

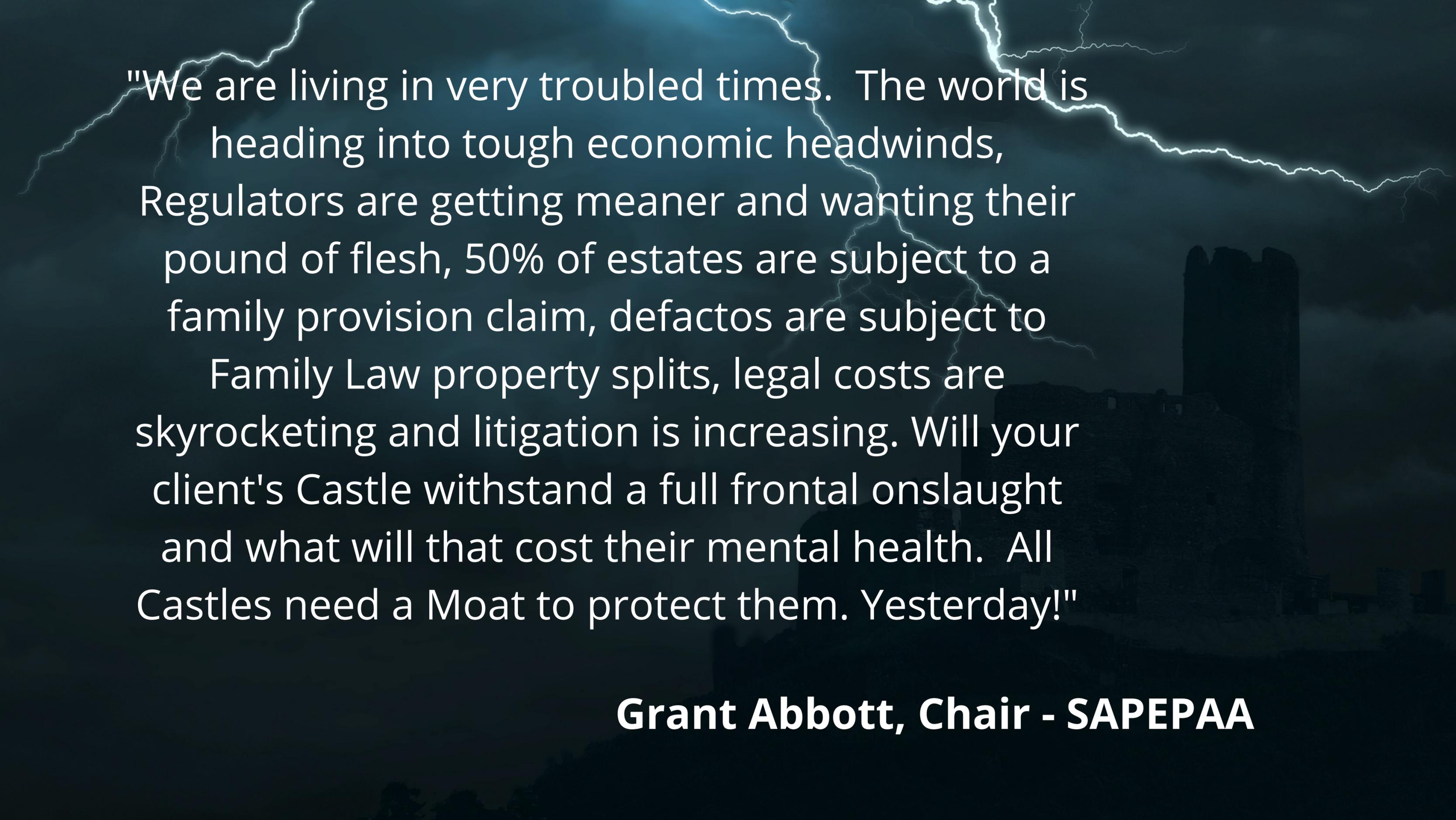
# Is your castle protected?

Seven top asset protection strategies  
to put in place right now - before the  
castle falls

Grant Abbott and  
James Meli  
Abbott & Mourly  
Lawyers



lightyear docs



"We are living in very troubled times. The world is heading into tough economic headwinds, Regulators are getting meaner and wanting their pound of flesh, 50% of estates are subject to a family provision claim, defactos are subject to Family Law property splits, legal costs are skyrocketing and litigation is increasing. Will your client's Castle withstand a full frontal onslaught and what will that cost their mental health. All Castles need a Moat to protect them. Yesterday!"

