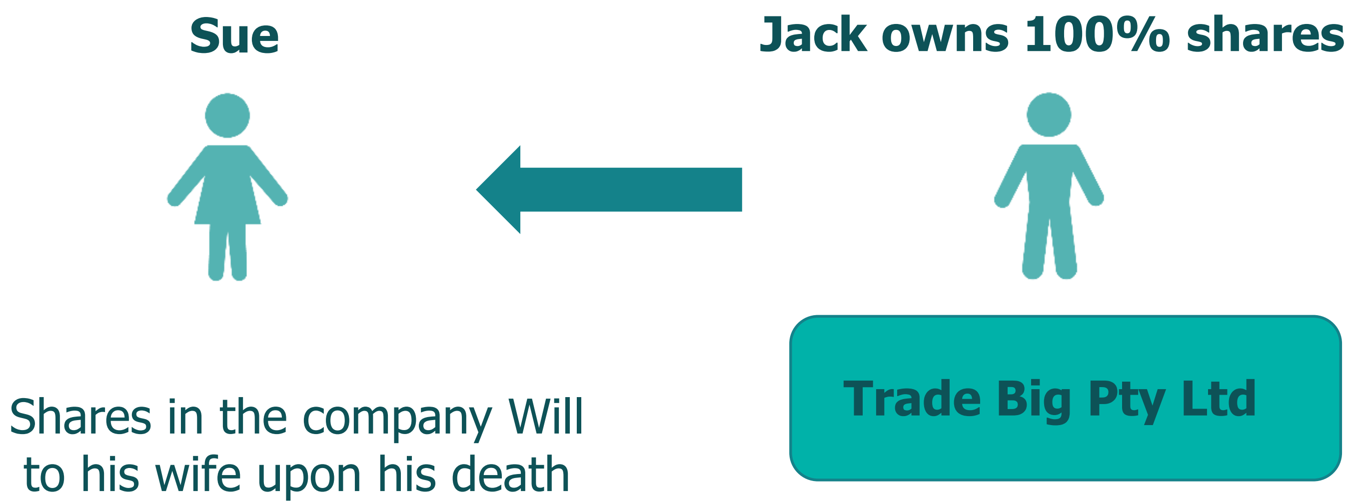
Nexia Australia

Life interest

- Jack owns the family home solely. In the event of his death, he has given his wife Sue life interest

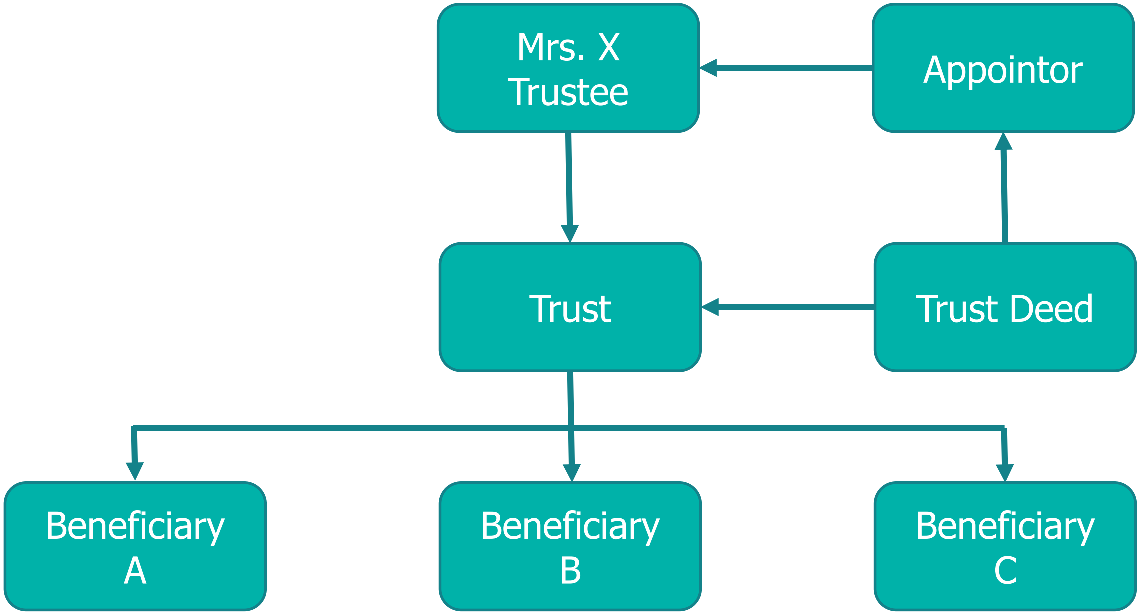
Assets owned by a company

- Jack owns 100% of the shares in Trade Pty Ltd
- He is the sole director of the company
- Upon his death, his Will transfers the shares to his wife Sue
- Sue, as the sole shareholder, can appoint herself as the sole director of the company. She will assume control of the company.



