

Estate planning observations & trends

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more value / less risk / better outcomes

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General observations

- Awareness
- Preparedness
- Implications
- Pressures
- Transfers
- Opportunities

Population

- Local
- Aging generations
- Health / incapacity
- Access to funds
- Global
- Life planning
- Women
- Financial literacy

Planning

- How driven
- Set and forget
- Off the shelf
- Robustness
- Why driven
- Legacy thinking
- Collaborative
- Continual

Family capital

- Assets & finances
- Human
- Intellectual
- Social
- Spiritual

Trusts

- Family / trust
- Purpose unclear
- Aging settlors
- Core position
- Productive relationships
- Get the basics right
- Letters of wishes
- Distribution committees

Preparing heirs

- Expectations
- Rising generation
- Financial literacy
- Capacity and skills
- Trust & communication
- Family elders
- Timing

Advisory

- One stop shop
- Transactional
- Complexity
- Uncertainty
- Skills
- Roles
- Making sense
- Relational



Estate Planning Trends

Capacity

- New EPOA forms
- Removal of incapacitated trustees – see *Godfrey v McCormick*
- Duress
- Requisite levels:
 - Wills
 - EPOAs
 - Memoranda of wishes
 - Transfer of powers of appointment
 - Exercise of trustee discretions
 - Appointment and removal of trustees
 - Investment decisions
- Sensible and appropriate appointments - succession

Appointment and Removal of Trustees / Beneficiaries

- Fiduciary obligations owed by trustees / protectors / appointors
- Succession of control
- Wills
- Draft Trusts Bill
- *Clayton v Clayton*
 - diversification of powers
 - Nuptial settlement considerations - Family Proceedings Act 1980, s 182
 - Retention of broad powers



Estate Planning Trends

Trust fitness

- Mirror trusts
- Draft Trusts Bill
- Trust audit
- Where is the deed? See *Davis v White*
- Beneficiary classes
- Trustee resolutions
- *Clayton v Clayton*
 - diversification of powers
 - nuptial settlement considerations - Family Proceedings Act 1980, s 182
 - retention of broad powers



Estate Planning Trends

Information is king

- *Erceg v Erceg*
- Draft Trusts Bill
- Disclosure
 - Have you got a plan?
 - One size does not fit all
- Beneficiary distributions
 - Distribution committee
 - Policy
 - Communication
 - Feel the fear and do it anyway



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