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Your Reference: Mutual Wills Tax Effective  
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Tuesday, 30 March 2022

Edward Sun  
12 Alexandra Street  
Canterbury VIC 3126  
Australia

Christina Sun  
12 Alexandra Street  
Canterbury VIC 3126  
Australia

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*telephone us, we can help you complete  
the questions.*

*Adj Professor, Dr Brett Davies – Partner*

Dear Edward and Christina,

### **3 Generation Testamentary Trust Mutual Wills for Edward Sun and Christina Sun**

Thank you for instructing us to prepare your attached 3 Generation Testamentary Trust Wills.

#### **How to print your document**

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex)
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document)

**When you are happy that your Wills express your wishes, then this is how you sign your Wills.**

#### **Signing your Wills**

1. Find 2 people that are: over 18 years of age, of sound mind and have an address in Australia. The witnesses can't be related to you or have any chance of being related to you (eg it can't be your son's girlfriend because your son could marry that person and then you would be related to the witness). The witness can't be a

person that is likely to get anything under the Will. The best witnesses are 'strangers' or the 'next door neighbour'.

2. All beneficiaries and potential beneficiaries leave the room.
3. Get your 2 witnesses and yourselves in a room with at least 2 identical blue pens. Lock all the doors so that none of you leave the room. If either of you or either of your witnesses leave the room during the signing process, then tear up the Will, print out another copy of the Will and start the Will signing process again.
4. You sign your Wills on each and every page where marked. Then both witnesses (WITH THE SAME BLUE PEN) sign each page of the Will. If you signed with different coloured pens (eg a dark blue and a light blue) then tear up the Wills. Print out new Wills and start the process again.
5. Ensure that you date the Will with the date at which the Will is signed and witnessed.
6. If you need reading glasses, then don't sign your Will until you put on those glasses.
7. If you have issues reading English, then let me know. An interpreter may be required.

### Storing Wills

An original signed Will is valuable. Keep it somewhere safe and let your Executors know where it is stored.

You can store it at home, at the bank or with the Executors. Keep it safe.

You should, if you wish, email a copy of your Will to the Executors.

### Executors

Keep your Executors up-to-date as to where your signed Will is stored. Upon your death, the Executors need to get the original signed Will and carry out your wishes and instructions in your Will.

### Up to 32% tax on your superannuation when you die

Superannuation going to adult children and other beneficiaries suffers a non-dependency tax. The tax on your superannuation is 17% or 32% (including Medicare). It is payable immediately upon your death. However, we have put a Superannuation Testamentary Trust in your Will. Therefore, instead of paying the superannuation directly to children or other beneficiaries we want your superannuation to go into your Will.

To make sure this happens ask your superannuation fund ('Super Fund') for their Binding Death Benefit Nomination form. This is for you to complete and sign. In the Nomination Form you leave everything to your '**legal personal representative – 100%**'.

The Superannuation Testamentary Trust is in your Will. It seeks to reduce the tax on your superannuation down to zero. It provides the best possibility that the capital of the Superannuation proceeds goes to 'tax dependants' as defined in the *Income Tax Assessment Acts 1997* ('Tax Act').

Spouses and your children under 18 years of age are not subject to the 17% or 32% tax rate. Nevertheless, it is still better to leave them the superannuation via your Will.

The alternative is for your superannuation at death to go directly to a person (rather than into your Will). There are always greater tax advantages when your superannuation goes into your Will and therefore into a Superannuation Testamentary Trust.

A 'death benefits dependant' is defined in the *Income Tax Assessment Act 1997*. It is calculated at the moment of your death. A 'death benefit dependant' includes:

1. a spouse or former spouse (includes de facto and same sex)
2. your children but only if under 18 years of age
3. any other person with whom you had an interdependency relationship just before you died (for example, two sisters living together)
4. any other person who was your 'dependant' just before you died – such as people you maintain with 'substantial financial support'

If you had no 'death benefit dependants' at death you may lose up to 32% of your superannuation to the tax office.

The fourth category - people you maintain - gives you scope to create dependants. You can then escape this non-dependency tax.

For example, if you have no spouse and your children are over 18 years of age then you may not have any dependants when you die. If this is the case then you are at liberty to "nominate alternative" dependants, such as grandchildren. We are happy to work with your advisers on how to do and document this.

### **Where does your Super go when you die?**

#### **1. Non-binding**

Most Super funds ask: "who you would like to get your Super when you die?" You complete their "nomination form". This nomination form may be 'binding' or 'not binding'. If it is not binding the superannuation fund has discretion. It can pay your super directly to a person or into your Will. Where the Trustee has such discretion, it addresses its mind to many things. This includes tax implications of such a payment. Although not normally bound by it, the Trustee considers the wishes in your non-binding nomination form.

Subject to your adviser's thoughts, from a tax perspective only, we hold the view that the nomination form should nominate your 'legal personal representative'. If followed, then your superannuation goes into your Will.

Alternatively, your financial planner and accountant may wish you to keep the assets in superannuation by doing a Reversionary Pension. However, a Reversionary Pension is only available if you have a spouse or young children when you die. (See below.)

#### **2. Binding Nominations (for 3 years)**

As stated above, your superannuation fund decides where your super goes when you die. You may not be happy with that. Most superannuation funds allow you to make a "Superannuation binding nomination". Binding nominations can't be challenged if the deceased:

1. signed and witnessed the binding nomination correctly
2. was of sound mind when the binding nomination was last signed
3. was not pressured into signing the binding nomination

4. freshened up the binding nomination within 3 years from the date of death

As far as a Self-Managed Superannuation Fund is concerned, the Superannuation Complaints Tribunal can't challenge the deceased superannuation payments. This is good if you have put in place exact measures as to where your Self-Managed Super will go. For example, you trust the trustee, have binding nominations or have amended the trust deed to say what you want.

### **3. Non-lapsing nominations – never expires**

If you have a valid non-lapsing nomination, your super fund trustee is required to pay your death benefit to your nominated beneficiaries. You do not need to renew a non-lapsing nomination. For those persons that have a Self-Managed Superannuation Fund then the strongest position is to amend the SMSF trust deed to say where you want your super to go when you die. This is non-lapsing. It never needs to be updated. It carries on to your death (much like a Will, in that regard). You don't need to re-sign them every 3 years.

Contact your superannuation fund to see if they provide Non-lapsing Death Benefit Nomination forms. If they do put in 'legal personal representative – 100%'.

### **Marriage damages nominations**

All nominations are at risk if you re-marry, enter a defacto relationship, separate on a permanent basis or have had a child with a person other than your spouse or partner. This is since making your nomination. Immediately contact me, your accountant or financial adviser if any of the above apply.

### **Can superannuation in a Will be challenged?**

If your superannuation does find its way into the Will can the Will be challenged? Yes, certain people can challenge your Will. If your superannuation gets into your Will then it can be challenged.

### **Reversionary Pensions**

Your superannuation fund may allow for Reversionary Pensions, but they are not automatic. They need to be set up before you die. They also need to be set up for each pension. They are not part of a binding death benefit nomination. Rather they are part of a pension within the superannuation fund.

A matter of concern about the use of Reversionary Pensions is the Transfer Balance Cap (TBC) for each pensioner. We believe that modelling is required regarding the impact on the beneficiary potentially receiving a Reversionary Pension. Would this cause the recipient to go over the TBC? Is the recipient already receiving a pension? Is there the capacity to commute any existing pension to manage the TBC? Would a death benefit pension created using a BDBN be more appropriate? These are issues for your financial adviser and accountant to consider.

### **If you have Life Insurance when you die**

There are a number of insurances available to give your family protection. These include Life Insurance, Trauma and Total and Permanent Disability. After all debts are paid how much income will the remainder of your estate generate? While 3 Generation

Testamentary Trusts reduce tax you still need sufficient assets to generate the required income for a period of time that you choose. Your adviser can calculate this figure for you. You may need to top up your life insurance cover to achieve the desired goals for your family when you are gone.

You can structure (non-business) insurance policies a number of ways. A common form of payout is based on "cross-ownership". Cross-ownership is where a person dies and their partner gets the insurance directly. You can nominate up to 10 beneficiaries - in any percentages you like (totalling 100%). In this instance the insurance goes straight to the beneficiaries and not via any of their 3 Generation Testamentary Trusts in their Wills.

Alternatively, the insurance can be payable to the estate. In this case when a person dies the proceeds go into their Will. For estate planning the ownership of the insurance is not as important as who receives the payout.

