

# Estate Planning & Super

Sylvia Liang [sliang@nexiacourt.com.au](mailto:sliang@nexiacourt.com.au)

Darren Chinnappa [dchinnappa@nexiacourt.com.au](mailto:dchinnappa@nexiacourt.com.au)

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the next solution

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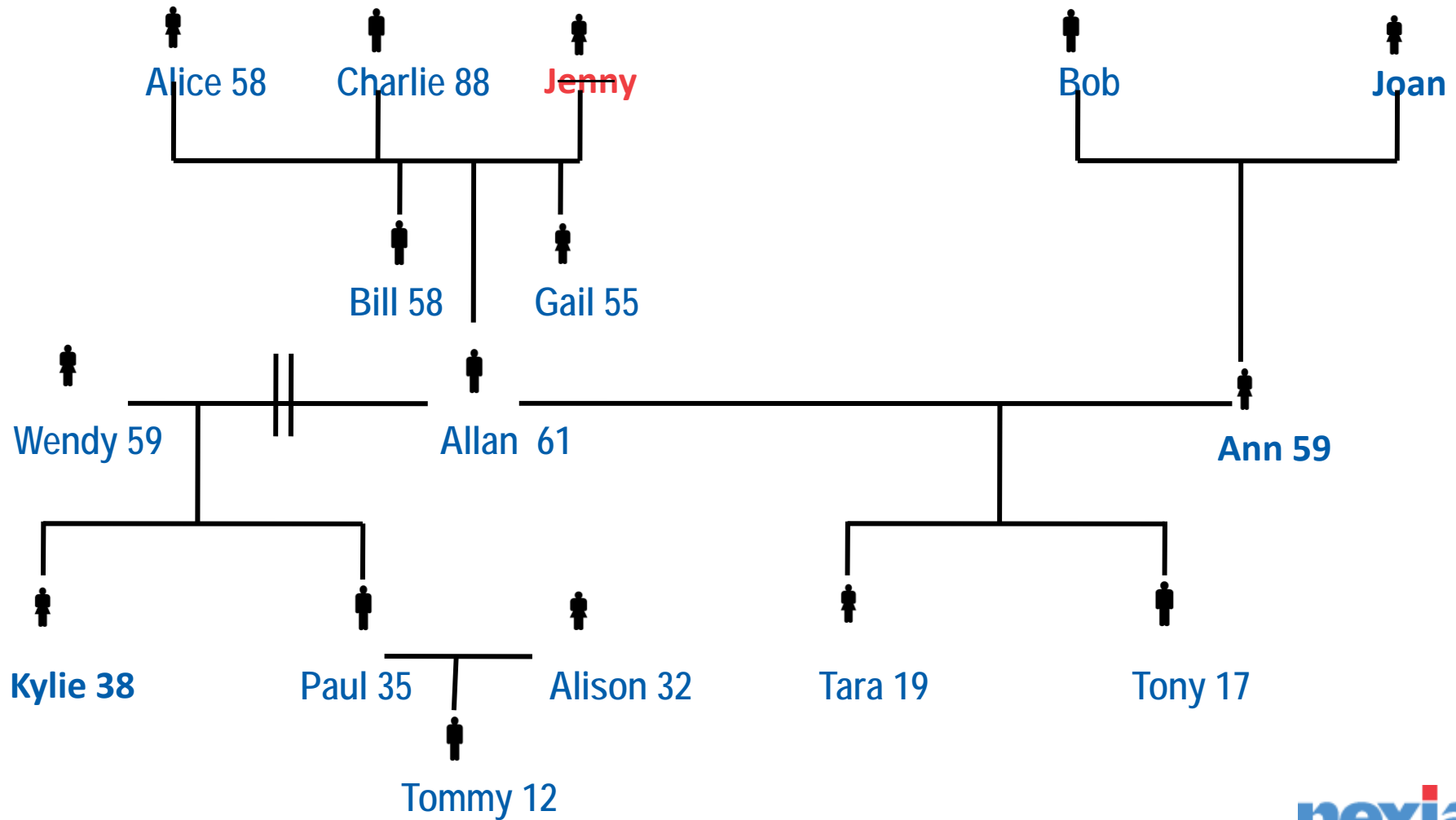
# Agenda