Assets held in trust

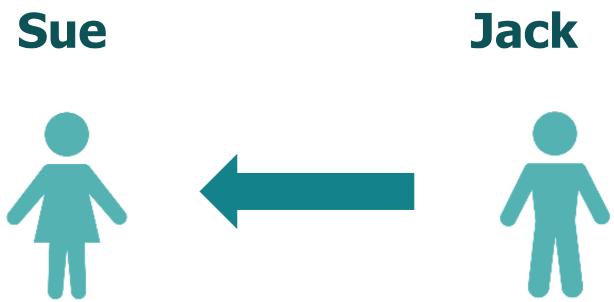
- Mrs X is Trustee of the Trust. Mrs X dies. Her Will cannot direct who will become the new trustee
- Trust Deed specify who will be the appointor - who will choose a new trustee
- Trust Deed states who will succeed Mrs X as appointor on her death
- This person will assume control of the trust and the trust assets



Nexia Australia

Life insurance proceeds

- Jack has a life insurance policy of $500,000 on his life. He has nominated his wife Sue as the owner of the policy
- In the event of his death, proceeds of the policy will be paid to Sue



Life insurance owned by Sue
$500,000

Nexia Australia

Non-resident estate beneficiaries

- Father has $9m estate and wants equal division for 3 sons (i.e. $3m each)
- Because of tax attributes, net effect is not the same for each beneficiary
  - CGT event K3 to consider

Asset	Beneficiary	Tax consequences
$2m main residence (post CGT)	Son A	• Cost base for Son A = market value at date of death • Son A = main resident exemption if sell house within 2 years of father's death (without having to use it as MR) • If sell after 2 years, have to use it as main resident
$2m investment property (pre CGT)	Son B	• Cost base for Son B = market value at date of death • Son B = subject to CGT on subsequent sale of property
$2m cash	$1m to Son A; $1m to Son B	No CGT consequences as cash ≠ CGT asset
$1m investment property (post CGT TAP)	Son C	• No K3 (since property is taxable Australian property) • Cost base for Son C = cost base at date of death • Son C = subject to CGT on subsequent sale of property
$2m shares (post CGT non-TAP)	Son C	• K3 capital gain in deceased's return since shares are non-TAP and Son C is a non-resident • Reduce amount of residuary deceased estate available for distribution since deceased estate must pay for CGT on K3

Nexia Australia

Treatment of Superannuation in the event of death

Estate Planning and Superannuation

- Superannuation death benefits – do not automatically form part of an estate
- The Super Fund's Trust Deed and the SIS Regulations set out how and to whom superannuation death benefits can be paid

Estate **P**lanning

is more than just a will

Nexia Australia

Who can receive a superannuation death benefit?

Death benefits can be paid by a trustee to any 'dependent' or to the Legal Personal Representative (LPR).

Superannuation Death Benefits

Dependents

LPR (Estate)

Spouse

Child

Interdependent

Nexia Australia

In what form can a superannuation death benefit be paid?

- Superannuation death benefits can be paid as either a lump sum or a pension.

- A pension can only be paid where the recipient is a ‘dependant’ of the deceased at the time of death.

- Death is a compulsory cashing condition

Nexia Australia

Taxation of Death Benefits

Lump sum to a tax law dependant

	Payment to estate and then to dependant	Payment to dependant directly
Tax on tax free component	Nil	Nil
Tax on taxable component (taxed element)	Nil	Nil
Tax on untaxed element	Nil	Nil

Taxation of Death Benefits

Lump sum to a non-tax law dependant

	Payment to estate and then to dependant	Payment to dependant directly
Tax on tax free component	Nil	Nil
Tax on taxable component (taxed element)	15% + Medicare Levy	15% + Medicare Levy
Tax on untaxed element	30%	30%
Tax liability	LPR	Beneficiary individually

Nexia Australia

Taxation of Death Benefits

Pensions

	Either deceased or recipient over 60	Both deceased and recipient under 60
Tax on tax free component	Nil	Nil
Tax on taxable component (taxed element)	15% + Medicare Levy	Beneficiary's marginal tax rate less a 15% tax offset
Tax on untaxed element	Beneficiary's marginal tax rate less a 10% tax offset	Beneficiary's marginal tax rate

Nexia Australia

Super Death Benefits Paid On:

Superannuation death benefits are paid to beneficiaries under the terms of the trust deed.

Trust deeds are generally flexible and allow for the following:

a) Reversionary pensions;

b) Death benefit nominations;

c) Trustee's discretion

Nexia Australia

Reversionary Pensions vs. Death Benefit Pensions

- Reversionary pensions get credited to recipient's transfer balance account after 12 months.

- Death benefit pensions get credited to recipient's transfer balance account upon receipt

- Regular pensions can be commuted to accumulation however death benefit and reversionary pensions have to be paid out as lump sums on commutation.

Control of fund after death

- The following issues need to be carefully considered in relation to control of the Fund after death of the member:
  - The choice of legal personal representative
  - The trust deed provisions for appointing trustees

- The importance of who controls the superannuation fund and has the discretion as to how the superannuation death benefit is paid is highlighted in the case of Katz v Grossman.