Your Will is drafted so that from a tax perspective the best place for any life insurance is in your Will and therefore into your 3 Generation Testamentary Trust. From a tax point of view, a payout to the Estate is better than a payout directly to a beneficiary. Next time you talk to your adviser you may want to discuss which method of owning the insurance is best for you. The situation to watch out for is if someone is likely to challenge your Will.

#### **How do you purchase and hold Real Estate?**

Back before 1980, Death and Probate Duties existed. At that time, it was popular for couples to hold assets as Joint Tenants. This meant that when one person died the survivor got the real estate irrespective of what the Will said. The Joint Tenancy property didn't go into the Will and therefore Probate Duties were avoided on that real estate.

Death and Probate Duties were abolished by 1981. In 1985, the Treasurer Paul Keating introduced Capital Gains Tax (CGT). CGT works very differently to Death and Probate Duties. For example, the CGT regime doesn't recognise Joint Tenancy. For the payment of CGT, it treats all property as though it was Tenants in Common. If you own property as Tenants in Common (instead of as Joint Tenants) then when you die your interest in the Real Estate doesn't go to the survivor. It goes into your Estate. This has additional benefits particularly as your Will has been drafted with tax effective Testamentary Trusts.

From a tax point of view (only) holding any asset in Joint Tenancy is old fashioned and dangerous. It is best to hold all real estate investments as Tenants in Common. We however only practice in the area of tax. Your advisers look at more than just your tax position. They look at your holistic needs based on your current circumstances.

I suggest that you speak with your Advisers about whether you need to transfer any real estate from Joint Tenants to Tenants in Common. In particular, it would seem prudent to own Investment properties (these are properties that you may rent out, rather than your family home) as Tenants in Common. The cost to sever Joint Tenancy is generally under \$2,200, including legal, government and mortgage fees.

If you decide to purchase any real estate in the future then you are welcome to ring me, or any of the solicitors at this firm, to discuss whether you should purchase that property as Tenants in Common or Joint Tenants. I would be happy to speak with your Advisers on this point should you wish me to do so.

### Own assets in a foreign country?

Generally, your Will is valid in most countries because it is valid under Australian law: *1961 Hague Convention*. However, don't rely on this rule if you own real-estate out of Australia. Make separate Wills for each country in which you have real-estate.

### What if I have a Family Trust when I die?

Certain assets do not go to beneficiaries via your Will. There may be a good reason for wanting this. Your Will can be challenged and completely re-written by a Court. A Court even has the power to replace your Executor.

As mentioned above, joint tenancy assets don't go into your Will. Similarly, if you die, the assets in your Family Trust are not transmitted via your Will.

#### The Rule:

**A Family Trust and a Will are separate. They are not related. A Family Trust should not try and deal with assets in a Will. Similarly, a Will should not mention or try and deal with Family Trust asset.**

A Family Trust lasts, generally for 80 years. However, your Family Trust can be 'corrupted' by the Will. The way in which a Family Trust Deed is worded means that your Will may affect your Family Trust. Family Trust Deeds are often wrongly drafted to state that the Appointor of the Trust, after the death of the current Appointor (usually Mum or Dad) is the person or persons who are their Executor. Our view is that this method can cause unwanted outcomes. For example - you appoint your oldest daughter as Appointor in your Will - you want her to get the valuable hair salon business. You die. Your two oldest sons challenge the Will. They get to be sole Executors named in your Will. Your sons now get to be the Appointors in your Family Trust and take everything in the Family Trust for themselves.

Quarantine your Family Trust from the *Family Provision Acts*. We suggest that Family Trust deeds be reviewed so that the Family Trust is operated by the persons you nominate.

Update your Backup Appointor/Guardian/Principal in your Family Trust via a Deed of Variation. Do not use your Will to appoint your replacement Appointor.

I have stated that the general rule is that Family Trust assets do not form part of your estate. One exception to this rule is "unpaid present entitlements" (sometimes incorrectly called 'loan accounts'). This is when the trust distributes to you, as a beneficiary, but doesn't pay you anything. You have an unpaid but presently owing entitlement. You can often see these 'UPEs' in the trust's financials. Such 'UPEs' belong to your estate, or worse creditors and people that challenge your Will, when you die.

### Can someone challenge your Will?

Yes, your Will can be challenged. There are 2 ways to challenge a Will. Your family and dependants may be able to say that the split of your assets isn't fair and they want more. They argue 'sure the Will may be valid, but it needs amending by the Court'.

Secondly, they may argue your Will is not valid at all. Is there any question of testamentary capacity? Senility, suffered a stroke or been seriously ill? Were you wearing your reading glasses? Can you understand and read English fluently? Was someone

unfairly influencing or pressuring you: 'poisoning your mind'? Always get a written medical letter from your Doctors. After you die the question of capacity may be called into question. The people whose evidence is of most value are your medical attendants and your witnesses to the Will.

You are able to validly sign a Will if you (here I am quoting court cases):

1. understand the nature of the act and its effects (i.e. you understand that you are signing a Will that gives away what you own)
2. understand the extent of the property of which you are disposing of (you know what assets you own)
3. are able to comprehend and appreciate the claims [i.e. the moral claims] to which you ought to give effect (e.g. while you don't have to, many people leave everything to their spouse, in the first instance, and then everything to the children equally)
4. suffered no disorder of the mind which poisons your affections, perverts your sense of right, or prevents the exercise of your natural faculties - that no insane delusion influences your Will in disposing of your property and bring about a disposal of it which, if the mind had been sound, would not have been made (e.g. you didn't have a 'loved one' putting pressure on you to leave everything to them 'otherwise they will put you out on the street').

If any one of these aspects of capacity is defective the Will may be wholly void.

For example, if you have cut a child out of the Will, then expect your Will to be challenged. Did the other children put pressure on you? Did they seek to poison your mind? Did they threaten you? Having a Will challenged is a bit like a divorce – messy and expensive.

#### **Get a Doctor's note to say you are of sound mind**

Under all circumstances, get a doctor's note to say you are of sound mind. Keep that note with your original Wills.

*"I have today examined Edward Sun. I believe that this person can understand the nature of a Will. I believe that this person is mentally competent to make a Will."*

A second note stating:

*"I have today examined Christina Sun. I believe that this person can understand the nature of a Will. I believe that this person is mentally competent to make a Will."*

#### **Joint Tenancy**

As discussed above, moving back to the issue of Joint Tenancy (although sometimes an issue for CGT) can be quite effective if someone is going to challenge your Will. If you own an asset as Joint Tenants then, generally, when you die, that asset goes directly to the survivor (or survivors). The asset does not generally pass through the estate – and therefore can't be challenged through the Will. I have not given you advice or checked to see if any particular asset is owned as Joint Tenants. If you are in doubt, then please instruct me and I will conduct searches to see if any particular asset is owned as Joint Tenants.

## What happens if a beneficiary moves to another location?

You, your beneficiaries and executors move from time to time. That is fine. You do not need to update your Will if anyone moves to a new home.

## Divorce Protection Trusts

### What if a beneficiary divorces?

The trusts available in your Wills include:

1. **3-Generation Testamentary Trusts** – to reduce Capital Gain Tax, Transfer duty (stamp duty) and income tax
2. **Superannuation Testamentary Trusts** – to seek to remove the 15% or 30% (plus Medicare) tax on your Superannuation when your Superannuation goes to adult children
3. **Protective and Maintenance Trusts** – in case your children, grandchildren or a beneficiary are under the Age of Majority
4. **Bankruptcy Trusts** – in case a beneficiary goes bankrupt
5. **Divorce Protection Trusts** – in case a beneficiary suffers from a split up from a spouse or defacto partner

The Divorce Protection Trust seeks to delay or stop any capital or income going to the beneficiary who is suffering divorce or separation proceedings. It is designed to reduce the opportunity for the Family Court to get its hands on your money.

The *Family Law Act* gives the Family Court power over third parties. This is evidenced by the Federal Court case in the West Point collapse.

However, in a divorce the Family Court looks at how the assets came to be in a trust. It considers who gave the money to the trust in the first place.

If assets come from one of the separating couple during the relationship and are then put into a trust, the assets are considered part of the marriage. The Court is free to order that the assets in the trust be transferred to your in-law.

However, this may not apply where the money comes via a Will. Instead of your divorcing child putting money into a trust, it is you who is putting the money into the trust (via a Divorce Protection Trust). It is arguably different where the married person's parents gift their assets into a Divorce Protection Trust.

The Divorce Protection Trust sits dormant in the Will until needed. The Divorce Protection Trust activates for the benefit of the married person and that person's children and grandchildren. (This is your divorcing child, then their children and their grandchildren). The assets in the Divorce Protection Trust is provided by the parents (being you), not the married person (e.g. your child). The parents' assets are more likely to be protected from the Family Court.

