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Legal Bulletin

ASSET PROTECTION: PUTTING IN PLACE A STRATEGY

Clients often want to put asset protection strategies in place when it is already too late. Generally it is only when something goes wrong that people turn their minds to whether or not they have “firewalled” their assets. The bankruptcy laws are extensive and if you haven’t put protection mechanisms in place long before the trouble arises it is generally too late as trustees in bankruptcy or liquidators have extensive power to “claw back” or set aside recent transfers of wealth.

The reality is we live in an increasingly litigious society, and your assets are at risk. Insurers are in the business of making money and will always look closely at any professional indemnity, public risk and product liability insurance before a payment is made. It only takes one disgruntled patient or customer to destroy a lifetime of asset accumulation. Regardless of whether a claim has merit or not it will have to be defended and probably a payment will be made more out of commercial expediency than legal merit.

How can you protect your assets from the unwarranted attack and what are your options?

HOW CAN BUSINESS OWNERS PROTECT THEMSELVES?

Starting and running a business is a risky proposition involving planning, marketing, day-to-day management, and compliance with state and federal laws. Not to mention actually delivering products and services at a price people want and making a profit which justifies this effort.

We can help reduce the risk in this endeavour by reducing your exposure to risk.

ASSET PROTECTION AND PLANNING FOR YOUR BUSINESS

We have a set of proven strategies which if put in place before trouble arises will protect your investment of time stress and money.

We approach asset protection by examining the following areas:

PERSONAL STRATEGIES

We examine your business, identify the risk and review your current asset position. Your personal strategies focuses on effective protection of the wealth you have accumulated so it is not exposed to the risk associated with your business. In particular we examine how you would be exposed in a bankruptcy situation. This generally involves legally transferring and protecting assets, as well as avoiding creditors' challenges to these transfers.

YOUR BUSINESS STRUCTURE

We review the structure under which your business is operating and how it is funded. The right business structure and how it is funded will have can have a great impact on how secure your assets are. This will also ensue the correct structure is in place to legally minimize Income and Capital Gains Tax. The right business structure can go a long way toward protecting you. If your business is already established it still may be possible to restructure to protect you.

MANAGEMENT OF DAY-TO-DAY RISKS

We focus on avoiding trouble before it arises. There are many risks that are inherent in operating a business so it is inevitable that conflict will arise if you co own the business. One day you or a co owner will want to leave; how will that inevitable departure be handled? Most employees leave one day; how do you stop them using stolen customer data or starting their own business in competition to you? Although none of us wants to confront it one day we will die; are our assets protected from claims on the estate or going to unreliable children?

A comprehensive asset protection strategy is a complex topic that impacts on every aspect of business ownership, but the aim is simple legal protection of your accumulated wealth.

The starting point for developing an asset protection strategy is to answer the following questions:



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What are your current business structures?

- Sole practitioner?
- Partnership?
- Company? (Sole director?)

Are there legal restrictions on how your business can operate?

Is a written Business Succession Plan in place?

Do you have a Will?

Do you operate a self managed Superannuation Fund?

Is my property owned Joint tenancy or Tenants in Common?

To whom do you owe money?

ABOUT LORD COMMERCIAL LAWYERS

Lord Commercial Lawyers is Melbourne based commercial law firm. The firm is comprised of senior practitioners with extensive experience. We advise on a wide range of commercial business, migration, dispute resolution and personal law. Click here to download our corporate brochure or visit our website www.lordlaw.com.au where you will find more detail about all our areas of practice and recent publications.