**Grant Abbott, Chair - SAPEPAA**



Justice Jeremy Curthoys, who was scathing of lawyers' "indefensible" legal fees. Credit: WA News

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

\$600,000  
estate  
decimated  
by over  
\$500,000 in  
legal fees

# And don't get me started



**" TODAY, IN EACH STATE OF AUSTRALIA, MANY FAMILIES WILL LOSE THE RIGHT TO LOOK AFTER THEIR VULNERABLE LOVED ONES IN THE**

**GUARDIANSHIP / TRUSTEE SYSTEM**

**SOCIAL WORKERS, TRUSTEES, GUARDIANS, TRIBUNALS, HOSPITAL STAFF HAVE BEEN CAUGHT FALSIFYING & LYING & ISOLATING LOVED ONES FROM CONCERNED FAMILY**

**WWW.AASGAA.ORG**



**10 NEWS**

**Aged care system a 'national disgrace', commissioner Lynelle Briggs says**

By James O'Brien  
Updated for 10 Day 2019, 1:40pm

A photograph of Commissioner Lynelle Briggs speaking at a podium.

PHOTO: Commissioner Lynelle Briggs described the current system as "a total national embarrassment". AAP: Kate Rawson

"It is very lucky for anyone to get in on the ground floor of anything, even once. It happened to me with SMSFs in 1994 and my career hit a jackpot. Now SAPEPAA is so much bigger and worldwide, Every day I get up at the end of a rainbow, feel the passion and protect families."



Next SAPEPAA Adviser Course  
with Grant Abbott - Live on the  
Gold Coast and also streamed:  
5-7 December 2022



We are SAPEPAA

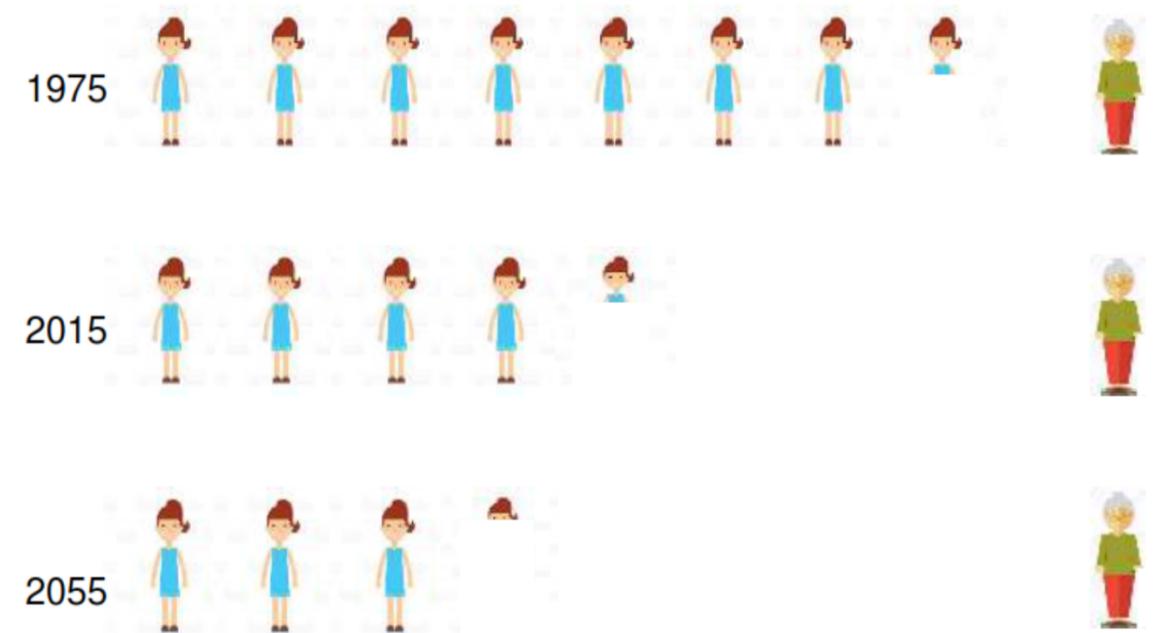
Succession, Asset Protection & Estate Planning Advisers Association

*Leave a Legacy*

# Funding is the real issue

- Over 65's hold the wealth
- But they don't pay taxes and have greater health, aged care and pension benefits
- What will the younger generations do when in power?

