



# LIVE SESSION



STARTING SOON...



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# BDBNs, SMSFs, Testamentary Trusts and Reversionary Pensions ++

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from Abbott & Mourly lawyers

## A Case Study

- John Smith is a 60 year old doctor with his own practice and also a locum at two local hospitals. He operates his business via a discretionary trust
- John and Sally are married and have three investment properties worth a total \$2.2M with \$300,000 in debt, a SMSF with \$1.4M in his lump sum account and \$1M in Sally's account with John and Sally as trustees
- They live in a \$2M property in Manly in NSW with their disabled daughter and the house is owned with no debt. The property is in his own name.

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- John and Sally have three children
    - Max aged 35 who is a successful stock broker and according to John “a chip off the block” – he lives in Sydney with wife Samantha and two children – Kathy and Janine;
    - Sarah who is a 32 year old doctor working in country NSW and is estranged from her father
    - Jodie who is 21 and John and Sally’s only child together who is disabled and still living at home
  - John completed a Will with his family solicitor in 2010 giving all of his estate to his former wife and a BDBN directing the Trustee of the Fund to transfer all of his superannuation to his estate
  - The Executor of the estate is his ex-wife
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## What are the Problems ALL – repeat ALL of our client's face? And we are not out of the woods!

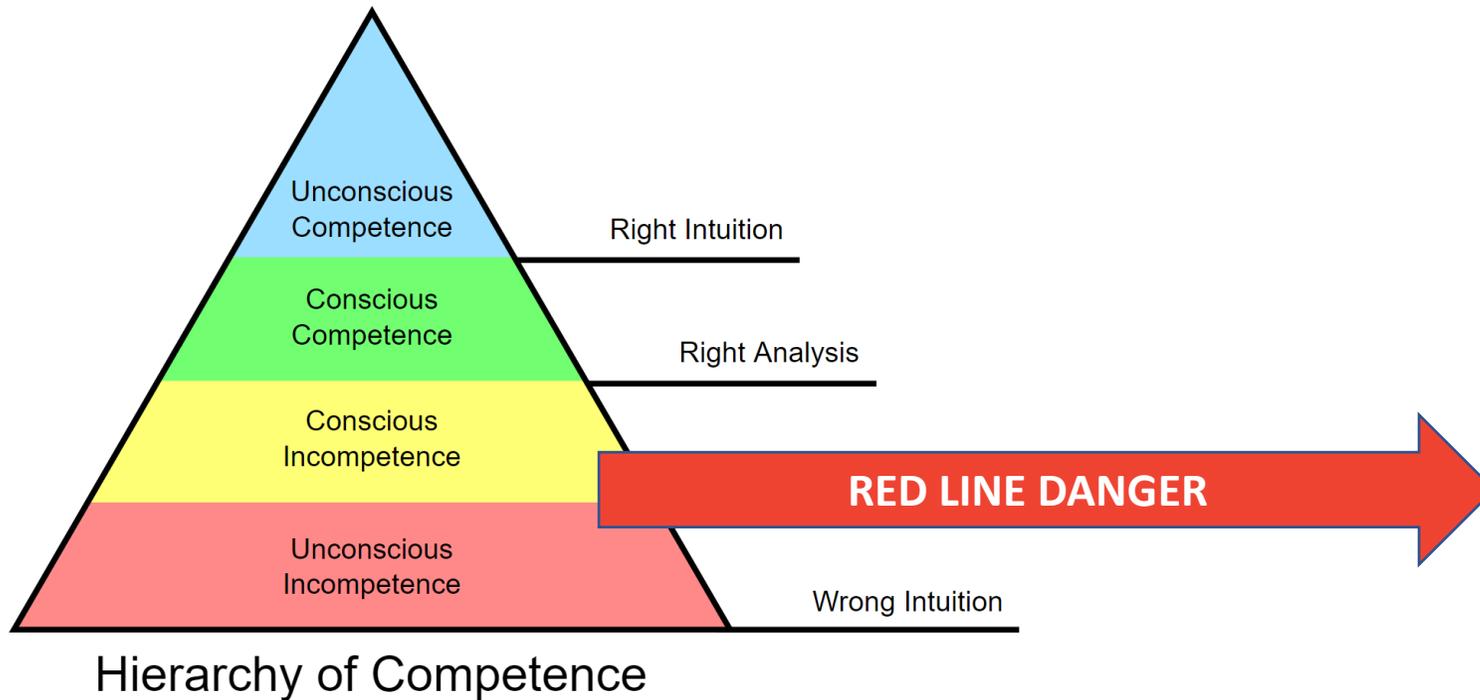


- **Litigation** – Fair Work, ATO debts, negligence, local government, customers and partners – is there any end?
- **Bankruptcy** – All starts with a creditor's petition and then rolls on from there. What is included and what is excluded
- **Family Law** – The difference between Matrimonial Property and financial resources – it is all about control
- **Challenging an Estate** – family provisions claims are going crazy as Supreme Courts open up “eligible persons” and legal fees explode



A MOAT FOR YOU AND YOUR CLIENT

# You cannot bluff your way through Family Wealth Protection



**Legal fee scandal: Lawyers 'feast' on Perth family estate**

# Let's look at the SMSF

- Step One: Check the Deed – what does it lay out for death benefits?
- Step Two: Check the BDBN to see whether it is valid or can be contested
- Step Three: Question why it is being sent to the estate where it will surely be contested?
- Step Four: Devise an alternative strategy
- Step Five: Retire John by ending one locum and commence reversionary pension to Sally or better still for Jodie as she can access the income stream
- Step Six: Set up SMSF corporate trustee with John as director, Sally only as member and bring in Max as a member – potentially Leading Member SMSF upgrade

