

Welcome to the Legenis eNewsletter March 2010 edition

In this months issue we feature an informative article on *Why Wills Matter* by Paul Clitheroe and a tale about a few lucky cats.

It's an opportune time before June 30th to look into establishing a [Foundation](#) for yourself or a client, contact us for further information.

If you have any questions regarding the information in this month's newsletter please don't hesitate to call or email us.

I hope you enjoy this month's articles.

Warmest regards,
Dr Robb Musgrave
CEO, Legenis

Legenis: Leaving a lasting legacy for families, foundations, corporations and non-profit communities by empowering them to do the right things, by doing things right.

Edition 16 - March 2010

Article 1

Why Wills Matter.

By Paul Clitheroe



The invincible British spy James Bond may have adopted a 'live and let die' approach but for us mere mortals, it's worth putting in place measures that protect our personal assets both during and after our lifetime. These steps,

collectively known as 'estate planning', are as much a part of personal wealth creation as building a long term portfolio. When we think of estate planning, Wills typically come to mind. There's no doubt that having an up to date Will can spare your family emotional hardship. As we saw in 2009, the untimely death of music legend Michael Jackson sparked a global outpouring of grief. But it was his billion dollar estate that created the legal thriller.

Apparently Jackson hadn't updated his Will for years, and not surprisingly it was challenged by his family and creditors in a very public dispute. Wrangling over a loved one's estate are not restricted to superstars. It's estimated that 40 percent of Australians die without a Will, often leaving behind a chaotic mess at a time of grieving. It's ironic that so many of us work hard during our lifetime to build a pool of assets, only to take a 'she'll be right' approach to our estate after we pass away.

For a Will to be watertight it must meet certain legal conditions and that makes it worth getting professional help to draft a Will. There are plenty of inexpensive do it yourself (DIY) Will kits available but in today's social setting of blended families and complex business arrangements, there are plenty of opportunities for informal Wills to be contested.

Your Will should reflect your most recent wishes so ideally it should be updated following key life events like marriage, the arrival of kids, divorce or if you acquire substantial assets. One aspect you may want to address in your Will is the creation of a testamentary trust. This involves appointing a trustee whose role is to manage your property for the benefit of the beneficiaries. In this way the trust assets can go on for many years following your death.

For parents of children with special needs or kids from a previous relationship, a testamentary trust can offer considerable peace of mind, providing targeted financial support for an extended period. Along with deciding who should get what, one of the key issues to consider in preparing a Will is the appointment of an executor. This is the person responsible for administering your estate, and while many ageing parents nominate their adult children for the job, it's a task that can be protracted and punishing if the Will is contested or the estate complex.

This being the case it makes sense to check that the person you nominate is happy to take on the role of executor. Professional trustee services can be a useful alternative, providing an impartial executor to relieve the burden from family members. It's a service that comes at a price, with the fees being deducted from your estate. Expect to pay in the order of around 4 per cent on the first \$100,000, dropping to about 1 per cent for an estate valued at over \$300,000.

Robb's Comment:

Paul Clitheroe is an old friend and his was the first personal interview in my PhD research. He has high competence level and a wonderful presentation style.

This past week we have seen the Estate of Michael Jackson contract with Sony

Music over selected material for the next seven years for initial consideration of US\$250 million. Watch this space for further developments.

The will of Leona Hemsley was compromised when the executors who were supposedly appointed, but refused to take up their positions. The issues being that Mrs Hemsley one of the richest women in the US and a great philanthropist had left US\$12 million for the care and ongoing support of her dog "Trouble". The latest judgement amended the amount for care to "Trouble" to less than \$1million

Paul Clitheroe is speaking on an *Introduction to Private Ancillary Funds* in Brisbane on the 25th March 2010 for the Australian Council for the Arts . If you are interested contact:

Kathy Davis

Queensland Manager, Artsupport Australia.

Phone: 3235 4023

Article 2



Philanthropy Seminar

Dr Robb Musgrave is speaking on an *Adviser perspective: Values based financial advice including estate & succession planning* at the Strategic & Sustainable Philanthropy for Advisers & Clients through Private Ancillary Funds Seminar

Details

Date:

Tuesday 30th March 2010

Time:

5:30PM - 7:30PM

Where:

COOPER GRACE WARD LAWYERS
Level 21/400 George St, Brisbane
(CPD: 1.5 points)

Other speakers include:

Scott Hay-Bartlem & Carly Ashwood, Cooper Grace Ward Lawyers

Legal perspective: Private Ancillary Funds (PAFs): Establishment, operational requirements, governance, perpetuity & tax advantages

Prof. Myles McGregor-Lowndes, Australian Centre for Philanthropy & Nonprofit

Studies (QUT)

Why philanthropy is relevant to Professional Advisers

Graeme Baulch, Director of Medimobile (Award winner: 2009 BRW Fast 100)

An intimate & informal information session for financial advisers and their clients with an interest in philanthropy and developing better structured philanthropic vehicles.

Bring your colleagues and clients to this informal information session in a comfortable and discreet environment to better understand the advantages of structured philanthropy and what you should expect in return from charitable recipients.

To register contact Derek Brown at World Vision.

Phone 07 3387 2708 or email: derek.brown@worldvision.com.au

Dr Robb Musgrave MBA, PhD is the CEO of Legenis. Legenis is committed to assisting individuals create living legacies. Dr Robb can be contacted on +61 7 3395 1213 or email: robb@legenis.com.

Article 3



Herding Million Dollar Cats Expensive

Two trustees involved in a dispute over disclosure of information about the administration of a bequest of more than \$1 million for cat welfare have been ordered by the High Court at Christchurch to dip into their own pockets to help pay court costs.

Mrs H B Hewitt, who died on July 2, 2007 left her estate worth in excess of \$1 million for the benefit of The Cats' Protection League. The money was left to trustees James Deans and James Frederick Sutherland on trust to pay the net income of the bequest to the Cats' Protection League, with discretion to advance capital.

A policy was adopted by the trustees of paying \$48,000 a year after tax, while retaining any remaining income in reserve. There were also payments from capital for capital works.

The league started court proceedings when it felt it was not getting adequate information about the trust finances. Eventually, the information was received before the case went to court, leaving only the issue of court costs to be sorted out. The protection league said it was entitled to costs because there had been a

"blatant refusal" by the trustees to provide information to which it was entitled.

The trustees denied there was an unreasonable delay or failure to respond to the league's requests. Associate Judge Rob Osborne ruled that there had been a "measure of unreasonableness in the position adopted by the defendants which led to this proceeding."

He said they should bear some of the costs . The judge said that if Mr Deans' and Mr Sutherland's costs were met from the capital of the trust, it would in fact be the protection league as beneficiary of the trust that would ultimately suffer the financial effect of paying those costs. He said the trustees had to pay half the league's costs personally and were not entitled to indemnity from the trust for half their own legal costs.

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