Your descendants (children, grandchildren and great grandchildren) are beneficiaries of the Divorce Protection Trust but not owners of the assets.

If any of the descendants controlled the trust through being the sole trustee or appointor (the person having the power to appoint and remove the trustee) then that person may be

considered to have an ownership interest in the assets. This is in the eyes of the Family Court.

In these circumstances, a court may decide that it has power to make an order affecting assets held by the trust. For example, an order that trust assets be transferred to a former spouse of the controller or to a trustee in bankruptcy.

However, the Divorce Protection Trust removes that person's power to control the trust while they are suffering the separation. This removes control.

The Divorce Protection Trust benefits the current and succeeding generations. This helps protect the assets from the Family Court.

### **Special Disability Trusts**

If a beneficiary can benefit from a Special Disability Trust, then the Executors are empowered to set them up under the Will. We have drafted the Special Disability Trust clause with great flexibility in the Will. This is because Special Disability Trust deeds and rules may change after you sign your Wills. There are also ongoing changes in the reporting and audit rules. In the Wills you have drafted these changes are accommodated.

### **How do I bind or staple a Will?**

A Will is a stand-alone document. It is **not** attached to anything such as another Will or covering letter.

You can either bind or staple the Will. This should be done before you start signing the Will. (This is just in case you make a mistake in the binding or stapling.)

While stapling the Will is common and acceptable, it is important to never remove the staple. (For example, you cannot undo the staple to copy the Will.) If you remove the staple you get left with a staple hole. A staple hole suggests that you had another document with the Wills, such as a codicil or some other information. Staple holes cause problems.

Similarly, binding the Will is also common and acceptable. However, it is important to never remove the binding. This leaves holes in the document. Such holes suggest that other documents were attached to your Will.

### **Can I print the documents in duplex (back to back)?**

Print your Wills single sided. Do not print double sided.

### **Funeral Arrangements**

Your Will only does one thing. It gives away your assets.

A Will is not designed to deal with body disposal. If you want to be buried, cremated or follow certain religious rites then that is a discussion to have with your family and loved ones.

Also, your body is disposed of, generally, well before anyone looks at your Will.

And in any event, directions in your Will as to your human remains are not binding on your Executor and loved ones.

It is inappropriate to put burial arrangements in a Will. We, therefore, have not done so in your Will.

A related issue is the Organ Donor Register. Again, your Will does not, and should not, document these issues.

### **"Wish List"**

You may have tools in the shed, jewelry, photographs and a Lladro collection. You may have a desire for certain people to get certain items. But it is best not to include Specific Gifts in a Will. It adds complexity. Also items worth over \$500 may be subject to Capital Gains Tax.

If you wish to give the Executors and loved ones some direction do a "Wish List".

A "Wish List" has no specific form. Rather, it is just a letter you keep with the Will. Do not sign the Wish List. Merely print or type your name at the end of the letter.

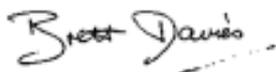
The beginning of the "Wish List" should state: "This is merely a Wish List and there is no legal compulsion for the Executors to follow any of the following. My wishes are ....."

If you have young children you can also put in the Wish List your views on how they should be brought up and their religion.

### **Conclusion.**

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS



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*Dr Brett Davies*

*Partner*

*Legal Consolidated Barristers & Solicitors*

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## **The last Will and 3 Generation Testamentary Trusts and Superannuation Trusts of Edward Sun**

Containing:

- 3-Generation Testamentary Trusts
  - Superannuation Testamentary Trusts
  - Bankruptcy Protection Trusts
  - Protective Maintenance Trusts
  - Divorce Protection Trusts
  - Severability Rights Protection
-

This Will is made by me, Edward Sun of 12 Alexandra Street, Canterbury VIC 3126, Australia. My date of birth is 05 October 1966.

## 1. Revoking Previous Wills

This is my last Will and Testament and accordingly, I revoke previous Wills of any description including testamentary trusts and testamentary dispositions (including Wills requiring revocation in writing).

## 2. Appointment of Executor

If Christina Sun, survives me by 28 days, I appoint Christina Sun as my Executor. If Christina Sun does not survive me by 28 days or is unable or unwilling to act as my Executor, then I appoint:

- Justin Sun of 21 Virgil Street, Chester Hill NSW 2162, Australia
- Mia Sun of 10 Salvado Drive, Subiaco WA 6008, Australia

as my Executors.

## 3. Definitions and Interpretation

In this Will, except where the context otherwise requires:

"Appointor" (provided that the Appointor has reached the Age of Majority or is not Lacking Capacity) the first appointor or appointors are the Primary Beneficiary. If the Appointor Lacks Capacity the Executor is the Appointor and the Executor is the Appointor and the Appointor is the Appointor in that position in trust for that Primary Beneficiary until that Primary Beneficiary reaches the Age of Majority or is not Lacking Capacity. The Appointor may then for their specific trust, appoint a new Appointor by deed or notice in writing to the current Trustee of that specific trust. If the Appointor dies without appointing a new Appointor, the legal personal representative of the Appointor is the new Appointor. The Appointor can remove or replace the Appointor's trusts for whatever reason at any time.

"Age of Majority" 18 years of age

"Categories" a category, character, type, class, part, item or section (and is not limited to) the categories: net capital gains, net capital losses; gross capital gains, net capital losses, gains, profits or any losses of capital or of a capital nature; assessable income or allowable deductions under the Tax Act for any part of the Trust Fund for any Financial Year; gains and profits or any losses of capital or of a capital nature that are not treated as assessable income or allowable deductions for taxation purposes for the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account that are or are treated as assessable income or allowable deductions for taxation purposes in relation to any part of the Trust Fund for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account whether treated as assessable income or allowable deductions for taxation purposes for any Financial Year; any income, receipts, gains or profits that are exempt or otherwise

*You are building two Tax Effective Mutual Wills. They each contain a 3-Generation Testamentary Trust. In the first instance, you leave everything to each other. After you both die, you leave everything to the same beneficiaries.*

(usual signature) Edward Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

not liable to tax under the Tax Act or any other act or regulation; Franked Dividends; Unfranked Dividends; any foreign income, foreign income tax credit, other tax credit, interest; any royalties, minors and others with proceeds from deceased estates, superannuation funds and life insurance and additional categories set out in any minutes plus, categories mentioned in any Australian Taxation Office publication, from time to time; and any combination or part of the above

**"Dependant"** a person who falls within the category of "death benefit dependants" as referred to in subdivision 302-D of the *Income Tax Assessment Act 1997*

**"Divorce Proceedings"** includes any period where a person is, or is likely to be, no longer residing with their spouse or partner in a marriage, de facto relationship or any other relationship including under the *Family Law Act 1975* or *Family Court Act 1997* or any such similar legislation; or during any time that a financial dispute is threatened, or actual, after the breakdown of a marriage (including under 79(4) and 75(2)) or a de facto relationship (including under 90SM(4) and 90SF(3) under the *Family Law Act 1975* or *Family Court Act 1997* (or similar legislation)

**"Executor"** the executor and executors named in my Will and from time to time appointed

**"Financial Year"** 1 July in a year to 30 June in the next year or the lesser period ending on 30 June after the date of the Trust Deed; and 1 July until the termination of the Trust before 30 June of the next year or otherwise as the Trustee decides

**"General Beneficiaries"** means:

- ⇒ the deceased and the grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces of the Primary Beneficiary and of Edward Sun and the grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces of each of those grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces
- ⇒ the trustee of any trust:
  - under which all interests vest within 80 years, minus 1 day, from the date of death of Edward Sun and under which any general beneficiary has a vested or contingent interest, or is eligible to receive a distribution of income or capital; and
  - which has been nominated by the Trustee to be a general beneficiary
- ⇒ any company:
  - of which a general beneficiary is a member (equitable, legal or otherwise), director or secretary; and

(usual signature) Edward Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

- which has been nominated by the Trustee as a general beneficiary
- ⇒ any other person whom the Trustee nominates to be a general beneficiary, in writing or by oral statement, within 80 years, minus 1 day, from the date of death of Edward Sun
- ⇒ all registered charities (whether incorporated or unincorporated)
- ⇒ all Dependants

"Primary Beneficiary" the person or persons who are or who become so nominated in this Will from time to time

"Tax Act" the *Income Tax Assessment Act 1936* and *1997* as appropriate

"Trust Fund" the residue of my estate both real and personal, any income and accretions arising from time to time from such residue, any capital and income from time to time and all property from time to time contained in the above

"Trust Income" unless the Trustee otherwise determines from time to time the income of any part of the Trust Fund is as defined in section 95 of the *Assessment Act 1936* (Cth)

"Trust Property" any property comprised in the Trust Fund

"Trustee" is the trustee, from time to time, of each trust, testamentary Trust Fund as appointed by the Appointor (and until such appointment the Primary Beneficiary is the Trustee unless the Primary Beneficiary Lacks Capacity in which case I hold the position of Trustee on trust). If the Appointor Lacks Capacity and the Appointor has already nominated a person before the Appointor started to Lack Capacity) the Trustee is as appointed by the Executor, unless the Will otherwise directs

- ⇒ Headings do not interpret this Will
- ⇒ All statutes and regulations are as amended from time to time

#### 4. Getting advice to operate the 3-Generation Testamentary Trusts and other trusts

I suggest that my Executor obtain advice concerning the administration of my estate, at the expense of my estate, from one or more of a lawyer, accountant and financial planner.