- What is estate planning?
- What is a testamentary trust?
- Why should I consider a testamentary trust?
- Post-death testamentary trust / Estate proceeds trust
- 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

# 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

# Family tree - blended family

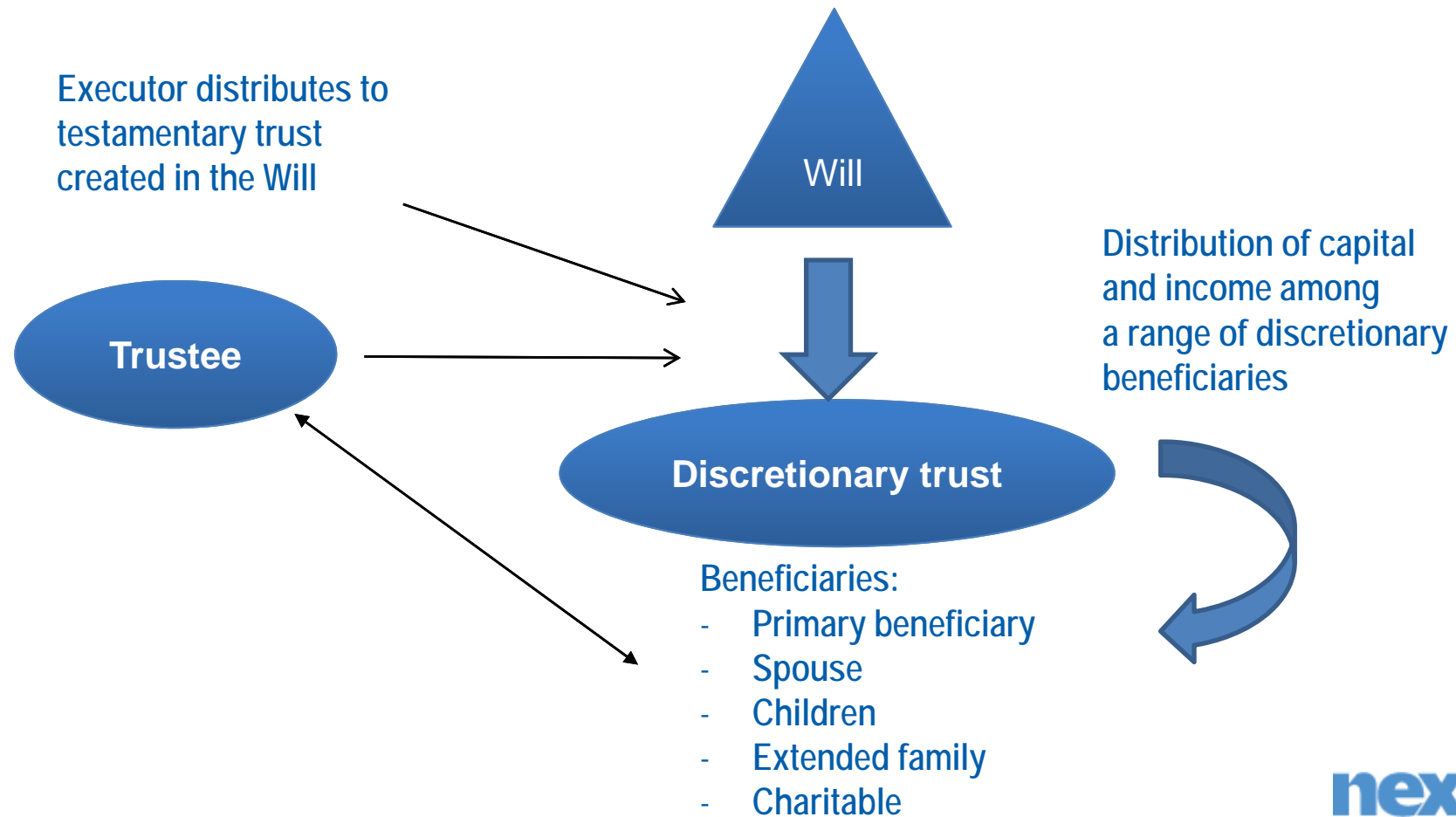


# Common factors to consider

- Will
- Power of attorney
- Enduring guardianship
- Advance health directives
- **Testamentary Trust**