# Let's look at the Family Home in John's name

- Step One: Will there be a life interest to Sally or does she get the property transferred by a Will
- Step Two: Consider the family provisions consequences of the property going into Sally's name
- Step Three: Use the Protector to transfer the equity in the property into a Leading Member discretionary trust with John as leading member and then Max
- Step Four: Transfer the property on Max's death to Sally or leave it in the trust with long term peppercorn lease to Sally while she is alive

# The Smith Family Protector

## Succession of FPA

- John
- Max
- Max's child
- Kathy



**Bloodline Beneficiaries**



*"Honestly, boss, I'm at home in bed sick. That noise? Um, I'm watching a show about Porsches."*



Asset	Net Value
Home	\$2,000,000
Watch	\$50,000
Porsche	\$250,000
Practice	\$300,000
<b>Total</b>	<b>\$2,600,000</b>

# THE LIVING TRUST



Leading Member Succession

- John
- Max
- Kathy
- ??

LEADING MEMBER TRUST DEED

Bloodline Beneficiaries

Bucket Company

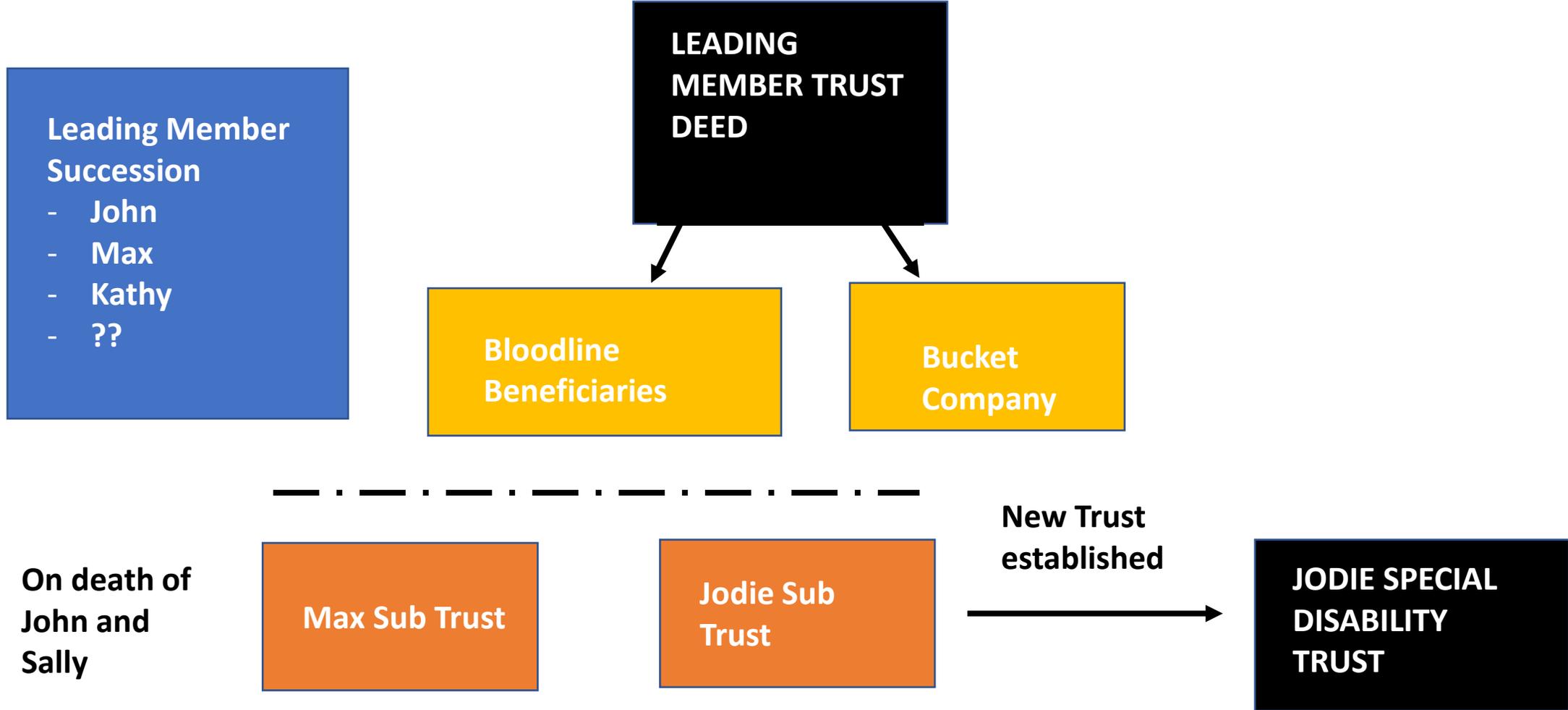
On death of John and Sally

Max Sub Trust

Jodie Sub Trust

New Trust established

JODIE SPECIAL DISABILITY TRUST



# Let's look at the Investment Properties

- Step One: Will there be a family provisions challenge by Sarah
- Step Two: Consider the family provisions consequences particularly with Jodie who needs long term care compared to Sarah
- Step Three: Use the Protector to transfer the equity in the properties into a Leading Member discretionary trust with John as leading member and then Max. Complete a registered mortgage over the properties to secure the loan
- Step Four: On death sell the properties and move the proceeds to the Smith Family Protection Trust or transfer them across.
- Step Five: Build a multi-generational trust



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