Asset Protection

You have no doubt worked hard to accumulate your assets and build up your wealth over time. You want to make sure that all of your hard work does not come undone by ensuring that your assets are protected and the risk of them being lost or significantly eroded by third parties is minimised.

Your assets may be at risk due to your profession (such as those working in the medical profession where there is potential to be sued for professional negligence, for example). In some circumstances, your professional indemnity insurance may not be sufficient to satisfy any claim against you and your personal assets may be exposed.

You may also run a business where your personal assets are on the line should your business fall on hard financial times. You may also be at risk of bankruptcy for whatever reason. This means that your assets could potentially be exposed to the Trustee in bankruptcy and used to satisfy your creditors.

Estate First Lawyers have a number of strategies that we use in order to safeguard your wealth.

There is no “one size fits all approach” which means that not all of these strategies will be suitable for you. We will work closely with you to carefully select the combination of tactics depending on your particular situation.

Protecting your wealth now

Transfer of assets during your lifetime

You may wish to consider transferring assets out of the ‘at risk’ person’s name. For example, you may wish to transfer assets to a Family Trust or to a superannuation fund. Depending on the way in which the control of these entities is structured, the assets that they hold should be protected from any claim that may be made against the ‘at risk’ person’s assets. Estate First Lawyers can assist you with establishing these entities and can talk you through your options for structuring the control of these entities to ensure that they offer the best possible asset protection advantages.

You may also wish to consider transferring assets out of the ‘at risk’ person’s name to a ‘safe harbor' spouse (such as a spouse working in a relatively safe occupation and with no business or bankruptcy risk). This can be a very effective way of safeguarding the assets from any claim that may be made against the 'at risk' person's assets. Transferring assets during your lifetime may also trigger transfer duty and capital gains tax and it is important to seek professional advice in this regard.

Gift & loan back strategy

You may also wish to consider entering into a 'gift and loan back' strategy which involves gifting a sum of money to a Family Trust by way of a deed of gift and then having the Family Trust loan the money back to you (by way of a deed of loan). This process creates a loan owing by you to the Family Trust. The trust can call for the loan to be repaid at any time, (for example, in the event a claim is made against your personal assets). As set out above, the assets in the Family Trust should be protected from any such claim (depending on the manner in which the control of the Family Trust is structured).

Under the gift & loan back strategy, the legal ownership of the assets does not change, and therefore entering into this strategy does not trigger any capital gains tax or transfer duty liabilities.

As set out below, the arrangement must be entered into 4 and a half years or more from the date of bankruptcy for it to be an effective strategy to protect from this kind of threat.

A word of caution

It is important to note that under clawback provisions of the Bankruptcy Act, these arrangements (made without an intention to defraud creditors) must be made 4 and a half years or more from the date of bankruptcy (this period can be reduced in some circumstances) otherwise it can be 'clawed back' and considered as part of your assets to be distributed in the event that you do become bankrupt.

This means that for those of you where bankruptcy is a possibility, however remote, the time to act is now, before it is too late. This is one of the many areas of law where it pays to be prepared.

Binding Financial Agreements

Even for those of you who are in safe occupations and are not exposed to any business risk, have you thought about the impact that any separation or divorce may have on your hard-earned wealth? You may wish to consider entering into a Binding Financial Agreement with your spouse which sets out the agreed distribution of your assets if your relationship does break down. It is best to consider this document at the outset of the relationship and to renew it on significant events occurring, such as the birth of children, for example.

Protecting your wealth after your death

What about ensuring that your hard-earned wealth safely passes to your intended beneficiaries once you pass away? Too many inheritances are eroded or never get to the people who you actually intend to benefit due to certain estate claims that may arise or unnecessary taxes that could have been avoided by careful planning. Estate First Lawyers have a range of available strategies to ensure that your assets pass to the people that you intend with as minimal complications as possible.

We can also advise you on asset protection vehicles for your beneficiaries to hold their inheritance in, so that the risk of loss in their hands is also minimised from any risks they themselves may be exposed to as they move through their life. For example, the use of **testamentary trusts** is a great way to protect your inheritance from going "L" shaped at the next generation (that is to in-laws or third parties when your intended beneficiary subsequently passes away).

Other measures, such as joint tenancies, binding nominations (for your superannuation entitlements) and **inheritance agreements** can be very useful to ensure that your assets pass to your desired beneficiaries while protecting them from any claim against your estate (such as by an estranged child or new spouse, for example). These types of claims against your estate are commonly referred to as a Family Provision Application.

See our fact sheet on '**Avoiding the L-shaped inheritance**®' for an in-depth look at these available strategies, and more.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us at **info@estatefirst.com.au.**