Figure 5.2: Baby Boomers won the demographic lottery; Gen Z lost



**Australians aged 15-64 for every Australian 65+**

*Sources: Treasury (2015, p. 12) and ABS (2018e).*

**Source: Grattan Institute 2019**

# Balancing the Budget



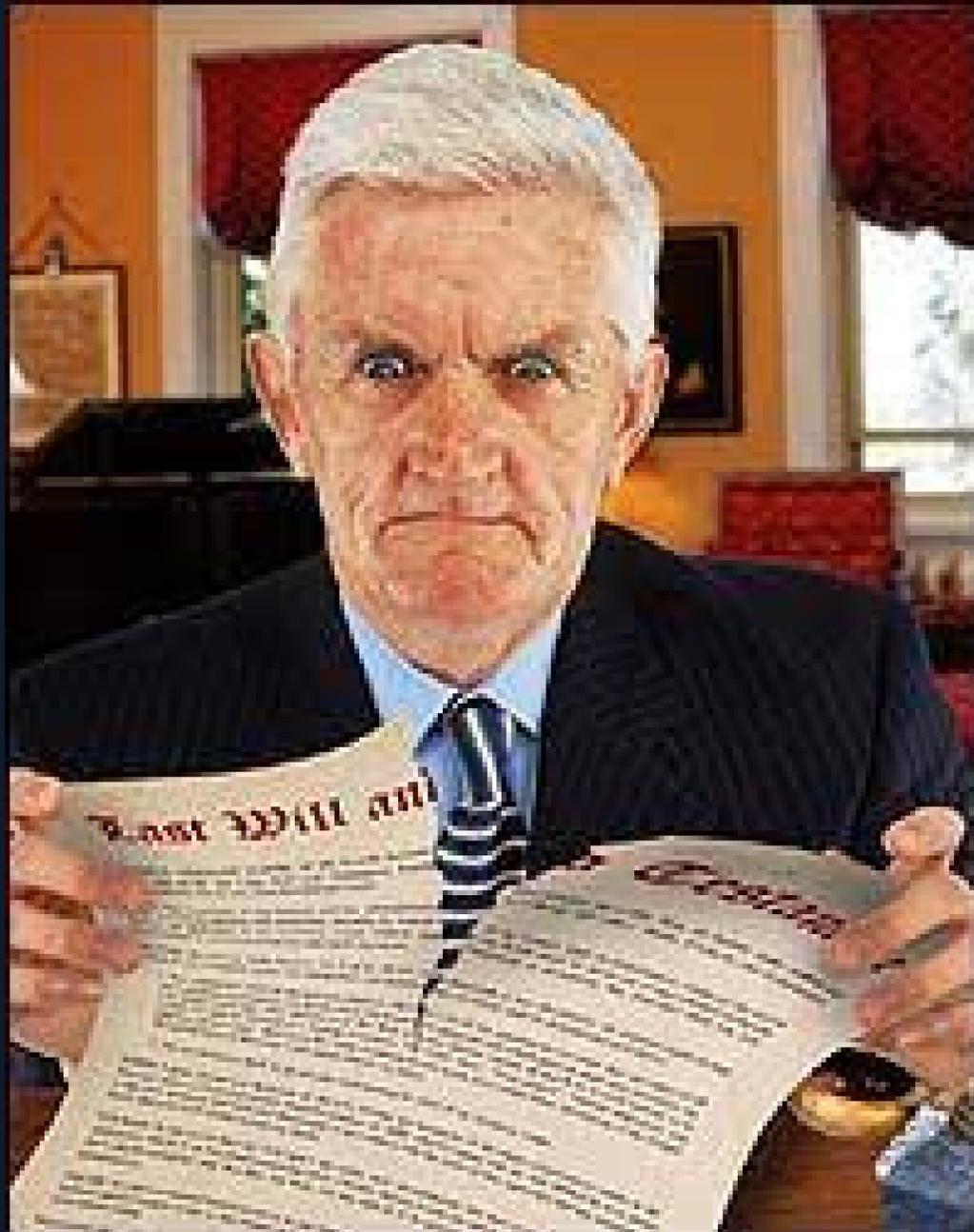
- **The Government should change the Age Pension assets test to include the value of the family home above some threshold, such as \$500,000. It should also allow other assets up to the same threshold so that nonhomeowners are not disadvantaged.**
- **Super death benefits taxes are intended to claw back superannuation tax breaks when the money is passed on to non-dependents, so that the government is not subsidising inheritances. But they are only partly achieving this aim. Current super death benefits taxes are too low. A higher tax on super bequests paid to non-dependents would better capture the value of the super tax-breaks accumulated by the deceased over their life.**