#### 5. Payment of Tax and other testamentary debts

I suggest that my Executor pay and discharge all of my estate debts, taxes, funeral and testamentary expenses and then distribute the Trust Fund.

#### 6. Executor Activities

My Executor holds all my estate on trust for:

Every year, Australian taxpayers voluntarily pay the government millions of dollars in 'death taxes'. Your Tax effective Single Will gets your assets to your family. Not the taxman.

(usual signature) Edward Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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### Testamentary Gifts for Primary Beneficiaries (Residual Beneficiaries)

If my spouse, Christina Sun, survives me by 28 days, then to give the Trust Fund to Christina Sun (for the purposes of this clause a "Primary Beneficiary") in trust to hold and to pay all or part of the income, all or part of the capital and all or part of the capital accretions of the Trust Fund to any one or more of:

- Christina Sun and the General Beneficiaries of Christina Sun
- all Primary Beneficiaries in this Will and the General Beneficiaries of those Primary Beneficiaries
- the General Beneficiaries of the deceased Edward Sun

from such part of the capital and income of the Trust Fund, in the shares and amounts and at such times as the Primary Beneficiary Christina Sun exercising absolute discretion thinks fit. The Primary Beneficiary is not obliged to make equal (or any) payment to any or all of the persons named above. The Primary Beneficiary has the discretion to set up as many testamentary trusts as that person requires or set up no testamentary trust.

### Testamentary Gifts for Primary Beneficiaries

If Christina Sun does not survive me by 28 days then to give the Trust Fund to:

- my Grandchildren of - amount of 100%

(for the purposes of this clause this person is a "Primary Beneficiary") upon obtaining the Age of Majority.

⇒ The above named Primary Beneficiary holds their share in trust:

To hold and to pay all or part of the income, all or part of the capital and all or part of the capital accretions of that respective share of the Trust Fund to any one or more of:

- the above Primary Beneficiaries
- the deceased Edward Sun and the General Beneficiaries of the deceased Edward Sun
- the General Beneficiaries of each of the following people: all Primary Beneficiaries named in this Will and Edward Sun

from such part of the capital and income of the Trust Fund, in the shares and amounts and at such times as each Primary Beneficiary (exercising their own absolute discretion) thinks fit. The Primary Beneficiary has the discretion to set up as many testamentary trusts as that person requires or set up no testamentary trust.

Each Primary Beneficiary in relation to their respective entitlement is not obliged to make equal (or any) payment to any or all of the persons named above.

## 7. The Children of the Primary Beneficiary

Unless my Will otherwise directs, if any Primary Beneficiary dies before me or dies before reaching the Age of Majority, leaving children then those children (as each of those

<i>(usual signature) Edward Sun</i>	<i>First Witness (use same blue pen):</i>	<i>Second Witness (use same blue pen):</i>
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children reach the Age of Majority) take what their parent would have taken. Such children then maintain the trusts their parent would have maintained, had they reached the Age of Majority, equally as tenants in common.

If all the above residuary gifts fail, only then I give the Trust Fund to (as follows):

- Australian Red Cross Society ABN 50169561394 of - amount of 100%

For the purposes of this clause all the beneficiaries named in this clause are Primary Beneficiaries.

## 8. Maintenance Trusts, Child Trusts, Bankruptcy Trusts, Divorce Protection Trusts and Protective Trusts

A Primary Beneficiary is unable to take control or have influence over any gifts or the Trust Fund or act as trustee or appointor of any trusts relating to (or established by or under) this Will if they:

- ⇒ have not attained the Age of Majority; or
- ⇒ lack the requisite mental capacity; or
- ⇒ are an undischarged bankrupt; or
- ⇒ are suffering Divorce Proceedings

(collectively "Lacks Capacity")

*Build Tax Effective 3-Generation Testamentary Trust Mutual Wills here:*

<https://www.legalconsolidated.com.au/mutual-wills-tax-effective-with-choice-of-beneficiaries-intro/>

When (if ever) the applicable above sub-clause no longer applies then, as directed by the relevant Primary Beneficiary, the Executor or Trustee (as the case may be) relinquishes control of the gifts and trusts applicable to the relevant Primary Beneficiary in favour of that Primary Beneficiary (or the person or persons nominated by that Primary Beneficiary). In the meantime, the gifts and trusts relating to that Primary Beneficiary are retained in the trusts and only applied for the maintenance, education, advancement, support and benefit of that Primary Beneficiary. The Executor's powers include the powers in this Will. The Executor has absolute discretion.

## 9. Executor and Primary Beneficiary Discretionary Powers

I, Edward Sun, give my Executor, Trustee, Appointor and each Primary Beneficiary (in respect of their gifts and any testamentary trusts) the following powers (in addition to those given by law, equity and statute):

- ⇒ To accumulate income
- ⇒ To sell, lease, exchange, postpone the sale of my estate
- ⇒ To borrow money secured by my estate
- ⇒ To accept any property as an addition to the Trust Fund

(usual signature) Edward Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

- ⇒ To carry on any business in any business structure such as a trust, company and partnership
- ⇒ To determine whether receipts and outgoings are capital or income notwithstanding that the receipts are from a company that has made a decision on the matter
- ⇒ To open in the trustee name current and cheque accounts with full power to operate such accounts
- ⇒ To apply for the maintenance, education (including travel to broaden the mind), advancement, support and benefit of a beneficiary the whole or part of any income and capital to which that beneficiary is or may become entitled
- ⇒ To pay the income or capital of any beneficiary to the parent or guardian of the beneficiary and accepting that person's receipt as a good discharge
- ⇒ To make payments to a minor beneficiary's parent or guardian or a person with whom the beneficiary lives and accept the receipt of that payee as an absolute discharge
- ⇒ To open, operate, invest or reinvest in or acquire for the purpose of receiving income, interest, profit or capital gain in any country of the world, any of the following (and freely change such investments, without reference to any trustees acts):
  - shares, stock units, trusts, property trusts, common funds debentures, debenture stock, bonds, notes including convertible notes, or other securities of any company or of any statutory authority
  - land of any tenure including leasehold and land held by company title and land subject to any mortgage or charge
  - mortgages, including contributory mortgages
  - the units or interest of or in a trust including a fixed or flexible trust
  - mutual funds
  - friendly society investments
  - antiques, works of art, coins, stamps or other collectibles
  - insurance bonds and policies of life insurance
  - bank accepted or endorsed bills of exchange
  - deposits with any public company, bank, credit union, building society, co-operative society, trust or public body
- ⇒ To make loans to any beneficiary or any person or company associated with any beneficiary whether:
  - secured or unsecured

<i>(usual signature) Edward Sun</i>	<i>First Witness (use same blue pen):</i>	<i>Second Witness (use same blue pen):</i>
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- on interest or interest free
- alone or jointly
- on whatever terms

