



## Child Support FAQ (Frequently asked questions)

**Navigating the issue of child support can be both emotionally draining and confusing. At TDE we encourage our clients to ask questions. Listed below are some of our most frequently asked child support questions.**

**Q** *Am I obliged to support my children financially?*

**Answer** Until your children are 18 years of age and have finished secondary school, you are legally obliged to support them financially.

**Q** *How do I obtain child support for my children?*

**Answer** One of the first things that you should do when you separate is to visit a Centrelink office or go online. Register for a Child Support Assessment with the Child Support Agency and determine your eligibility for government pensions or other benefits. This is important, as it can take some time for your application to be processed and to start receiving payments.

**Q** *How is the amount of child support determined?*

**Answer** The Child Support Agency determines the amount of child support via a complex formula. In basic terms, the amount is calculated by assessing the incomes of both parents and the percentage of nights that the children

spend with each parent. The money can be collected by the agency and paid to the parent who is deemed to be eligible for the child support.

**Q** *What if I disagree with the amount determined by the Child Support Agency?*

**Answer** Sometimes if the liable parent runs their own business their true income may not easily be able to be determined. There is a review process

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in place at the Child Support Agency, if you disagree with the amount of child support. If you are still dissatisfied, you can approach the Social Security Appeals Tribunal for a further review.

**Q** *Can we come to a private arrangement?*

**Answer** Many parents, with the assistance of their lawyers, come to a private arrangement over child support. Typically, this includes who will pay for private school fees, extra curricular activities (such as sport or music lessons) - as well as the amount for general child support. This is then detailed in a legal document called a Binding Child Support Agreement and is lodged with the Child Support Agency.

**Q** *Do I have any say over how my ex-partner spends the child support I provide?*

**Answer** Child support is provided to the eligible parent who has complete control over how the money is spent for the support of the children.

**Q** *If I pay child support am I obliged to pay for other expenses, such as private school fees?*

**Answer** If you are paying child support, as determined by the Child Support Agency, you are under no legal obligation to pay for any other costs associated with the support of your children.

**Q** *My ex-husband has a new partner and they are now expecting a baby. Will this affect the amount of child support provided to me?*

**Answer** If circumstances change and your ex-partner has more children, this will often decrease the amount of child support provided to the original family.

For further information on this topic, please contact contact Randall Bradshaw at [RBradshaw@tde.com.au](mailto:RBradshaw@tde.com.au) or Eilish Cooke on [ECooke@tde.com.au](mailto:ECooke@tde.com.au)



## What is a caveat and how does it impact your property?

**You have unexpectedly received a letter in the mail from the Titles Office informing you that someone has registered a caveat on your property. What does this mean and what should you do?**

### What is a caveat?

The word caveat is a Latin word meaning “warning.” From this simple definition a good sense of the importance of caveats can be appreciated. Broadly speaking, a caveat is a notice of a claim to an unregistered interest in a property by a third party.

The person lodging the caveat is called a “caveator.” Caveats must detail the claim, listing contact details of the caveator. When a caveat is lodged, the Land Registry is obliged to notify the registered proprietor of the land.

### Why are caveats lodged?

Caveats are lodged to protect equitable interests in land where a claimant is not registered on the title. This occurs in a broad range of circumstances, including:

- to protect the equitable interest of a purchaser of land once a contract is signed and a deposit has been paid
- to protect a charge over land granted by the registered proprietor of the property to secure payment of a debt

- to protect an unregistered easement (e.g. a right of way over another person’s land)

### The impacts of caveats

People who deal with properties affected by caveats do so at their own risk. A caveat signifies that a person other than the registered proprietor also claims an interest in the property. In effect this usually prevents the registration of a further dealing on the property until the demands of the caveat are fulfilled or the caveat lapses, is withdrawn or cancelled.

### Can caveats be removed?

In most cases, clients seek our assistance to prepare an application to the Registrar of Titles to remove caveats from their properties. This action puts the onus on the caveator to commence legal proceedings to substantiate his or her claim of a legal interest in the property.

### What should you do?

In the event that you receive a notice from the Titles Office advising that a caveat has been placed on your property, or if you feel that you have a caveatable interest in a property owned by someone else - it is important that you seek our advice promptly.

For further information on this topic, please contact Paul Webster on [PWebster@tde.com.au](mailto:PWebster@tde.com.au)



## What is a Testamentary Discretionary Trust Will?

**Good estate planning requires a full understanding of the aims and circumstances of willmakers and their beneficiaries. In some circumstances, making a will which includes a trust, commonly referred to as a Testamentary Discretionary Trust Will (“TDT”), can be beneficial. In this article, we examine the pros and cons of this estate planning entity.**

Ordinarily under a will, assets pass directly to named beneficiaries after the death of the willmaker. Under a TDT, property and investments are left to the beneficiaries in the form of a discretionary trust that the beneficiaries totally control.