Source: Grattan Institute

# Balancing the Budget

- **Tax all superannuation earnings in retirement at 15 per cent. This would align the tax treatment of super earnings of retirees with people of working age. Taxing long-term savings at a much lower rate than other income is justified, but the magnitude of the current concessions (zero for most super earnings in retirement) goes way beyond the purpose of superannuation to supplement or replace the Age Pension. A 15 per cent tax on all super earnings would improve budget balances by about \$2 billion a year today, and much more in future.**
- **The Henry Review of Australia's tax system noted that 'a bequest tax levied at a low flat rate, and designed to affect only large bequests, could be an efficient and equitable component of Australia's future tax system'. Australia is one of only seven OECD countries that do not levy any inheritance, estate, or gift taxes. An IGTT/income tax swap could also boost disposable income for young people. For example, if all inheritances above \$500,000 were taxed at 20 per cent, and the revenue was used to fund income tax cuts, most people under 50 would be ahead financially**

Source: Grattan Institute



“

**In Australia, about 50% of Wills are contested usually by family members unhappy with the distribution of their parents' estates.**

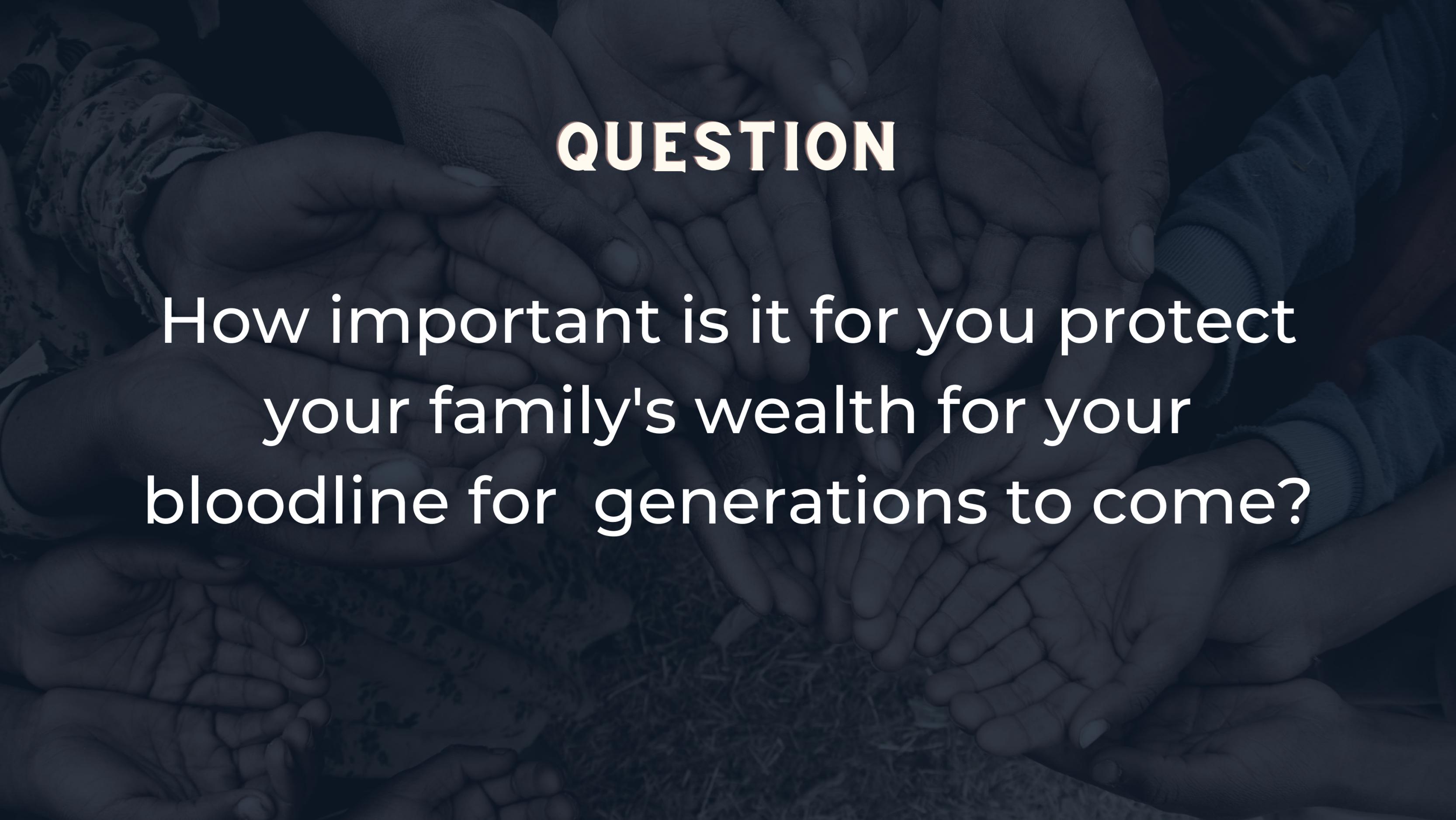
**The boom in family provision claims across Australia recently has been of significant benefit to legal professionals and many firms are offering 'no win/no fee' options to draw in additional claimants.**