- ⇒ To acquire and keep up a residence or any personal property for any beneficiary
- ⇒ To acquire or lease assets for occupation or enjoyment by a beneficiary (whether alone or with some other person or persons)
- ⇒ To sell to (or buy from) any beneficiary any assets on any terms
- ⇒ To divide assets and Trust Funds *in specie* (in kind) to beneficiaries
- ⇒ To mix investments with investments of other people or trusts
- ⇒ To vary, replace, encumber and deal with the investments as if it were its own property
- ⇒ To appoint nominees to hold or operate investments
- ⇒ To pay those executors who are accountants, advisers and other professionals on the basis as if employed to act on behalf of my executors in their professional capacity. Such professionals are entitled to be paid fees for work done by themselves or the professional's firm on the same basis as if the professional was not an Executor or trustee but employed by my Executor or trustee
- ⇒ To reimburse the executors for their reasonable out of pocket expenses
- ⇒ To engage or dismiss agents and staff
- ⇒ To vote in and exercise all rights, of whatsoever nature for voting in any company or trust in which my estate or any fund arising from my estate may be interested or concerned
- ⇒ To apply for and accept directorship of any company in which my estate or any fund arising from my estate may be interested or concerned
- ⇒ To apply for and accept bonus shares and units and other benefits made available by a company or unit trust in which my estate is concerned
- ⇒ To have the power to seek reimbursement from a beneficiary (including a charity) for any income tax liability payable on my estate or any testamentary trust arising under the *Income Tax Assessment Act* as a consequence of a gift to that beneficiary before the gift is given to the beneficiary
- ⇒ To accept a receipt from an authorised officer of a beneficiary that is a charity or incorporated entity as sufficient discharge to my Executor and trustees who shall not be obliged to see the application of such gifts
- ⇒ The Executor and Trustee of any specific trust can vest any trust at any time

The 4 defacto death duties are:

1. Capital Gains Tax
2. Stamp Duty
3. Income tax
4. for adult children 32% tax on Super

(usual signature) Edward Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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- ⇒ Upon 80 years, minus one day, from the date of death of Edward Sun all trusts created under this Will and all testamentary trusts relating to any of the estate assets and assets that later form part of this estate in the Primary Beneficiary of the relevant trusts must vest, however, this clause and the other references to the law of perpetuity in this Will does not apply if there is no legal requirement for a vesting date or the law of perpetuity is abolished by the time of my death, or if the law so allows, it is abolished by the expiration of the 80 years minus one day
- ⇒ To borrow money or raise money for any purpose connected with these trusts either with or without giving security and enter into any mortgage, charge, bill of sale, lien or security over any part of the property that forms part of any fund arising from my estate

**Streaming, franking credits, attribution and separate accounts to reduce CGT & income tax in compliance with *Thomas v FCT* [2017] FCAFC 57**

- ⇒ To distinguish between income as defined by the Tax Act and deal with income of a particular nature or from a particular source in one manner and income of any other nature or from any other source in a different manner
- ⇒ To classify and create a separate account (and separate trust) for any type of income (including under the Tax Act), including net capital gains, dividend income (with or without imputation credit), interest, primary production income, net PAYG income or whatever other categories that are deemed appropriate. Such income may be paid into a separate account, however any amount paid to any beneficiary retains the character it had in the hands of the trustee
- ⇒ To determine the particular type of income or account against which the losses and outgoings incurred in deriving the income as allowed under the Tax Act are offset
- ⇒ Make an *in specie* distribution
- ⇒ Redefine the definition of Trust Income before or after 30 June
- ⇒ Accumulate Trust Income and treat it as Trust Fund capital
- ⇒ At any time before 30 June in a Financial Year, decide that a distribution of income for that year is to be made solely from income that the Trustee regards as a particular class of income
- ⇒ Decide when a beneficiary becomes entitled to the income or capital Categories of that entitlement
- ⇒ Distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any Categories

(usual signature) Edward Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

- ⇒ Distribute an amount to a beneficiary by setting the amount aside in a separate account in the books in the name of the beneficiary and that amount may be held on a separate trust for such beneficiary if so determined by the Trustee, as an amount owed to the beneficiary as an interest free debt at call to determine that the Trust Income for a Financial Year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an Unpaid Present Entitlement
- ⇒ Separately allocate all or part of the Trust Income or capital whether distributed or accumulated
- ⇒ To request the trustee or person in control to exercise its discretion and:
  - purchase either an annuity or pension (subject to the law or the regulations)
  - make payment of any part of the income or capital of my estate
  - cause any annuity or allocated pension to vest
- ⇒ The Executors act unanimously at all times. The Executors, Appointors, and Trustees may be (for each specific trust): one or more companies; one or more individuals or a combination of both companies and individuals
- ⇒ A Trustee ceases to hold office, for that specific trust, when:
  - the Trustee resigns by written notice to the Appointor
  - the Appointor states that the Trustee ceases to hold office (whether the Trustee is so advised or not)
  - being an individual becomes bankrupt, makes an assignment or similar with creditors; becomes mentally ill or incapable of carrying out the responsibilities or dies
  - being a company, is liquidated, enters into receivership or similar or is wound up
- ⇒ To establish a Testamentary Trust or Testamentary Trusts for each Primary Beneficiary as may or may not be required from time to time. Each Testamentary Trust is named after the Primary Beneficiary of that Testamentary Trust if no other name is chosen
- ⇒ To elect not to have a Testamentary Trust established for all or some of the assets relating to that Primary Beneficiary in which case the Primary Beneficiary holds such assets absolutely
- ⇒ The Primary Beneficiary (and until the Primary Beneficiary becomes the trustee of the Testamentary Trust, then the Executor) of each respective Testamentary Trust

*Build Tax Effective 3-Generation Testamentary Trust Mutual Wills here:*

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(usual signature) Edward Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

ensures that its Testamentary Trust is a separate trust and administered as follows:

- by deed or Will appoint from time to time one or more new trustees of the Testamentary Trust either as additional trustees or as successors to a retiring trustee
  - by deed or Will appoint one or more successor to replace them as trustee on their death
  - the trustee may declare the Testamentary Trust to have ended and wind up and distribute the assets contained in that Testamentary Trust
- ⇒ To establish disability trusts including Special Disability Trusts and Special Disability Trusts that qualify under the *Social Security Act 1991* or the *Veterans' Entitlement Act 1986*
- ⇒ While my Executor and trustees act honestly in the discharge of duties in accordance with and under the terms of this will, they are:
- not liable for loss
  - entitled to be indemnified out of the estate for any loss suffered
- ⇒ To vary all or any of the trusts, terms and conditions and to amend any trust under this Will to add or vary the terms of the trusts, including all the powers under *Dion Investments Pty Ltd* [2014] NSWCA 67 and *Mercanti v Mercanti* [2015] WASC 297
- ⇒ Any obligations under any trustees acts are read down and do not apply to this Will

However, no power can be used to create a delegation of testamentary power that would invalidate the Will or any trust arising under this Will or offend any perpetuity period.

## **10. Foreign Beneficiaries, Land Tax surcharges, Stamp duty, and severing Unenforceable parts of the Will of Edward Sun**

At times powers under this Will may become void or unenforceable. Such powers are severed from this Will to the extent that all powers that are not void or unenforceable remain in full force and unaffected by any severance. If a provision of this Will is or becomes illegal, invalid or unenforceable in any jurisdiction, this shall not affect:

- ⇒ the validity or enforceability in that jurisdiction of any other provision of this Will; or
- ⇒ the validity or enforceability in other jurisdictions of that or any other provision of this Will.

Further, as advised by the respective Primary Beneficiary or where applicable the Trustee the Will is to be interpreted to reduce tax, land tax, land tax surcharges, duty, duty

(usual signature) Edward Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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surcharges, stamp duty, stamp duty surcharges, surcharge purchaser duty and other taxes:

- ⇒ This Will is interpreted to reduce taxes, imposts, land tax, duties and stamp duty (including state and federal) (Taxation Act 1997) to the extent of the illegality. If any clause nonetheless fails to reduce Taxes or is otherwise rendered inoperative, the Will is read down or fettered, as required, from the Will to the extent necessary to give effect to the furtherance of the reduction of the Taxes.
- ⇒ The Will is read down so that no mandatory taxation law of any jurisdiction, at any time, is contravened that would lead to an unfavourable result for the estate, including any surcharges.
- ⇒ For land ownership registration requirements, including when a Trustee then all powers in the Will are severed, read down or otherwise modified, as required, and vesting restricted, as required to allow for the payment of stamp duty in the relevant jurisdiction.
- ⇒ Beneficiaries are excluded that are foreign beneficiaries and persons who are not intended to be potential beneficiaries or Taxation Act 1997 or land tax surcharges may apply or alternatively no property is able to be distributed to or applied for the benefit of a foreign person, as applicable.

After you die your adult children pay 17% or 32% on your Superannuation. That is a non-dependancy tax. It is on your concessional superannuation. Our Super Testamentary Trust, which you get in these two Wills, seeks to reduce this tax to zero.

## 11. Contemplation of Divorce

This Will is made in contemplation of my divorce to Christina Sun and is not void if the divorce does not take place.