### The advantages and disadvantages of Testamentary Discretionary Trust Wills

#### Advantages

- Tax benefits for minor beneficiaries
- Avoids or delays the effects of capital gains tax
- Preserves assets acquired during willmaker's lifetime for beneficiaries
- Allows trustees discretion to distribute income and capital to maximise benefits
- Some benefits for beneficiaries who become bankrupt
- Long term vehicle for holding assets for the benefit of family
- Advantages for elderly, spendthrift or disabled beneficiaries

#### Disadvantages

- Some initial establishment costs
- Not appropriate in all circumstances
- May lack flexibility to deal with future tax and other changes
- Can create unnecessary tax liabilities
- Ongoing administrative costs
- Advantage is only gained if the beneficiary has someone to split the income with

# Wills, Probate, Estates & Trusts

## Scenario 1 - Assets pass directly to Pamela

<b>Income</b>	<b>\$100,000</b>
Income tax rate 37%	\$37,000
Medicare levy 2%	\$2,000
Total	\$39,000
<b>After tax income</b>	<b>\$61,000</b>

## Scenario 2 - Assets form part of a TDT

<b>Income</b>	<b>\$100,000</b>
Income for each person (ie Pamela and 2 grandchildren)	\$33,333
Income tax rate 19%	\$2,875
Medicare levy 2%	\$666
Low income tax offset	-\$445
After tax income for each person	\$30,237
<b>Total after tax income distributed</b>	<b>\$90,711</b>

### A case study – Jane

Jane is aged 64. Jane's beloved husband Patrick passed away 15 years ago. Patrick's will left everything to Jane. Patrick left a sizable estate however, as a result of good advice and strategic investment decisions, Jane now owns several properties and a healthy share portfolio. She lives comfortably and has assets of \$2 million. Jane and Patrick had a daughter, Pamela. Pamela is now an adult, unemployed single mother of two children. Jane has been supporting Pamela and she is concerned about Pamela's situation.

Importantly, Jane wants to ensure that her assets will be protected upon her death. When Jane consults us, we advise that she should create a TDT will. Sadly, Jane dies in an accident before undertaking this change.

Jane's will left her estate to Pamela. Our two scenarios show the significant financial advantages that would have resulted if the estate had been held in a TDT will.

In these scenarios it is assumed that Pamela and the two grandchildren have no other income.

### The tax implications

Income splitting between beneficiaries is one of the advantages of a TDT. Another

key benefit of a TDT is that children can receive income taxed at normal rates, rather than the punitive rates for children.

This can result in reducing the amount of tax payable on the income generated by the investment pool held in the estate.

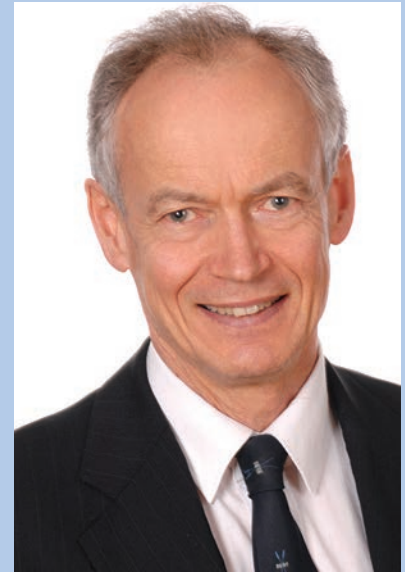
In Jane's situation, a TDT would have allowed the income from the investments to be split between Pamela and the two grandchildren.

Assuming that the \$2 million asset pool generated a 5% income (or \$100,000 pa), Pamela and her two children would have been \$29,711 better off each year, if Jane had established a TDT before her death. This would have substantially increased the return from their inheritance.

### How can TDE help?

It is never too soon or too late to get your affairs in order. We suggest that you contact us to prepare or review your will and estate planning structures.

*For further information on this topic, please contact Annette Esposito on [AEsposito@tde.com.au](mailto:AEsposito@tde.com.au) or John Henry at [JHenry@tde.com.au](mailto:JHenry@tde.com.au)*



## Notary Services provided by TDE

### Did you know that TDE offers notarial services?

In certain circumstances, you may need to sign a legal document from a country other than Australia or send a legal document overseas. Some of those documents must be witnessed by a notary.

Notaries are recognised worldwide as qualified witnesses of documents of all kinds. Documents dealing with land overseas, overseas estates, or to do with migration or the certification of copies of documents for overseas, often require the services of a notary. Whoever sends you or asks for the document for overseas will usually tell you if it needs a notary.

Our practitioner, John Henry, is one of a small number of practising notaries and assists clients requiring these services. Please contact our office to make an appointment with John, should you require this type of assistance.