**University of Queensland research showing that three-quarters of family provision claimants are successful in their claims is further encouraging potential claimants to also consider proceeding with a claim.**

**Source: Author Monica Bryant-NOrved**

# Case Reviews

1. Hill v Zuda High Court – BDBN case
2. Bosanac High Court – Spouse holding assets
3. ATIA v Nusbaum – Qld Supreme Court – gift and loan back
4. Re Permewan – Qld Supreme Court – costs award case
5. Owies – Victorian Appeals Court – trust to look at circumstances of beneficiary



# QUESTION

How important is it for you protect  
your family's wealth for your  
bloodline for generations to come?



# Top Seven Asset Protection Strategies

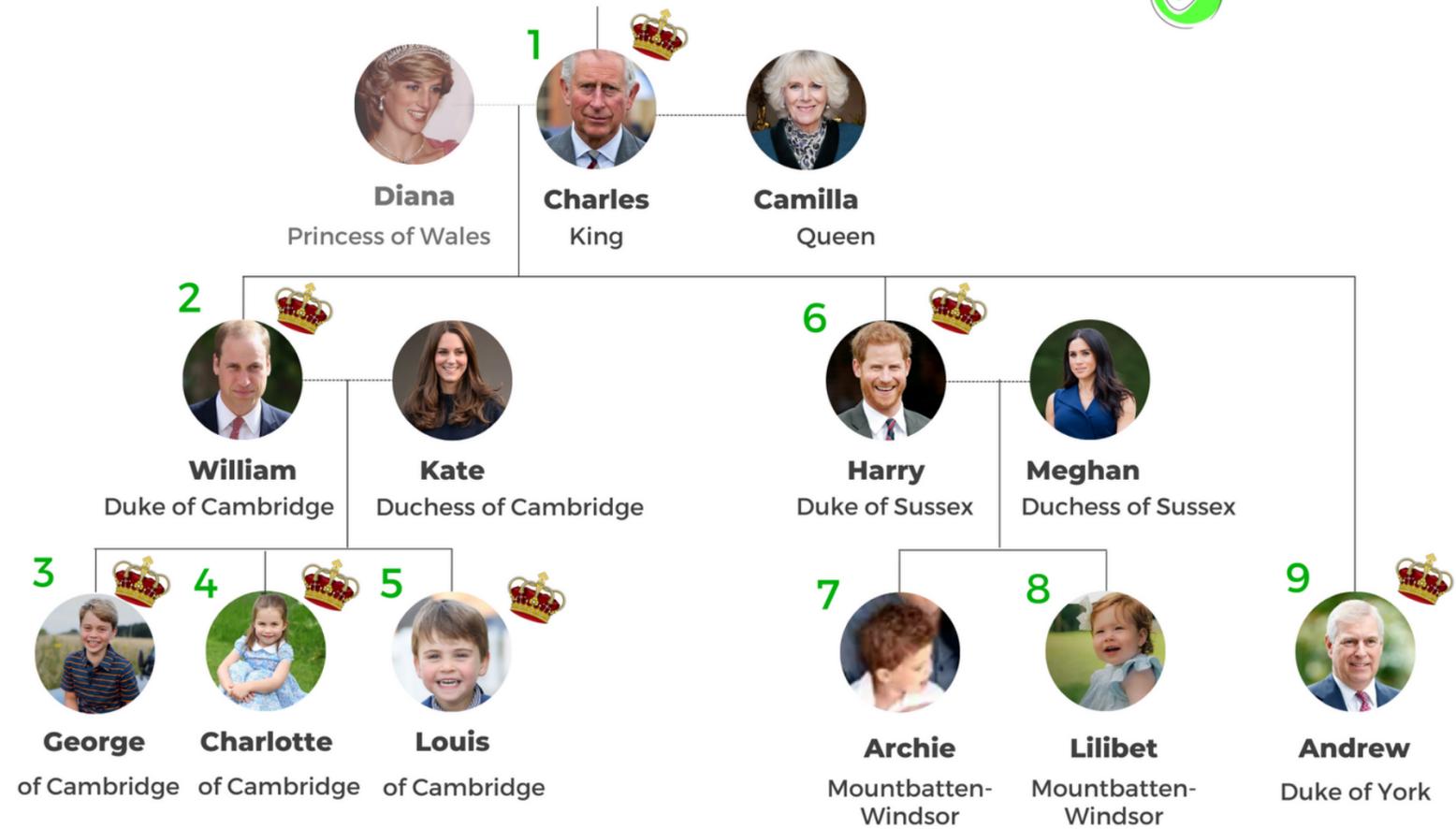


# Strategy One - Line of Succession

Line of  
Succession  
is all  
important



## British Monarchy Line of Succession



# Successors

- Should be Attorneys, Executors and Successor LMA
- Need to be strong in decision making