## 12. Considered Person Clause

I have considered my obligation towards:

- Ninna Thompson and I expressly declare myself completely satisfied that all proper provision has been made for Ninna Thompson

## 13. Superannuation Testamentary Trust

The Executor gives to the trustees and to the Primary Beneficiary a statement detailing the amount of any Superannuation Death Benefit relating to Edward Sun then these terms mean:

“Capital of the Superannuation Death Benefit” only the capital of the Superannuation Death Benefit and does not include any income derived from the Superannuation Death Benefit

“Superannuation Death Benefit” any part of the estate (or that becomes part of the estate) comprised of payments and assets within the meaning of

(usual signature) Edward Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):

“Superannuation Death Benefit” as that term is used and referred to in Division 302 of the Income Tax Assessment Act 1997

And then, **notwithstanding anything else** for the operation of the trusts, the Primary Beneficiary and trustee of those trusts holds the Capital of the Superannuation Death Benefit on trust for only the Dependants in such shares and either absolutely or upon such conditions and in such manner as the trustees in their absolute discretion think fit. The income of the Superannuation Death Benefit is held in trust for the General Beneficiaries. This clause does not apply if there are no Dependants.

Signed the    day    day of            month    20 \_\_  
by Edward Sun in our presence and witnessed by  
us in the presence of Edward Sun and of each  
other. All three of us being present together  
throughout the entire signing of this Will. We  
attested the signature of Edward Sun in the  
presence of Edward Sun and of each other.

\_\_\_\_\_  
Edward Sun (*usual signature*)

First Witness	
First Witness Signature: <i>(Use same blue pen)</i>	
Full Name <i>(Print)</i>	
Address	
Occupation	

Second Witness	
Second Witness Signature: <i>(Use same blue pen)</i>	
Full Name <i>(Print)</i>	
Address	
Occupation	



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*Adj Professor, Dr Brett Davies - Partner*

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## **The last Will and 3 Generation Testamentary Trusts and Superannuation Trusts of Christina Sun**

Containing:

- 3-Generation Testamentary Trusts
  - Superannuation Testamentary Trusts
  - Bankruptcy Protection Trusts
  - Protective Maintenance Trusts
  - Divorce Protection Trusts
  - Severability Rights Protection
-

This Will is made by me, Christina Sun of 12 Alexandra Street, Canterbury VIC 3126, Australia. My date of birth is 20 May 1970.

## 1. Revoking Previous Wills

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This is my last Will and Testament and accordingly, I revoke previous Wills of any description including testamentary trusts and testamentary dispositions (including Wills requiring revocation in writing).

## 2. Appointment of Executor

---

If Edward Sun, survives me by 28 days, I appoint Edward Sun as my Executor. If Edward Sun does not survive me by 28 days or is unable or unwilling to act as my Executor, then I appoint:

- Justin Sun of 21 Virgil Street, Chester Hill NSW 2162, Australia
- Mia Sun of 10 Salvado Drive, Subiaco WA 6008, Australia

as my Executors.

## 3. Definitions and Interpretation

---

In this Will, except where the context otherwise requires:

“Appointor” (provided that the Appointor has reached the Age of Majority and does not Lack Capacity) the first appointor or appointors are the Primary Beneficiaries. While the Appointor Lacks Capacity the Executor is the Appointor and the Executor holds that position in trust for that Primary Beneficiary until that Primary Beneficiary no longer Lacks Capacity. The Appointor may then for their specific trust, appoint a new Appointor by Will, deed or notice in writing to the current Trustee of that specific trust. If the Appointor dies without appointing a new Appointor, the legal personal representative of the Appointor is the new Appointor. The Appointor can remove or replace the Trustee of any of the Appointor’s trusts for whatever reason at any time

“Age of Majority” 18 years of age

“Categories” a category, character, type, class, part, item or source, including (but not limited to) the categories: net capital gains, net capital losses; gross capital gains, gross capital losses, gains, profits or any losses of capital or of a capital nature treated as assessable income or allowable deductions under the Tax Act for any part of the Trust Fund for any Financial Year; gains and profits or any losses of capital or of a capital nature that are not treated as assessable income or allowable deductions for taxation purposes for the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account that are or are treated as assessable income or allowable deductions for taxation purposes in relation to any part of the Trust Fund for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account whether treated as assessable income or allowable deductions for taxation purposes for any Financial Year; any income, receipts, gains or profits that are exempt or otherwise

(usual signature) Christina Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

not liable to tax under the Tax Act or any other act or regulation; Franked Dividends; Unfranked Dividends; any foreign income, foreign income tax credit, other tax credit, interest; any royalties, minors and others with proceeds from deceased estates, superannuation funds and life insurance and additional categories set out in any minutes plus, categories mentioned in any Australian Taxation Office publication, from time to time; and any combination or part of the above

**"Dependant"** a person who falls within the category of "death benefit dependants" as referred to in subdivision 302-D of the *Income Tax Assessment Act 1997*

**"Divorce Proceedings"** includes any period where a person is, or is likely to be, no longer residing with their spouse or partner in a marriage, de facto relationship or any other relationship including under the *Family Law Act 1975* or *Family Court Act 1997* or any such similar legislation; or during any time that a financial dispute is threatened, or actual, after the breakdown of a marriage (including under 79(4) and 75(2)) or a de facto relationship (including under 90SM(4) and 90SF(3) under the *Family Law Act 1975* or *Family Court Act 1997* (or similar legislation)

**"Executor"** the executor and executors named in my Will and from time to time appointed

**"Financial Year"** 1 July in a year to 30 June in the next year or the lesser period ending on 30 June after the date of the Trust Deed; and 1 July until the termination of the Trust before 30 June of the next year or otherwise as the Trustee decides

**"General Beneficiaries"** means:

- ⇒ the deceased and the grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces of the Primary Beneficiary and of Christina Sun and the grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces of each of those grandparents, parents, brothers, sisters, spouses, partners, defactos, widows, widowers, children, step children, adopted children, grandchildren and great grandchildren, uncles, aunts, nephews and nieces
- ⇒ the trustee of any trust:
  - under which all interests vest within 80 years, minus 1 day, from the date of death of Christina Sun under which any general beneficiary has a vested or contingent interest, or is eligible to receive a distribution of income or capital; and
  - which has been nominated by the Trustee to be a general beneficiary
- ⇒ any company:
  - of which a general beneficiary is a member (equitable, legal or otherwise), director or secretary; and

(usual signature) Christina Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
---------------------------------	------------------------------------	-------------------------------------

➤ which has been nominated by the Trustee as a general beneficiary

⇒ any other person whom the Trustee nominates to be a general beneficiary, in writing or by oral statement, within 80 years, minus 1 day, from the date of death of Christina Sun

⇒ all registered charities (whether incorporated or not)

⇒ all Dependants

"Primary Beneficiary" the person or persons named in this Will from time to time

"Tax Act" the *Income Tax Assessment Act 1936* (Cth)

"Trust Fund" the residue of my estate both real and personal, any income or capital accretions arising from time to time from such residue, any capital and income added from time to time and all property from time to time contained in the above sub-clauses

"Trust Income" unless the Trustee otherwise determines from time to time, the net income of any part of the Trust Fund is as defined in section 95(1) *Income Tax Assessment Act 1936* (Cth)

"Trust Property" any property comprised in the Trust Fund

"Trustee" is the trustee, from time to time, of each trust, testamentary trust and Trust Fund as appointed by the Appointor (and until such appointment the Primary Beneficiary is the Trustee unless the Primary Beneficiary Lacks Capacity in which case the Executor holds the position of Trustee on trust). If the Appointor Lacks Capacity then (unless the Appointor has already nominated a person before the Appointor started to Lack Capacity) the Trustee is as appointed by the Executor, unless the Will otherwise directs

⇒ Headings do not interpret this Will

⇒ All statutes and regulations are as amended from time to time

#### 4. Getting advice to operate the 3-Generation Testamentary Trusts and other trusts

I suggest that my Executor obtain advice concerning the administration of my estate, at the expense of my estate, from one or more of a lawyer, accountant and financial planner.

#### 5. Payment of Tax and other testamentary debts

I suggest that my Executor pay and discharge all of my estate debts, taxes, funeral and testamentary expenses and then distribute the Trust Fund.