# What is a Testamentary Trust?

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



# Why should I consider having a testamentary trust?

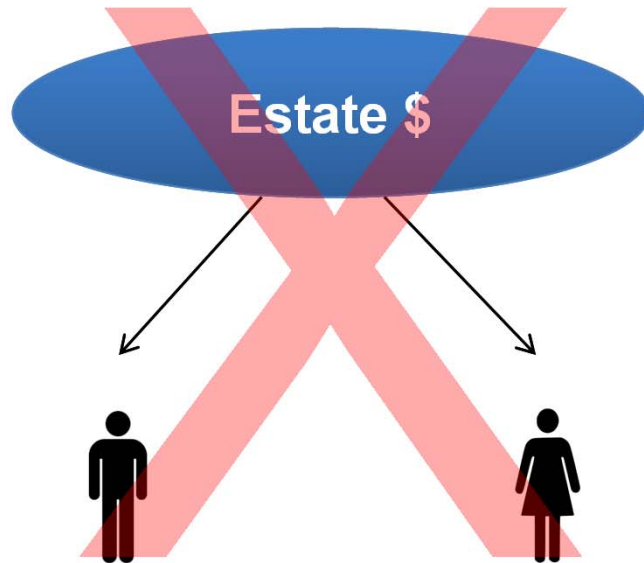
Key advantages are

- 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

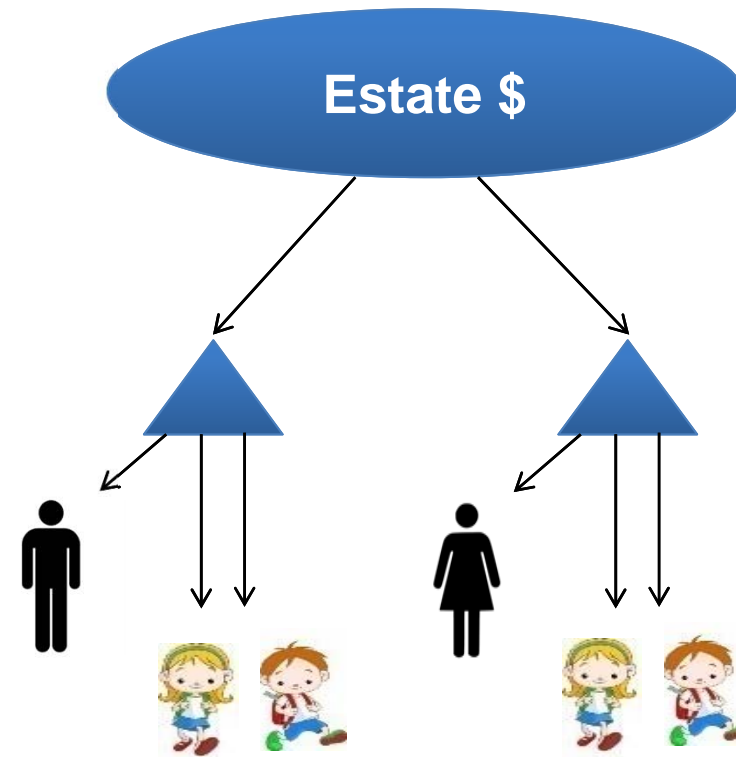


# Testamentary trust

Not like this...



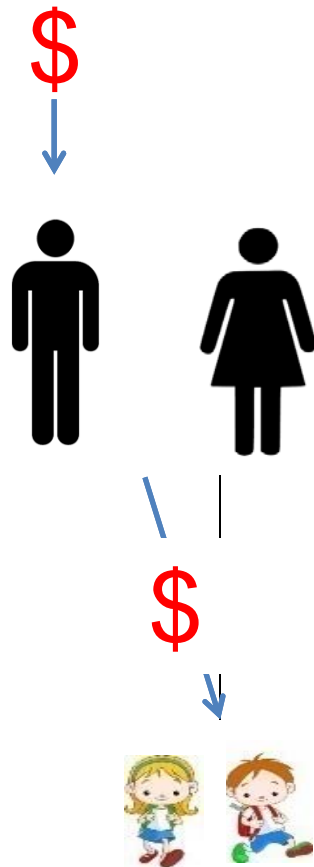
Like this...