Nexia Australia

Importance of EPOA's

- A member can appoint an attorney under an enduring power of attorney (EPOA) so that the attorney acts as trustee or director of the corporate trustee in place of the member should the member lose capacity.

- An SMSF has six months to appoint a trustee or director in place of the member to remain complying so it is important for all members to consider having an EPOA.

How can we help?

NCFS Financial Planning Design

Cashflow needs

Return objective

Risk tolerance

Taxation objective

Financial Planning Strategy

Ownership Structures
Debt Management
Risk Management
Estate Planning
Investment Planning
Taxation Planning
Retirement Planning
Centrelink Issues
Asset Allocation

Liquidity needs

Estate Planning

Retirement Funding

Family requirements (e.g. Education funding)

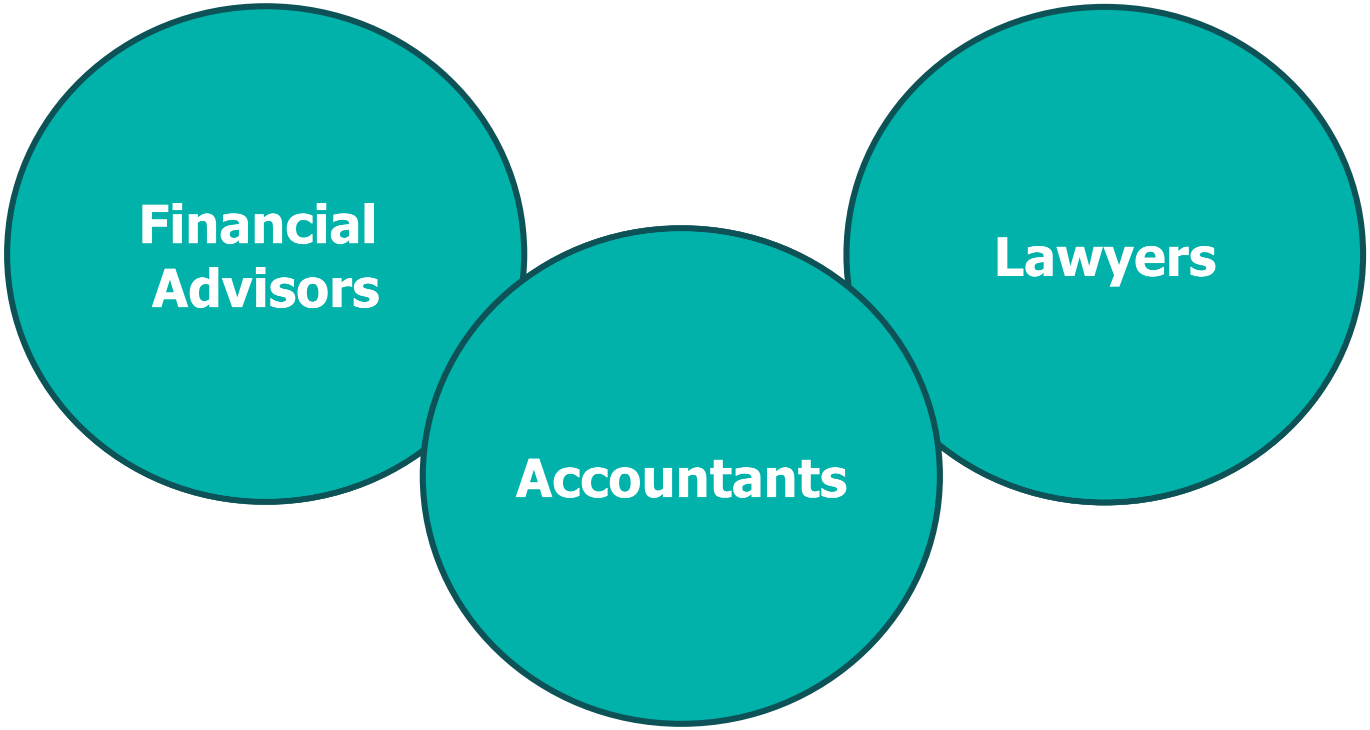
Nexia Australia

Estate planning process

1. Gather Information
2. Identify issues and objectives
3. Options and strategy
4. Recommendations
5. Implementation
6. Review

Nexia Australia

A team approach



Your Estate Plan and Financial Plan should be a coordinated approach

How we operate

Complimentary meeting *No cost to you*	**Fee for service** *Complete objectivity*
Hourly rate *Varies depending on the complexity of your situation*	**No commission** *Our advice is in your best interest*

Nexia Australia

“Life is pleasant. Death is peaceful. It’s the transition that’s troublesome”

Isaac Asimov (1920-1992)

Contact Details

Sylvia Liang

Email: sliang@nexiasydney.com.au

Darren Chinnappa

Email: dchinnappa@nexiasydney.com.au

Phone: (02) 9251 4600

Website: www.nexia.com.au

Nexia Australia

Thank you