- Can be supplemented with a SAPEPAA Family Advisory Board Member
- Can make the "at risk" person the first LMA but remove if litigated against and exclude as beneficiary
- Be careful with control in the event of separation
- Go down at least three levels and can be changed at any time



**Strategy Two - Successor Directors**

# Successor Directors

- Need to use for -
  - trustee companies (significant asset protection issues)
  - trading company
  - bucket company
- What happens on incapacity, death or litigation - removal and replacement with qualified successor director
- Three fold strategy - ensure constitution enables it, set in place binding directors resolution and deed of indemnity for the incoming director

# Elizabeth Hurley's son cut from father's family trust

Bang Showbiz · 14 hrs ago



Like | Comments | 👍❤️👤 22

Elizabeth Hurley's son has been cut from his father's family trust.



**Strategy Three - Family Protection Trust**

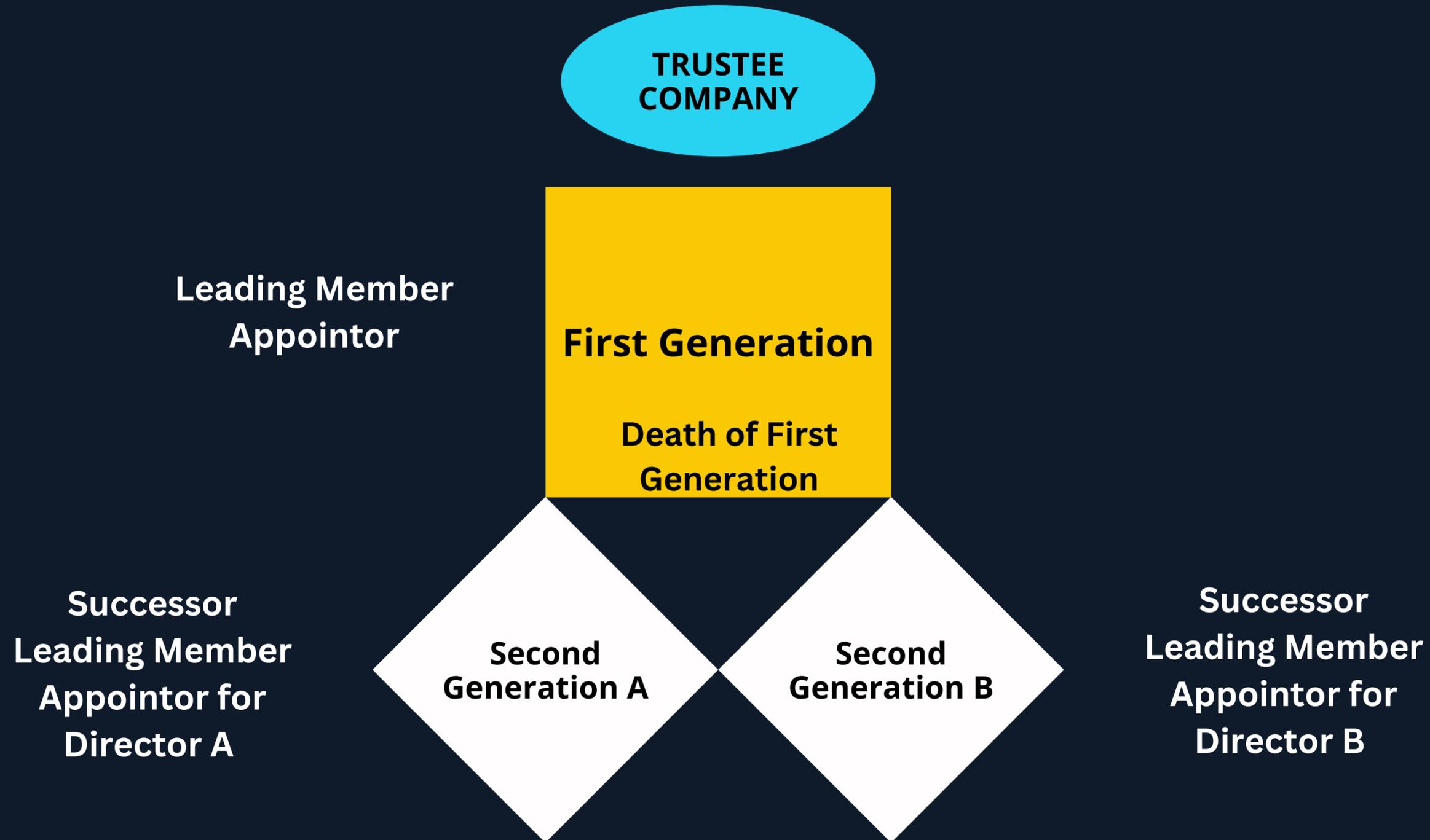
# Key Features for Family Protection Trust

