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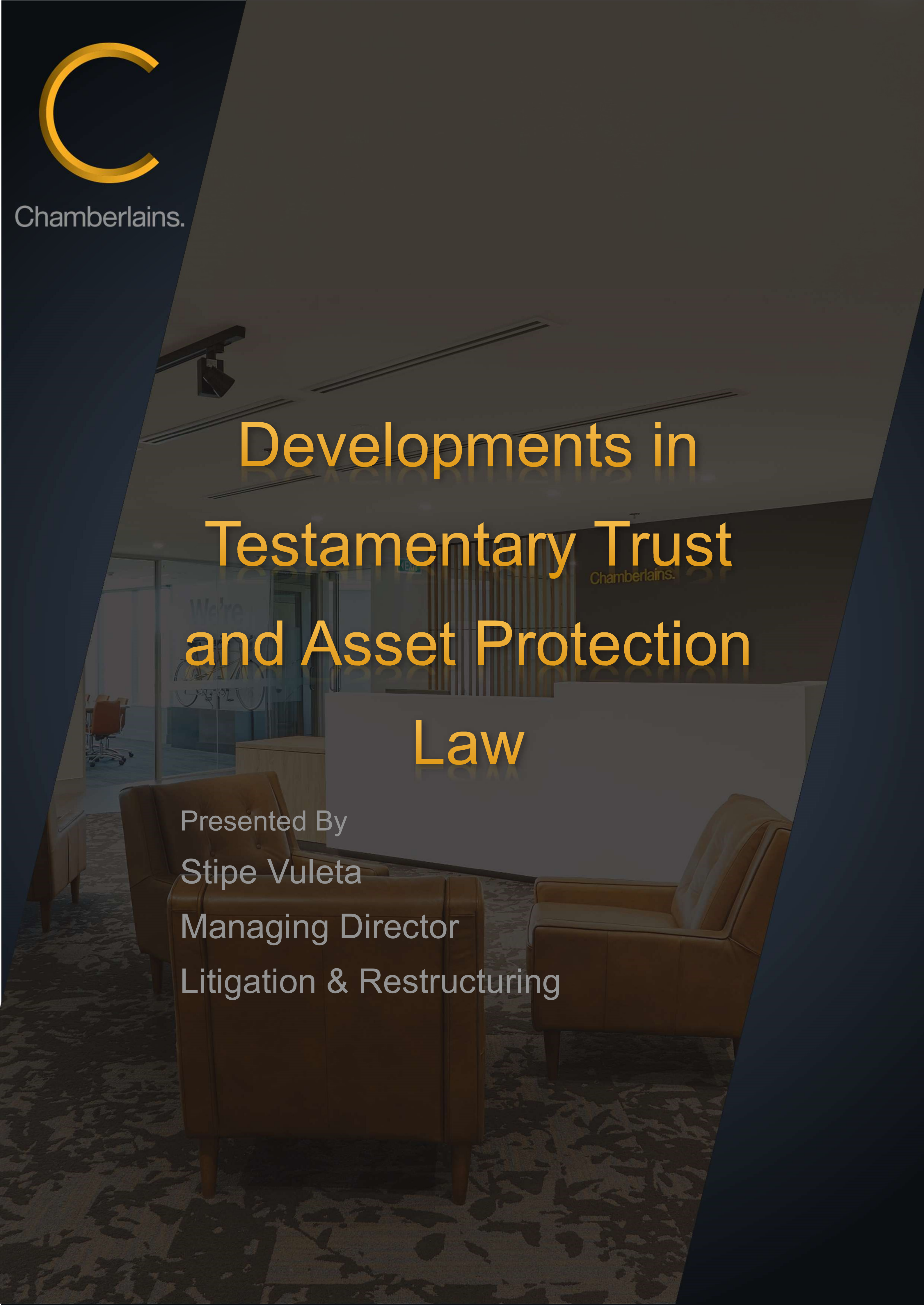

Developments in Testamentary Trust and Asset Protection Law

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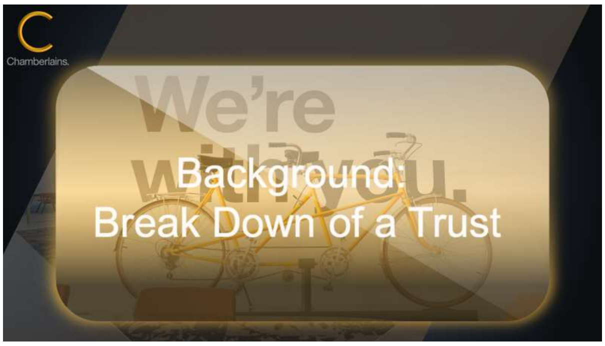
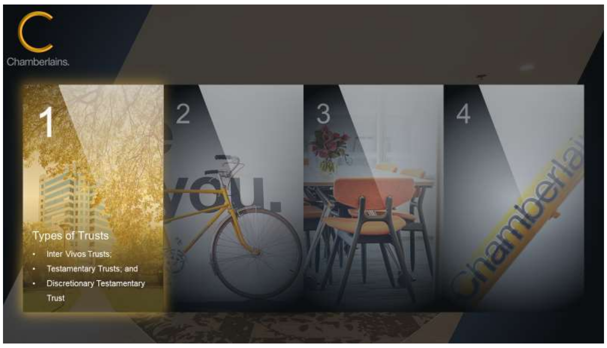
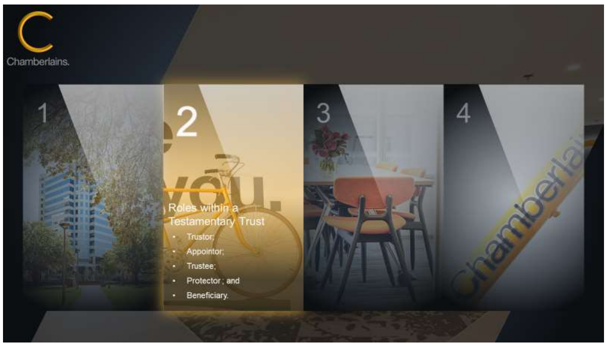
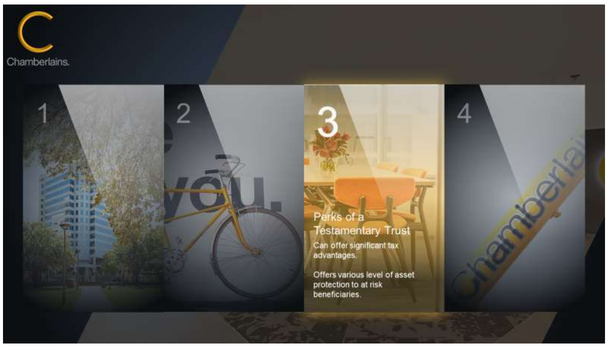