## How to ensure you have a binding and valid legal document

**Creating a valid and binding legal document is the most important part of the drafting of any contract. Whilst the negotiations direct the focus of the parties to the content of the document, it is important to pay attention to its form. This is because contracts, or other legal documents, can cause problems due to errors in form which may result in adverse consequences, sometimes culminating in litigation.**

Below are a few basic tips on how to ensure your legal document is valid and binding. It is important to keep this in mind whenever you sign a contract or other legal document. Our tips include:

**1**

All parties must sign the document, as required by the type of document that is under consideration. It is not a binding document if one of the parties has not signed it, or if the document has been signed incorrectly.

**2**

The correct individual or legal entity must sign the document. For example, a person cannot sign on behalf of his or her spouse without appropriate authority.

A director must sign on behalf of a company. A trustee must sign on behalf of a trust.

**3**

Ensure your document identifies the capacity in which the signatory has signed the document. For example, if an individual is signing a contract under a Power of Attorney, Court Order or other legal authority it is important that the document identifies this.

**4**

Make sure that you sight the document or Order which creates that authority. For example, if a party's attorney signs a contract under a Power of Attorney, it is important that the Power is certified, does not contain any restrictions and that the Attorney has the right to enter into a particular transaction on behalf of the party.

**5**

Where a legal document is required to be signed before a witness, it is important that you select an independent adult witness. Witnesses must be over 18 years of age and should not be a party to the transaction. Certain documents also restrict witnesses who are to, or might,

benefit from the transaction. Some legal documents require signing before somebody who is authorised to take Affidavits or Statutory Declarations. Ensure that this person is appropriately qualified and that their name and qualifications are printed under their signature.

**6**

The document must be dated. This will ensure that there is no doubt about when the document takes effect and will enable the calculation of time for parties to comply with certain obligations, effective from the date of the contract.

A well drafted and legally binding document will save you time, worry and expense if you need to enforce it. We encourage all of our clients to contact us before they sign any legal contract. As the saying goes a stitch in time saves nine!

*For further information on this topic, please contact Faten Awad on [FAwad@tde.com.au](mailto:FAwad@tde.com.au)*



## TDE farewells Sylvia Varsamis

After a 31 year history with Tolhurst Druce & Emmerson we bade a fond farewell to our receptionist, Sylvia Varsamis, in late February.

Sylvia commenced work at TDE in early 1985 assisting the then partners, Mr Frank Druce, Mr Peter Druce and Mr Bill Hazlett.

Throughout this time, Sylvia has been a familiar and constant presence for our clients. She always made a visit to our offices a pleasant experience due to the warmth of her welcome and her ability to put our clients at their ease.

We thank Sylvia for her loyal service and wish her well in the future.

## Working with you

**Q** *Can I bring a friend or family member with me to my meetings at TDE?*

**Answer** We understand that legal proceedings can be an unfamiliar and stressful experience. Our lawyers are all experienced in their fields of law and are well versed in guiding clients through the legal process.

If you would feel more comfortable with a trusted friend or family member, we are very happy for you to bring them with you to your meetings with us.

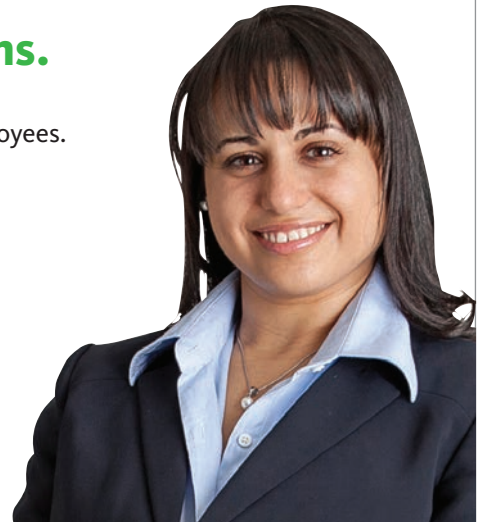
## Business & Commercial Law

### Faten Awad answers your legal questions.

**Q** I am concerned about the inappropriate use of social media by my employees. What should I do?

**A** Social media is an area of concern for many business owners. Our advice is threefold. Firstly, prepare a clearly worded, legally compliant social media policy and circulate it to your staff. Secondly, familiarise everyone in your workplace with the content of your policy. Finally, manage by example – ensure your management team conduct themselves appropriately when on social media sites.

**Tolhurst Druce & Emmerson Working with individuals, families & business.**



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Tolhurst Druce & Emmerson incorporates the firms of Gavan Duffy & King, Doyle & Kerr, Puglisi, Heffey & Pavlidi, Louis S Lazarus, and D Condon & Co. If you wish to change your contact details or no longer wish to receive this publication, please contact our office on (03) 9670 0700.

The information in this newsletter is not intended to be a complete statement of the law relating to the issues raised. Accordingly, no person should rely on this information without obtaining specific advice from lawyers.

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