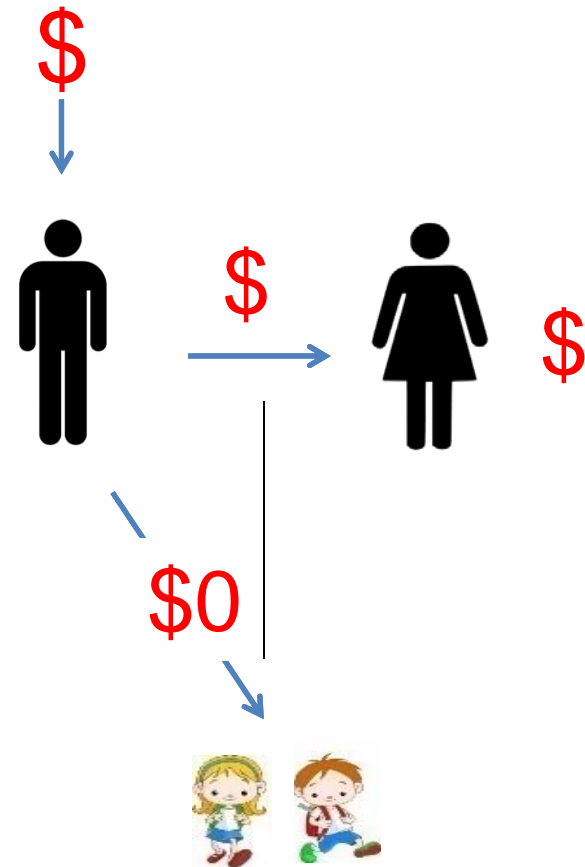
- \$ don't pass directly to beneficiaries
- \$ pass to a trust controlled by a trustee for your beneficiary's benefit

