ASSET PROTECTION OVERVIEW

Whether you run a business or have personal assets. In this short White Paper, we outline some definitions and some processes to follow:

Is Insurance Enough?

Insurance is a vital ingredient of asset protection as a safeguard for circumstances where a person may suffer financial loss. However, many insurance policies may be inadequate to provide individuals exposed to trading and professional risk with adequate protection.

While vital to seek coverage from the appropriate policy, insurance policies generally preclude cover where a person has done something outside the scope or in contravention of the insurance policy. If this is the case, you may be liable to find funds above what an insurance policy will provide, or in total if the policy is found to not apply.

Seeking specialist insurance advice is important.

Why Consider Asset Protection?

When contemplating a property, business or other asset acquisition, asset protection must be an important consideration.

All people should adopt a plan for a worst-case scenario. Many self-employed people and those in positions of responsibility are conscious that their personal assets are highly exposed. Once there is a threat to assets, often it is too late to protect them. Protecting assets also includes determining the most appropriate structure to hold your assets.

Protecting Assets

When purchasing an asset such as a business or property it is vital to:

- ✓ Ensure that capital injections into an asset purchase, generally in the form of loans, are secured over the assets of the business venture or the property.
- ✓ Determine the most appropriate structure to hold the asset in conjunction with lawyers and accountants. Holding an asset in your own name, in the name of a partnership, trust or company are common.
- ✓ Wherever possible ensure personal and business assets are not at risk from creditors.
- ✓ Where possible avoid spouse/personal/director guarantees, which expose personal assets.
- ✓ Ensure the above measures are relevantly documented.

Make sure you communicate and outline the ownership structure of any assets or income insured to your insurance broker.

The Family Home - Transfer to Spouse Less at Risk

A common asset protection strategy when in a stable long-term relationship is for the partner of the person exposed to risk holding all assets in their name. This is only effective where the spouse holding the assets is not exposed to any risk themselves.   The insurance process will generally support this structure.

Discretionary or Family Trusts

Trusts, where property is held by a trustee for the benefit of others (i.e. beneficiary(ies)), can be effective entities to hold and protect assets, including property.

Generally, a beneficiary of a discretionary trust does not have any right to the assets of the trust until the Trustee exercises their discretion to distribute the income or capital of the trust to a beneficiary stipulated in the Trust Deed. Accordingly, the property and other assets of the trust are not usually exposed to creditors.

If a trust is established for asset protection, it should not generally operate a business or engage in any other trading or risk related activity.

Capital Gains Tax ("CGT") Implications of Transferring Property or Other Assets to a Partner

Generally, this will apply, however you can ignore a capital gain or capital loss made from a CGT event relating to a dwelling that was your principal place of residence.

Again, insurance structures will generally support these types of arrangements.

Conclusion - Aspects of asset protection and taxation must be considered when purchasing any asset such as a property or business. Further, asset protection and insurance policies should be reviewed regularly.

DISCLAIMER: This White Paper is provided as a broad overview and should not be relied upon as a substitute for legal or insurance advice.

If you require further advice in relation to the above or business generally, please contact us.

More Information?

E: insurance@mcpinsurance.com.au
P: (03) 9620 2001
W: www.mcpinsurance.com.au