

# Succession - and “What if” - Planning

Oliver Portway  
Principal Solicitor  
Heuzenroeders Lawyers  
Barossa Valley SA



**HEUZENROEDERS**  
LAWYERS | CONVEYANCERS

# Succession - and “What if” - Planning

## Disclaimer

This presentation is general information only and is not intended to provide legal advice. For legal advice you should consult your solicitor and for financial advice you should consult your accountant and/or financial planner.



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# Business structure

- Sole trader
- Partnership
- Company
- Trust with personal trustees
- Trust with corporate trustee
- Company with family trust as shareholder
- SMSF



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# Business Structure

- Asset holding entity
- Trading entity
- Security/Custodian entity
- Guarantees



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# Succession plan – what is it?

- Planning to leave your estate on death
- Passing on to family members during lifetime
- Staggered transition
- Complete sale of business



HEUZENROEDERS

LAWYERS | CONVEYANCERS

**Everybody who has assets  
needs a Will**



**HEUZENROEDERS**

LAWYERS | CONVEYANCERS

# What do you need?

- Personal - Will
- Partnership – written agreement
- Company – shareholder agreement
- Trust – change of control provision
- SMSF – Fund Deed provisions



HEUZENROEDERS

LAWYERS | CONVEYANCERS





Image: ABC news



# What if ...

- Ag bike rollover
- Tractor accident
- Machinery accident
- Car accident
- Serious illness or health episode



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# “What if” provisions

- General Power of Attorney
- Enduring Power of Attorney
  - \*\*Only personal assets\*\*
- Company - POA
- Trust – provisions for alternative control
- Advance Care Directives



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# **“What if” best case scenario**

Family grove/ business. Four children - one in the business, three not. Mum & Dad die in car accident.

Wills – yes, drafted with family consultation: farming child to inherit business; other assets or provision made for other children.

**Everyone is on the same page: they grieve together but there are no disputes over the estate.**



**HEUZENROEDERS**

LAWYERS | CONVEYANCERS

# **“What if” worst case scenario**

Wills – no. The non-farming children want the estate distributed equally and now. The farming child wants to keep the farm but doesn't have the financial resources to pay the others out. It ends up court: a substantial bill for all involved.

**The farm is sold and the family is irretrievably torn apart.**



**HEUZENROEDERS**

LAWYERS | CONVEYANCERS

# “What if” - incapacitated

e.g. Sole trader:

- No POA - the business stops functioning
- Enduring POA - donee can operate accounts and keep business functioning. When the sole trader is up on their feet again, there's a viable business to come back to.



HEUZENROEDERS

LAWYERS | CONVEYANCERS

# Wrap up

Succession and “what if?” planning should be an integral part of your business.

Relatively easy to set up and relatively small initial cost can save \$\$\$\$\$ - and secure the continuation of your business and family relationships.



HEUZENROEDERS

LAWYERS | CONVEYANCERS



# I encourage you to:

- Review/understand your business structure
- Review existing documents
- Discuss with others involved
- Consult legal, accounting and financial advisors



HEUZENROEDERS

LAWYERS | CONVEYANCERS