# Divorce

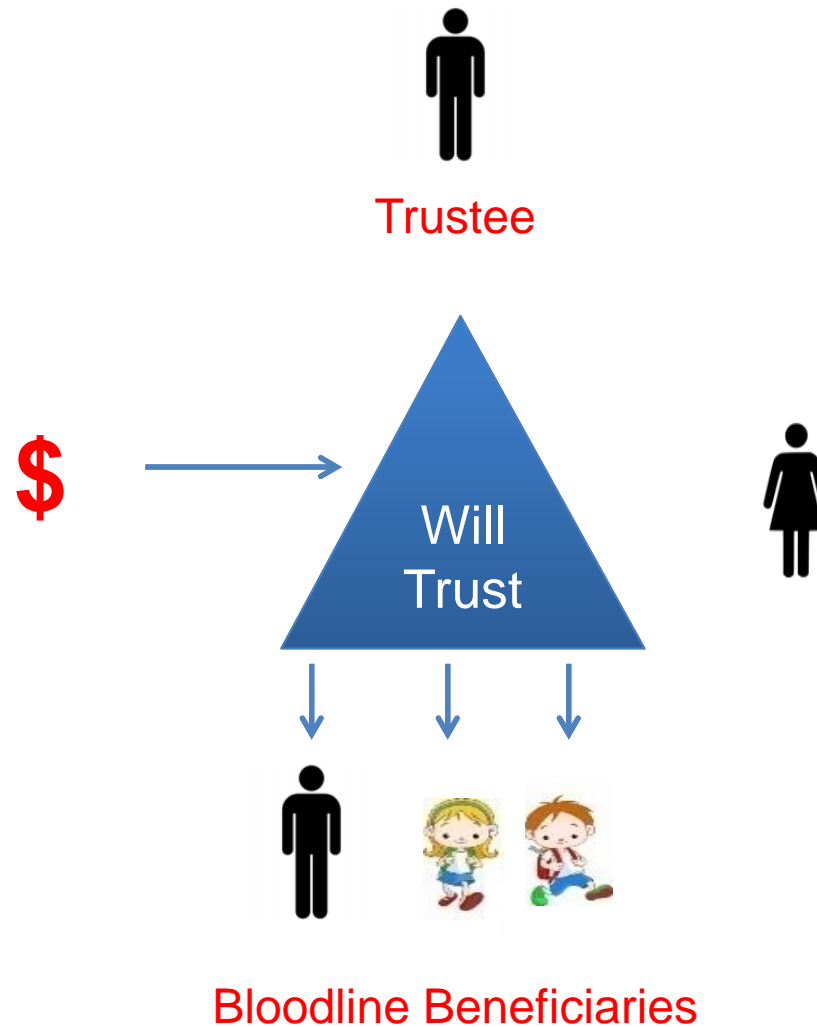
What Parents Want



What They're Afraid Of

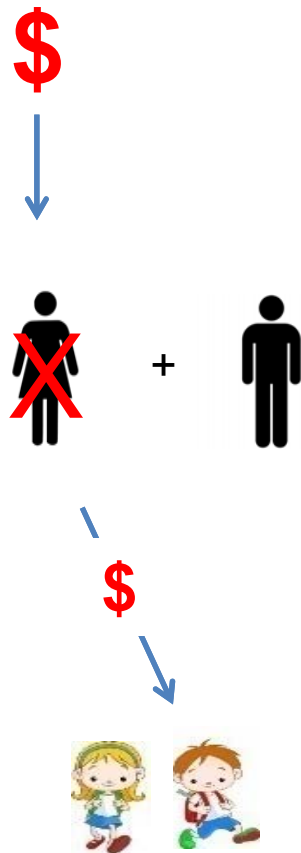


# Divorce: a better solution

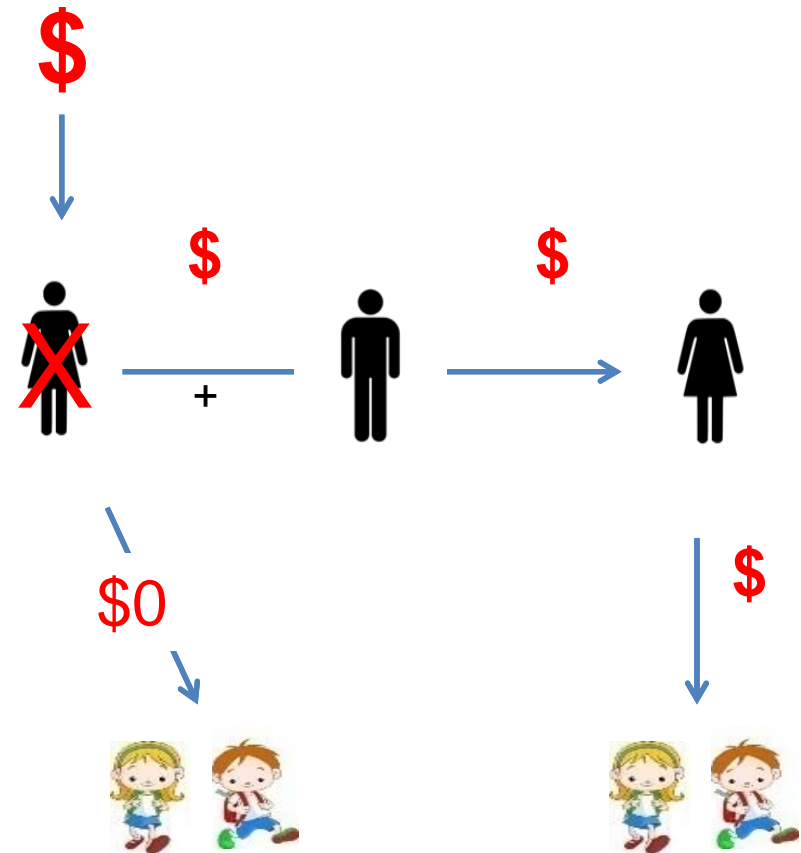


# Death & Re-partnering

## What Parents Want

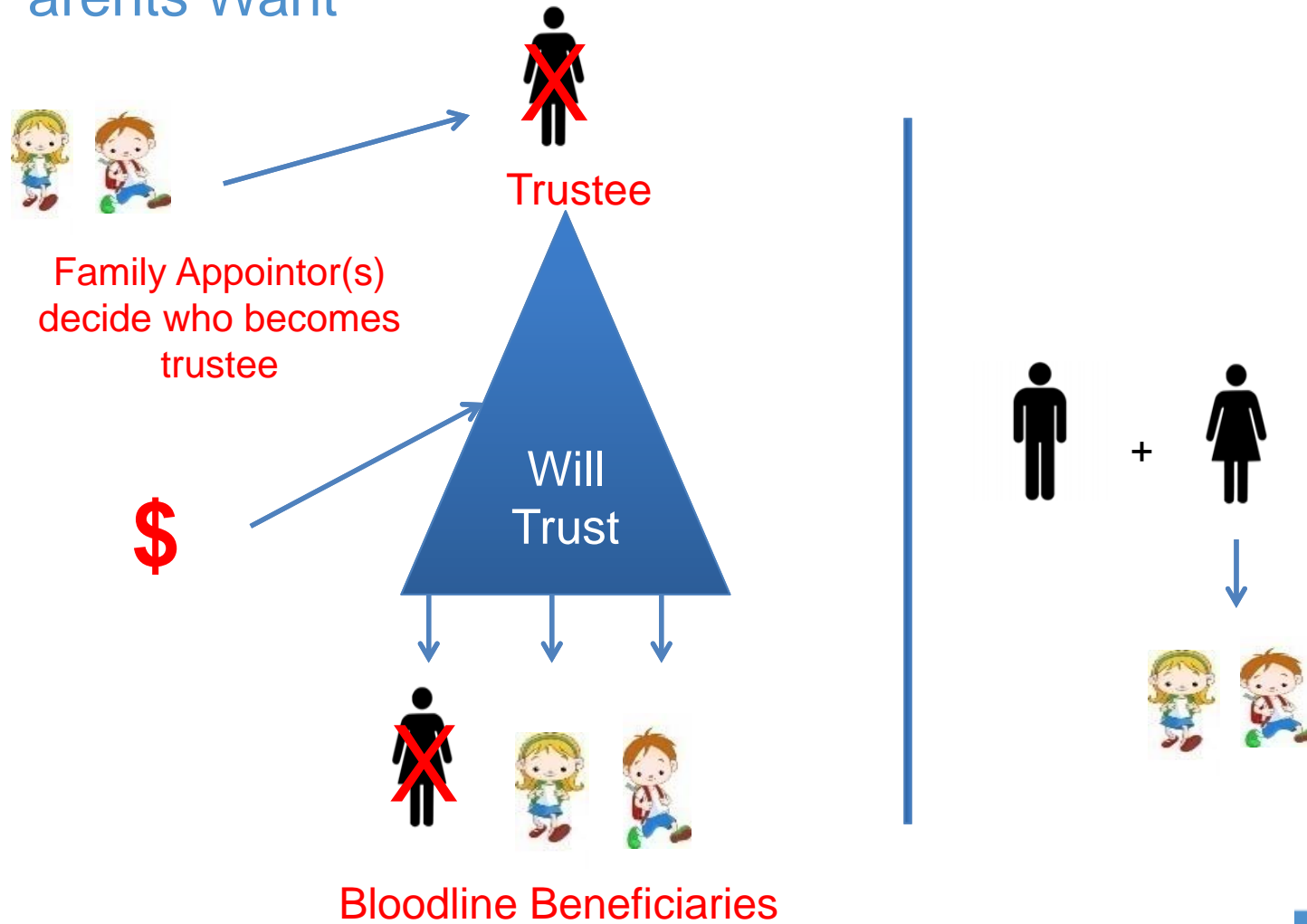


## What They're Afraid Of



# Death & Re-partnering: a better solution

## What Parents Want



# Why should I consider having a testamentary trust?

Key disadvantages are

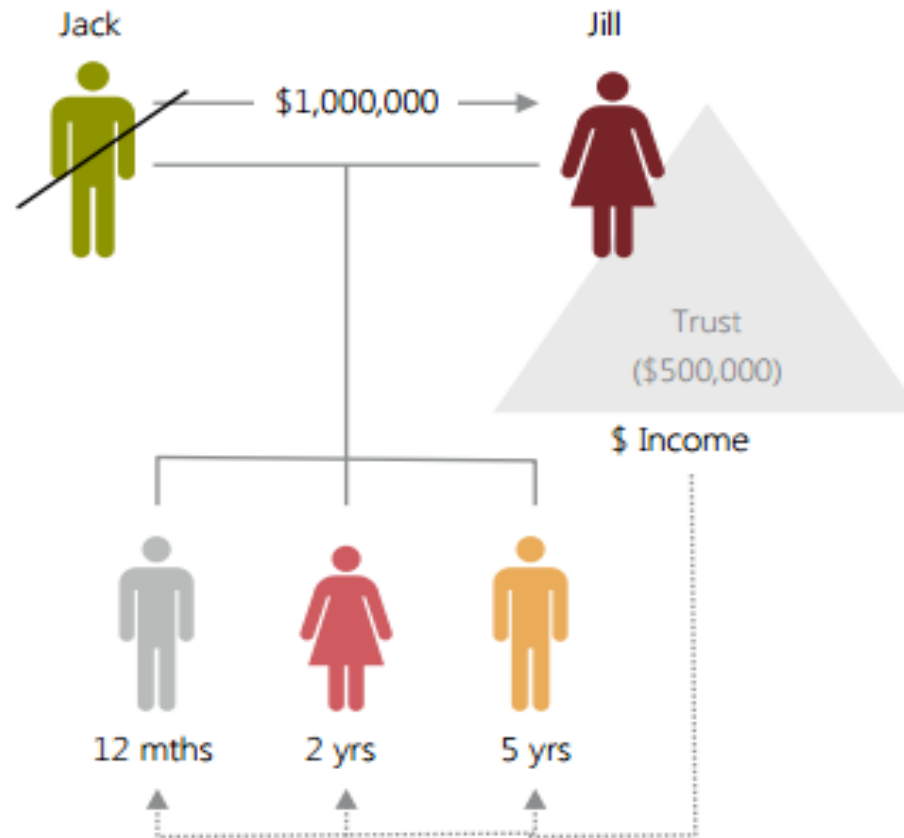
- Cost
- Complexity
- Can be challenged under the family provision
- Potential loss of main residence CGT exemption

# 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





# 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	CGT 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

# 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

# Death and superannuation

# Estate Planning & Superannuation

- Superannuation death benefits – do not automatically form part of an estate