#### 6. Executor Activities

My Executor holds all my estate on trust for:

Build Tax Effective 3-Generation Testamentary Trust Mutual Wills here:  
<https://www.legalconsolidated.com.au/mutual-wills-tax-effective-with-choice-of-beneficiaries-intro/>

(usual signature) Christina Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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### Testamentary Gifts for Primary Beneficiaries (Residual Beneficiaries)

If my spouse, Edward Sun, survives me by 28 days, then to give the Trust Fund to Edward Sun (for the purposes of this clause a "Primary Beneficiary") in trust to hold and to pay all or part of the income, all or part of the capital and all or part of the capital accretions of the Trust Fund to any one or more of:

- Edward Sun and the General Beneficiaries of Edward Sun
- all Primary Beneficiaries in this Will and the General Beneficiaries of those Primary Beneficiaries
- the General Beneficiaries of the deceased Christina Sun

from such part of the capital and income of the Trust Fund, in the shares and amounts and at such times as the Primary Beneficiary Edward Sun exercising absolute discretion thinks fit. The Primary Beneficiary is not obliged to make equal (or any) payment to any or all of the persons named above. The Primary Beneficiary has the discretion to set up as many testamentary trusts as that person requires or set up no testamentary trust.

### Testamentary Gifts for Primary Beneficiaries

If Edward Sun does not survive me by 28 days then to give the Trust Fund to:

- my Grandchildren of - amount of 100%

(for the purposes of this clause this person is a "Primary Beneficiary") upon obtaining the Age of Majority.

⇒ The above named Primary Beneficiary holds their share in trust:

To hold and to pay all or part of the income, all or part of the capital and all or part of the capital accretions of that respective share of the Trust Fund to any one or more of:

- the above Primary Beneficiaries
- the deceased Christina Sun and the General Beneficiaries of the deceased Christina Sun
- the General Beneficiaries of each of the following people: all Primary Beneficiaries named in this Will and Christina Sun

from such part of the capital and income of the Trust Fund, in the shares and amounts and at such times as each Primary Beneficiary (exercising their own absolute discretion) thinks fit. The Primary Beneficiary has the discretion to set up as many testamentary trusts as that person requires or set up no testamentary trust.

Each Primary Beneficiary in relation to their respective entitlement is not obliged to make equal (or any) payment to any or all of the persons named above.

<i>(usual signature) Christina Sun</i>	<i>First Witness (use same blue pen):</i>	<i>Second Witness (use same blue pen):</i>
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## 7. The Children of the Primary Beneficiary

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Unless my Will otherwise directs, if any Primary Beneficiary dies before me or dies before reaching the Age of Majority, leaving children then those children (as each of those children reach the Age of Majority) take what their parent would have taken. Such children then maintain the trusts their parent would have maintained, had they reached the Age of Majority, equally as tenants in common.

If all the above residuary gifts fail, only then I give the Trust Fund to (as follows):

- Australian Red Cross Society ABN 50169561394 of - amount of 100%

For the purposes of this clause all the beneficiaries named in this clause are Primary Beneficiaries.

## 8. Maintenance Trusts, Child Trusts, Bankruptcy Trusts, Divorce Protection Trusts and Protective Trusts

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A Primary Beneficiary is unable to take control or have influence over any gifts or the Trust Fund or act as trustee or appointor of any trusts relating to (or established by or under) this Will if they:

- ⇒ have not attained the Age of Majority; or
- ⇒ lack the requisite mental capacity; or
- ⇒ are an undischarged bankrupt; or
- ⇒ are suffering Divorce Proceedings

(collectively "Lacks Capacity")

When (if ever) the applicable above sub-clause no longer applies relevant Primary Beneficiary, the Executor or Trustee (as the case may be) shall have full control of the gifts and trusts applicable to the relevant Primary Beneficiary (or the person or persons nominated as the Primary Beneficiary). In the meantime, the gifts and trusts relating to that Primary Beneficiary shall be retained in the trusts and only applied for the maintenance, education, support and benefit of that Primary Beneficiary. The Executor or Trustee has full powers in this Will. The Executor has absolute discretion.

The Divorce Protection Trust delays or stops any capital or income going to the beneficiary who is suffering divorce or separation proceedings. It is designed to reduce the opportunity for the Family Court to get its hands on your money.

## 9. Executor and Primary Beneficiary Discretionary Powers

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I, Christina Sun, give my Executor, Trustee, Appointor and each Primary Beneficiary (in respect of their gifts and any testamentary trusts) the following powers (in addition to those given by law, equity and statute):

- ⇒ To accumulate income
- ⇒ To sell, lease, exchange, postpone the sale of my estate

(usual signature) Christina Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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- ⇒ To borrow money secured by my estate
- ⇒ To accept any property as an addition to the Trust Fund
- ⇒ To carry on any business in any business structure such as a trust, company and partnership
- ⇒ To determine whether receipts and outgoings are capital or income notwithstanding that the receipts are from a company that has made a decision on the matter
- ⇒ To open in the trustee name current and cheque accounts with full power to operate such accounts
- ⇒ To apply for the maintenance, education (including travel to broaden the mind), advancement, support and benefit of a beneficiary the whole or part of any income and capital to which that beneficiary is or may become entitled
- ⇒ To pay the income or capital of any beneficiary to the parent or guardian of the beneficiary and accepting that person's receipt as a good discharge
- ⇒ To make payments to a minor beneficiary's parent or guardian or a person with whom the beneficiary lives and accept the receipt of that payee as an absolute discharge
- ⇒ To open, operate, invest or reinvest in or acquire for the purpose of receiving income, interest, profit or capital gain in any country of the world, any of the following (and freely change such investments, without reference to any trustees acts):
  - shares, stock units, trusts, property trusts, common funds debentures, debenture stock, bonds, notes including convertible notes, or other securities of any company or of any statutory authority
  - land of any tenure including leasehold and land held by company title and land subject to any mortgage or charge
  - mortgages, including contributory mortgages
  - the units or interest of or in a trust including a fixed or flexible trust
  - mutual funds
  - friendly society investments
  - antiques, works of art, coins, stamps or other collectibles
  - insurance bonds and policies of life insurance
  - bank accepted or endorsed bills of exchange
  - deposits with any public company, bank, credit union, building society, co-operative society, trust or public body

<i>(usual signature) Christina Sun</i>	<i>First Witness (use same blue pen):</i>	<i>Second Witness (use same blue pen):</i>
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- ⇒ To make loans to any beneficiary or any person or company associated with any beneficiary whether:
  - secured or unsecured
  - on interest or interest free
  - alone or jointly
  - on whatever terms
- ⇒ To acquire and keep up a residence or any personal property
- ⇒ To acquire or lease assets for occupation or enjoyment (alone or with some other person or persons)
- ⇒ To sell to (or buy from) any beneficiary any assets on any terms
- ⇒ To divide assets and Trust Funds *in specie* (in kind) among beneficiaries
- ⇒ To mix investments with investments of other people or companies
- ⇒ To vary, replace, encumber and deal with the investments in its own property
- ⇒ To appoint nominees to hold or operate investments
- ⇒ To pay those executors who are accountants, advisers and lawyers on the same basis as if employed to act on behalf of my executors and trustees in that capacity. Such professionals are entitled to be paid fees for work done by themselves or the professional's firm on the same basis as if the professional was not an Executor or trustee but employed by my Executor or trustee
- ⇒ To reimburse the executors for their reasonable out of pocket expenses
- ⇒ To engage or dismiss agents and staff
- ⇒ To vote in and exercise all rights, of whatsoever nature for voting in any company or trust in which my estate or any fund arising from my estate may be interested or concerned
- ⇒ To apply for and accept directorship of any company in which my estate or any fund arising from my estate may be interested or concerned
- ⇒ To apply for and accept bonus shares and units and other benefits made available by a company or unit trust in which my estate is concerned
- ⇒ To have the power to seek reimbursement from a beneficiary (including a charity) for any income tax liability payable on my estate or any testamentary trust arising under the *Income Tax Assessment Act* as a consequence of a gift to that beneficiary before the gift is given to the beneficiary

*The Divorce Protection Trust sits dormant in the Will until needed. The Divorce Protection Trust activates for the benefit of the married person and that person's children and grandchildren. It removes that person's power to control the trust while they are suffering the separation.*

(usual signature) Christina Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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- ⇒ To accept a receipt from an authorised officer of a beneficiary that is a charity or incorporated entity as sufficient discharge to my Executor and trustees who shall not be obliged to see the application of such gifts
- ⇒ The Executor and Trustee of any specific trust can vest any trust at any time
- ⇒ Upon 80 years, minus one day, from the date of death of Christina Sun all trusts created under this Will and all testamentary trusts relating to any of the estate assets and assets that later form part of this estate in the Primary Beneficiary of the relevant trusts must vest, however, this clause and the other references to the law of perpetuity in this Will does not apply if there is no legal requirement for a vesting date or the law of perpetuity is abolished by the time of my death, or if the law so allows, it is abolished by the expiration of the 80 years minus one day
- ⇒ To borrow money or raise money for any purpose connected with these trusts either with or without giving security and enter into any mortgage, charge, bill of sale, lien or security over any part of the property that forms part of any fund arising from my estate

