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protection

Protecting your business equity and your assets has never been more important.

Protecting Your Hard Earned Assets, Equity and Business Value

Over the last 20 to 30 years, Australia has become and increasingly so, a more litigious society.

This is due in many ways to the rise of the plaintiff legal system, litigation funding and the increased prevalence of class action law suits. In the current environment, it is quite easy and inexpensive for a person to bring a claim against your business, irrespective of the legitimacy of the claim.

It is therefore imperative that as business owners, you protect as best as you possibly can, your personal assets and business equity that have been accumulated over time through diligent work and investment.

We often see new clients who are not structured properly or who have not thought outside their trading sphere and therefore have unnecessary risk exposure.

It can become too easy for some business proprietors to simply say, “It won’t happen to me.” Whilst business owners are always trying to conduct business with diligence, you never can be certain of the future. You may be faced with litigation (whether there is real case for action or not) next week, next year or it could be your next customer transaction.

One thing that is for certain is that you should be doing your utmost to protect your Assets. In some cases the Business is your retirement fund and therefore you are doing yourself and your family an injustice if you are not protecting it.

We thought we would step you through a few issues that we come across from time to time with our new clients. Some points can be easily resolved, which, when administered can provide a higher level of protection. Some other options involve a little more detail and investigation.

1. **Business Insurance** – it sounds simple, but in some cases clients are under insured and in other cases not correctly insured for what they do. The policies are just rolled over year after year with no consideration to their current trading activities. In some cases the client may not be covered, for all the work they undertake, and therefore exposed to litigation claims.

2. **Husband and Wife Director Companies** – the roles / duties of the directors are to run the business for the benefit of the shareholders. Directors have an active role in running the company and therefore there can be a real purpose for a person wanting to be a director but there is also risk. Directors can be personally liable to creditors where the company is insolvent and the company continues to trade. This personal liability also extends to employee entitlements. Consider the need to have both the husband and wife as directors. Having a sole director company may be more appropriate.

3. **Separate Assets from the Trading Entity** – do not hold assets in the trading entity. Commercial and residential property, shares and excess cash should not be held in the trading entity. If the trading entity is sued then the assets held by the entity are at risk. This can even extend to the Goodwill of the Business. If correctly structured, licensing the Goodwill to another trading entity can protect Goodwill. The entity holding the Goodwill is then a non-trading entity. Consider trust structures for holding assets in order for there to be no defeasible interest held by a particular person.

4. **The Family Home** – in some cases the home is 100% owned by the Director of the trading company i.e. the person who has assumed the business risk. It is prudent to consider transferring your share of the property to a non-risk spouse, dependent on stamp duty and potential capital gains tax issues.

5. **Wills and Testamentary Trusts** – some clients have been extremely diligent in protecting / transferring assets from their personal name only to then have assets transferred back to them upon the death of a spouse or family member. The use of testamentary trusts ensures that you do not have a defeasible interest in a particular asset.

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6. **Monies in Superannuation** – they say there are three certainties in life - death, taxes and changes in super. Whilst superannuation is like a dirty word to some, it can, when structured correctly provide you with an environment which is not subject to medicare levy nor deficit tax levy. Income is taxed at a flat rate of 15% and also the ability to later convert to pension phase which results in a zero income tax rate and no capital gains tax. Superannuation is also protected from being attacked by creditors.

7. **Personal Guarantees** – avoid them where you can or have only one person sign where assets are held jointly.

8. **Registering Interests on the Personal Properties Securities Register (PPSR)** – some clients have made every intention to secure a loan / an asset via agreements or documentation but then failed to register their interests on the PPSR. This then jeopardises their ranking as secured creditor.

For more information contact either Brendan Podevin or Cameron Wilson on 07 3360 9600 or visit hwone.com.au