- Death is a compulsory cashing condition
- The SIS Regulations set out how and to whom superannuation death benefits can be paid

# 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

Spouse

Child

Financially  
Dependent &  
Interdependent

# 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.

# 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



# 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)	Nil	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

# 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) Binding death benefit nominations;
- (c) Trustee's discretion

# Binding Death Nominations v Reversionary pensions

Which must the trustee follow?

- The trust deed should specify the order of priority if there is both a binding nomination and a reversionary pension.
- Generally reversionary pensions take precedence over binding nominations per most trust deeds.

# CONTROL OF THE 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*.

# IMPORTANCE OF EPOAS

- 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



## How We Operate

- Initial appointment no cost
- Initial analysis at hourly rate based on complexity of analysis
- Ongoing service is based on fee for service
- No commissions



Life is pleasant. Death is peaceful.  
It's the transition that's troublesome.

*Isaac Asimov (1920 – 1992)*

# Contact Details

- Darren Chinnappa  
Email: [dchinnappa@nexiacourt.com.au](mailto:dchinnappa@nexiacourt.com.au)
- Sylvia Liang  
Email: [sliang@nexiacourt.com.au](mailto:sliang@nexiacourt.com.au)
- Phone: (02) 9251 4600
- Website: [www.nexia.com.au](http://www.nexia.com.au)

Thank you