- NO named primary beneficiary
- Leading Member and successors are core beneficiaries
- Extends to bloodline children, grandchildren and relatives plus companies, trusts and other entities they control
- Also can make specific or class exclusions
- To be used with a Family Protection discretionary trustee company
- Family Protection Trust = LMĐT (different in name)



**Strategy Four - Multi-generational trust splitting**

# Split Trust - how it works



# TD2019/14

## ***Example 2 – separating the control of some of the assets of an existing trust that does not result in creation of a new trust***

13. *The Kingdom Family Trust is a discretionary trust settled in 1970 for the benefit of Ian King and his family members – his wife Maria and his children Katarina and Laura. Ian King is the current appointor of the Kingdom Family Trust.*

14. *The trustee of the Kingdom Family Trust is Emperor Pty Ltd (Emperor), a company jointly owned by Ian and Maria. Together with their daughters, Ian and Maria are also the directors of Emperor.*

15. *The Kingdom Family Trust is in the business of property development and the operation of retirement villages. Ian is 70 years old and wishes to reduce his involvement in the family's business activities.*

16. *Ian and Maria King decide that now is an appropriate time for greater responsibility for the administration of the Kingdom Family Trust to be placed on Laura who is currently taking increased responsibility for the property development business. To facilitate the desired succession planning goal, the trust deed is amended to:*

- (a) *allow for the appointment of additional trustees in respect of some of the assets of the trust fund*
- (b) *allow for separate appointors in respect of the different parts of the trust fund*



# PROMISSORY NOTE

UE RECEIVED, the undersigned  
(hereinafter referred to as "  
erest herein being he  
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**Strategy Five - Gift and Loan Back -**

**The Protector**

holder referred to as Payee to pay

# Making it work

1. Who and what is being protected
2. Build a Family Protection Trust
3. Irrevocable Gift to the Trust
4. Cash, bill of exchange, cheque or promissory note to fund the irrevocable gift - ensures protection with no asset transfers - no CGT or stamp duty
5. Loan of cash or cash instruments back to the gifter or gifters
6. Mortgage deed to secure property and securities deed to secure PPSR assets
7. Call option for uplifts and asset claim