**Streaming, franking credits, attribution and separate accounts to reduce CGT & income tax in compliance with Thomas v FCT [2017] FCAFC 57**

- ⇒ To distinguish between income as defined by the Tax Act and deal with income of a particular nature or from a particular source in one manner and income of any other nature or from any other source in a different manner
- ⇒ To classify and create a separate account (and separate trust) for any type of income (including under the Tax Act), including net capital gains, dividend income (with or without imputation credit), interest, primary production income, net PAYG income or whatever other categories that are deemed appropriate. Such income may be paid into a separate account, however any amount paid to any beneficiary retains the character it had in the hands of the trustee
- ⇒ To determine the particular type of income or account against which the losses and outgoings incurred in deriving the income as allowed under the Tax Act are offset
- ⇒ Make an *in specie* distribution
- ⇒ Redefine the definition of Trust Income before or after 30 June
- ⇒ Accumulate Trust Income and treat it as Trust Fund capital
- ⇒ At any time before 30 June in a Financial Year, decide that a distribution of income for that year is to be made solely from income that the Trustee regards as a particular class of income
- ⇒ Decide when a beneficiary becomes entitled to the income or capital Categories of that entitlement

(usual signature) Christina Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

- ⇒ Distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any Categories
- ⇒ Distribute an amount to a beneficiary by setting the amount aside in a separate account in the books in the name of the beneficiary and that amount may be held on a separate trust for such beneficiary if so determined by the Trustee, as an amount owed to the beneficiary as an interest free debt at call to determine that the Trust Income for a Financial Year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an Unpaid Present Entitlement
- ⇒ Separately allocate all or part of the Trust Income or capital which has accumulated
- ⇒ To request the trustee or person in control of any Superannuation to exercise its discretion and:
  - purchase either an annuity or an allocated pension (subject to the law or the relevant Superannuation Act)
  - make payment of any part of the Superannuation D as part of my estate
  - cause any annuity or allocated pension to vest
- ⇒ The Executors act unanimously at all times. The Executors, Appointors, and Trustees may be (for each specific trust): one or more companies; one or more individuals or a combination of both companies and individuals
- ⇒ A Trustee ceases to hold office, for that specific trust, when:
  - the Trustee resigns by written notice to the Appointor
  - the Appointor states that the Trustee ceases to hold office (whether the Trustee is so advised or not)
  - being an individual becomes bankrupt, makes an assignment or similar with creditors; becomes mentally ill or incapable of carrying out the responsibilities or dies
  - being a company, is liquidated, enters into receivership or similar or is wound up
- ⇒ To establish a Testamentary Trust or Testamentary Trusts for each Primary Beneficiary as may or may not be required from time to time. Each Testamentary Trust is named after the Primary Beneficiary of that Testamentary Trust if no other name is chosen

*The Divorce Protection Trust benefits the current and succeeding generations. This helps protect the assets from the Family Court.*

(usual signature) Christina Sun

First Witness (use same blue pen):

Second Witness (use same blue pen):

- ⇒ To elect not to have a Testamentary Trust established for all or some of the assets relating to that Primary Beneficiary in which case the Primary Beneficiary holds such assets absolutely
- ⇒ The Primary Beneficiary (and until the Primary Beneficiary becomes the trustee of the Testamentary Trust, then the Executor) of each respective Testamentary Trust ensures that its Testamentary Trust is a separate trust and administered as follows:
  - by deed or Will appoint from time to time one or more new trustees of the Testamentary Trust either as additional trustees or as successors to a retiring trustee
  - by deed or Will appoint one or more successor to replace them as trustee on their death
  - the trustee may declare the Testamentary Trust to have ended and wind up and distribute the assets contained in that Testamentary Trust
- ⇒ To establish disability trusts including Special Disability Trusts and Special Disability Trusts that qualify under the *Social Security Act 1991* or the *Veterans' Entitlement Act 1986*
- ⇒ While my Executor and trustees act honestly in the discharge of duties in accordance with and under the terms of this will, they are:
  - not liable for loss
  - entitled to be indemnified out of the estate for any loss suffered
- ⇒ To vary all or any of the trusts, terms and conditions and to amend any trust under this Will to add or vary the terms of the trusts, including all the powers under *Dion Investments Pty Ltd* [2014] NSWCA 67 and *Mercanti v Mercanti* [2015] WASC 297
- ⇒ Any obligations under any trustees acts are read down and do not apply to this Will

However, no power can be used to create a delegation of testamentary power that would invalidate the Will or any trust arising under this Will or offend any perpetuity period.

## **10. Foreign Beneficiaries, Land Tax surcharges, Stamp duty, and severing Unenforceable parts of the Will of Christina Sun**

At times powers under this Will may become void or unenforceable. Such powers are severed from this Will to the extent that all powers that are not void or unenforceable remain in full force and unaffected by any severance. If a provision of this Will is or becomes illegal, invalid or unenforceable in any jurisdiction, this shall not affect:

- \* the validity or enforceability in that jurisdiction of any other provision of this Will; or

(usual signature) Christina Sun	First Witness (use same blue pen):	Second Witness (use same blue pen):
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- \* the validity or enforceability in other jurisdictions of that or any other provision of this Will.

Further, as advised by the respective Primary Beneficiary or where applicable the Trustee the Will is to be interpreted to reduce tax, land tax, land tax surcharges, duty, duty surcharges, stamp duty, stamp duty surcharges, surcharge purchaser duty and other taxes:

- \* This Will is interpreted to reduce taxes, imposts, land tax, land tax surcharges, duties and stamp duty (including state and federal) (Taxes) and avoid any illegality. If any clause nonetheless fails to reduce Taxes or is illegal, it is severed, read down or fettered, as required, from the Will to the extent of the illegality or in the furtherance of the reduction of the Taxes.
- \* The Will is read down so that no mandatory taxation law or Taxes, from time to time, is contravened that would lead to an unfavourable taxation position, including any surcharges.
- \* For land ownership registration requirements, including where there is a change of Trustee then all powers in the Will are severed, read down or fettered, as required, and vesting restricted, as required to allow for minimal duty or stamp duty in the relevant jurisdiction.
- \* Beneficiaries are excluded that are foreign beneficiaries where such foreign persons are not intended to be potential beneficiaries or Taxes, duty, stamp duty or land tax surcharges may apply or alternatively no property is able to be distributed to or applied for the benefit of a foreign person, as applicable.

## 11. Contemplation of Divorce

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This Will is made in contemplation of my divorce to Edward Sun and is not void if the divorce does not take place.

## 12. Superannuation Testamentary Trust

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The Executor gives to the trustees and to the Primary Beneficiary a statement detailing the amount of any Superannuation Death Benefit relating to Christina Sun then these terms mean:

**"Capital of the Superannuation Death Benefit"** only the capital of the Superannuation Death Benefit and does not include any income derived from the Superannuation Death Benefit

**"Superannuation Death Benefit"** any part of the estate (or that becomes part of the estate) comprised of payments and assets within the meaning of "Superannuation Death Benefit" as that term is used and referred to in Division 302 of the Income Tax Assessment Act 1997

<i>(usual signature) Christina Sun</i>	<i>First Witness (use same blue pen):</i>	<i>Second Witness (use same blue pen):</i>
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And then, **notwithstanding anything else** for the operation of the trusts, the Primary Beneficiary and trustee of those trusts holds the Capital of the Superannuation Death Benefit on trust for only the Dependants in such shares and either absolutely or upon such conditions and in such manner as the trustees in their absolute discretion think fit. The income of the Superannuation Death Benefit is held in trust for the General Beneficiaries. This clause does not apply if there are no Dependants.

Signed the    day    day of            month    20 \_\_  
by Christina Sun in our presence and witnessed  
by us in the presence of Christina Sun and of  
each other. All three of us being present together  
throughout the entire signing of this Will. We  
attested the signature of Christina Sun in the  
presence of Christina Sun and of each other.

You can build this document here:

[https://www.legalconsolidated.com.au/  
mutual-wills-tax-effective-with-  
choice-of-beneficiaries-intro/](https://www.legalconsolidated.com.au/mutual-wills-tax-effective-with-choice-of-beneficiaries-intro/)

\_\_\_\_\_  
Christina Sun (usual signature)

First Witness	
First Witness Signature: <i>(Use same blue pen)</i>	
Full Name <i>(Print)</i>	
Address	
Occupation	

Second Witness	
Second Witness Signature: <i>(Use same blue pen)</i>	
Full Name <i>(Print)</i>	
Address	
Occupation	