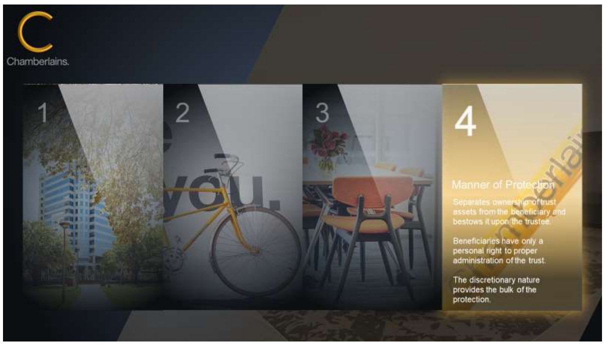
Inter Vivos Trusts	Testamentary Trusts	Discretionary Testamentary Trusts
• Created by a deed; • Established during the lifetime of the trustor; and • Main benefit is to help avoid probate process.	• Created within and by a Will; • Does not take effect until the trustor's death; and • Offers wide flexibility in tailoring an estate to suit the needs of the trustor and beneficiaries.	• Same mechanisms as a testamentary trust; but • Provides complete discretion to the trustee in making distributions; and • Can offer tax advantages and asset protection.



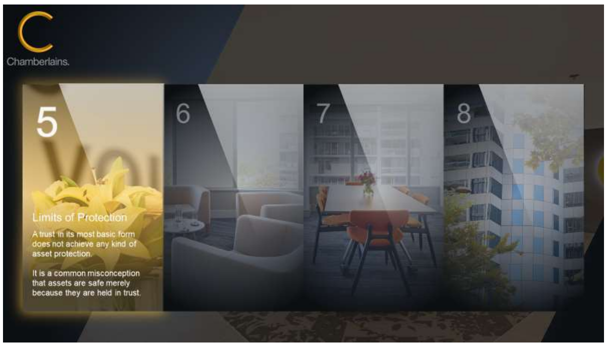
- Trustor- person who creates the trust, in this context the deceased.
- Appointor – wields the ultimate power to choose and appoint the Trustee.
- Trustee- person responsible for the administration of the trust and making distributions.
- Protector- wields power to grant or refuse the trustee permission to take certain actions.
- Beneficiary- individual or individuals for whose benefit a trust is created for.



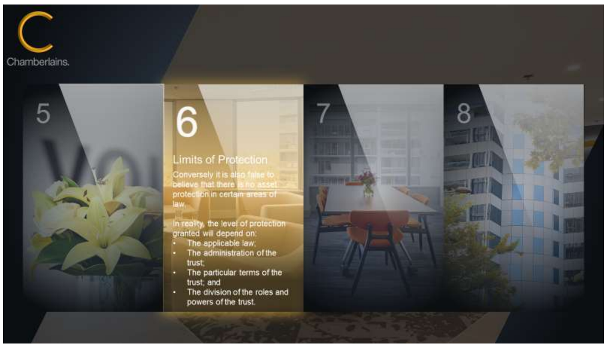
- Can offer significant tax advantages
- Offer various level of asset protection to beneficiaries to avoid losing or wasting the trust assets because of either:
  - ➢ The beneficiary's inability to manage the assets due to:
    - Youth;
    - Immaturity; or
    - Disability;
  - ➢ Or in personal crises such as:
    - Bankruptcy; or
    - Divorce.
- Different clients will place different values on these advantages depending on their objectives.



- Discretionary trusts provide such protection by separating ownership of the trust assets from the beneficiaries and giving it to the trustee.
- Beneficiaries have only a personal right to proper administration of the trust and to call upon the Trustee to deal appropriately with trust assets, but no actual property rights to said assets.
- The discretionary aspect in particular removes ownership rights and replaces them with powers to dispose of property.



- In its most basic form, a testamentary trust does not achieve any kind of asset protection, as the beneficiary has sufficient rights and entitlements to the assets. The trust needs to be discretionary to achieve the required separation of rights.
- It is a misconception to believe that merely because assets are held in trust that they will be safe. Certain characteristics of the trust may remove or limit protection in certain circumstances.



- It is also a misconception to believe that, in some areas of the law such as bankruptcy and family law, trusts will offer no asset protection.
- In reality, the level of protection granted will depend on:
  - The applicable law;
  - The administration of the trust;
  - The particular terms of the trust; and
  - The division of the roles and powers of the trust.

This is the first part of our Developments in Testamentary Trusts and Asset Protection Law series.

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