# Strategy Six - Testamentary Trust

# Testamentary Trusts

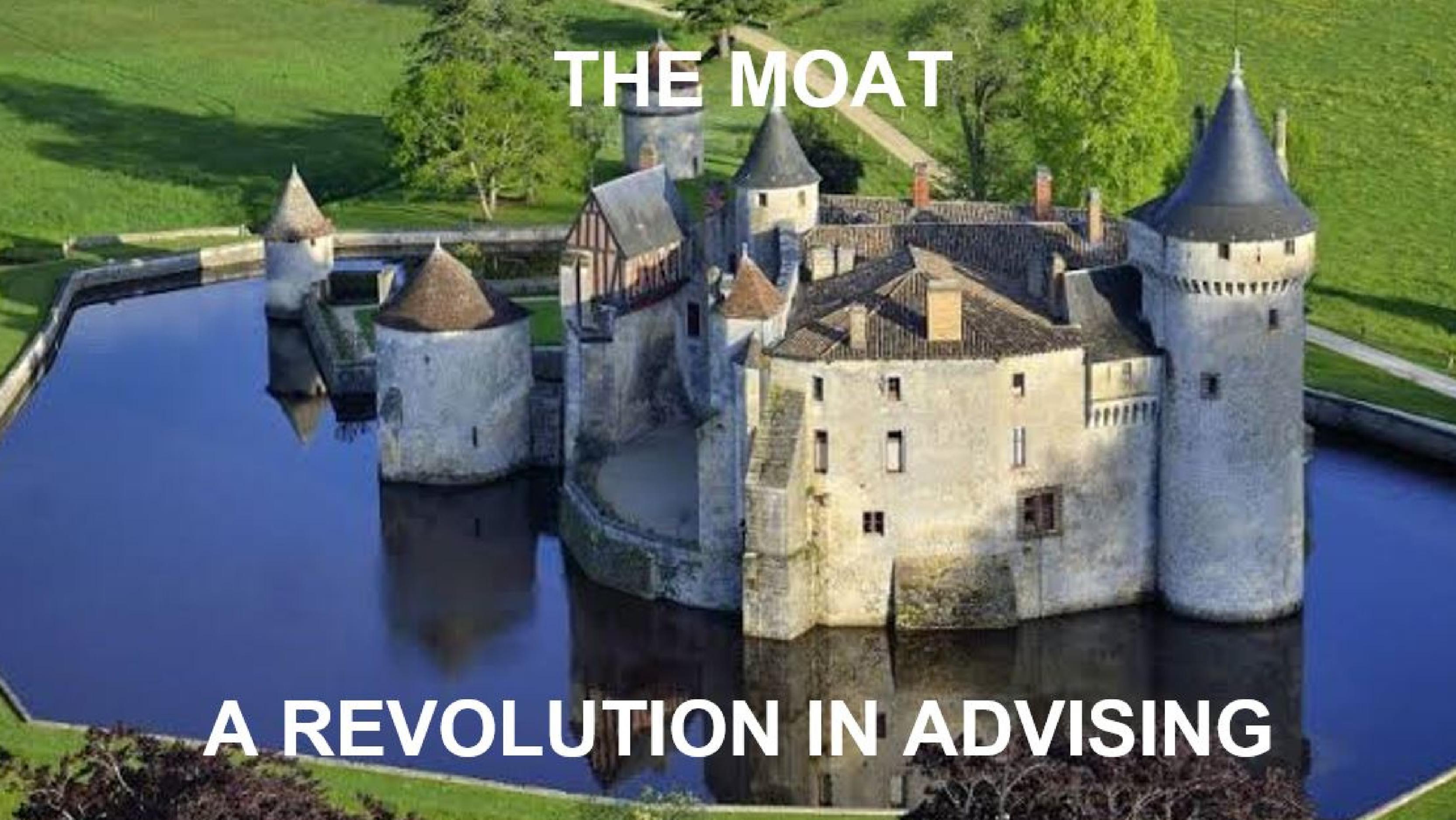
- Do not escape family provisions claims
- Never insert proposed testamentary trust deed into a Will only the general terms and conditions in case the laws or cases change
- Can use a Family Protection Trust as the core TT documents
- Family law and litigation protection plus family provisions claims for next generation
- Separate TT's for superannuation and also insurances



**Strategy Seven - Protecting Founder monies - The Enforcer**

# The Enforcer

- Founders insert cash into their start up companies or trusts
- There is no documentation for the transfers and thus they may be legally treated as a gift
- Convert those amounts to loans with The Enforcer
  - Loan Agreement
  - Deed of ratification confirming the loan from the start of the company/trust
  - Mortgage deed for any property
  - Securities deed across all the assets of the company or trust

An aerial photograph of a medieval castle, likely the Château de Beaucourt in France. The castle is a complex of stone buildings with several prominent towers, each topped with a conical roof. The entire structure is surrounded by a deep, dark moat. The surrounding landscape is lush and green, with rolling hills and scattered trees. The lighting suggests a bright, sunny day, casting soft shadows on the castle's walls.

# THE MOAT

**A REVOLUTION IN ADVISING**