

I LOVE REAL ESTATE PROFESSIONAL SERIES

THE SMSF & ADVANCED STRUCTURE ONLINE TRAINING EVENT 2021



*How Smart, Savvy Real Estate Investors Use SMSF And
Advanced Asset Protection And Structure Techniques
To Maximise Their Portfolios*



THE SMSF & ADVANCED STRUCTURE ONLINE TRAINING EVENT 2021

9.00am – 10.30am	How savvy investors use SMSF to maximise their portfolios
10.30am – 11.00am	Break
11.00am – 12.30pm	How to use Advanced SMSF Strategies to maximise your wealth
12.30pm – 1.30pm	Break
1.30pm – 3.30pm	How to use Structures to keep and protect all the wealth you've created
3.30pm – 4.00pm	Break
4.00pm – 5.30pm	Advanced Structures to help you pass on your wealth and reduce it's tax costs

SESSION 1
SELF-MANAGED SUPERANNUATION
HOW SAVVY INVESTORS
USE SMSF TO MAXIMISE
THEIR PORTFOLIOS
– CLINT DUCAT

THE SMSF & ADVANCED STRUCTURE ONLINE TRAINING EVENT

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Clint Ducat
SMSF Strategist & Advisor
Managing Director of the WIZDOM Group

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The notes and material discussed in this presentation are based on the Australian superannuation and taxation law and are provided on the understanding that they are for educational purposes only. WIZDOM, its associated entities, employees and advisors exclude all liability relating to relying on the information contained within. Whilst every care has been taken in their presentation taxation and superannuation rules are continually changing and ongoing review of the laws is recommended.

General Advice Warning

Any information or advice provided during this event is general in nature and does not take into account the particular objectives, financial situation or needs of any person. The material and opinions of the presenter should not be relied upon as your personal circumstances have not been taken into account. We recommended you seek further professional and personal advice from an appropriately qualified adviser.

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Self-Managed Superannuation



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Thinking of setting up a SMSF?

- Have you got enough?
- What options do you have if you haven't got enough?
- What will be the time commitment?
- Do you have adequate experience/knowledge?
- What's the process?
- How long does it take?
- Individual verses Corporate Trustee
- How much does it cost to both set up and to operate?

Note - Always seek specialist advice before setting up a SMSF





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+ Advantages



Greater control



Wide investment choice



Estate planning flexibility


Can borrow to invest (gearing) subject to limits

- Drawbacks



Significant trustee and compliance obligations


Time/costs of administration

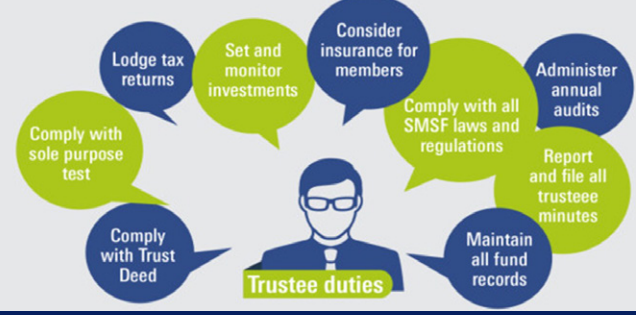

Investment management


\$400,000 - \$500,000

Generally require at least this amount to be cost effective


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WHAT ARE TRUSTEES RESPONSIBLE FOR?





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SMSF Set up Process

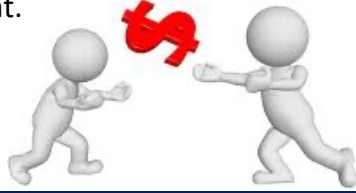
- Advice (Personal Statement of Advice)
- Set up Corporate trustee (Special Purpose Company)
- Set up the Self Managed Superannuation Fund
- Apply for the ABN and TFN for the SMSF
- Sign Trustee Declaration with 21 days of becoming a Trustee
- Create the funds written investment strategy
- Set up funds main operating bank account
- Completion of full or partial rollovers from existing funds (Ensure no loss of insurances)
- Replace Life/TPD Insurance if appropriate
- Purchase investments in line with investment strategy




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Sole Purpose Test

It is to ensure that SMSF's are maintained for the purpose of providing benefits to members upon their retirement, or their dependents in the case of a member's death before retirement.



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What can a SMSF invest in?

SMSFs have wider investment choices than other funds including:

- Cash, term deposits, fixed interest securities
- Direct shares (Australian and International)
- Direct property (Residential and Commercial)
- Listed and unlisted property trusts
- Managed discretionary accounts
- Unlisted Companies
- Mortgage Funds



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What can a SMSF invest in?

SMSFs have wider investment choices than other funds including:

- Exchange Traded Funds and Listed Investment Companies
- Managed Funds
- Government or corporate bonds
- Precious Metals / Commodities
- Derivatives
- Artwork
- Collectibles



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Appetite for risk

- All investment carries risk and can suffer losses
- Risk versus Return trade-off
- What is your Risk Profile? are you a;
 - Conservative Investor
 - Moderate Investor
 - Balanced Investor
 - Growth Investor
 - Aggressive Investor



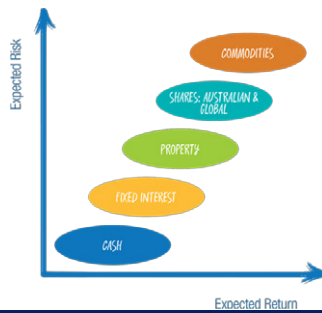
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Asset Allocation/Diversification

What % of the following asset classes would you be comfortable with?

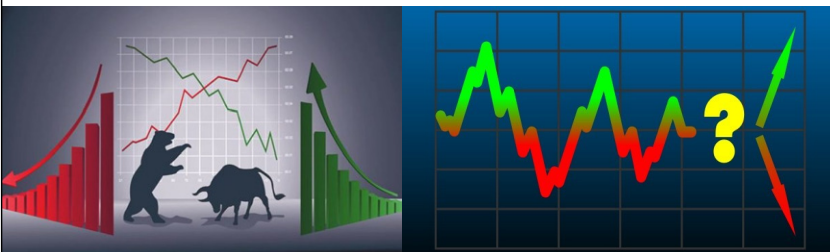
- Cash
- Fixed Interest
- Property
- Australian Shares
- International Shares
- Other? Mortgage Funds?



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We can't control the market?

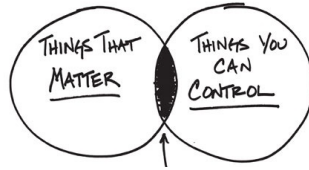


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Focus on what you can actually control:

- Strategy
- Ownership structure
- Tax/Cost
- Asset allocation/managing risk
- When we buy and when to sell (time in the market)
- Financial education and communication with your professional team as it drives better decisions



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Tax in Super



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Accumulation Account

Contributions Tax

- 15% < \$249,999 total income
- 30% > \$250,000 total income

Income Tax

- 15% on investment earnings

Capital Gains (>12mths)

- 10% effectively (15% but only 2/3 assessable)



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Pension Account

Limited by Transfer Balance Cap (between \$1.6m - \$1.7m)

Income

- Income in the Pension Account is Tax Free

Capital Gains (>12mths)

- Capital Gains on sale of assets in Pension Phase are Tax Free



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Accumulation verses Pension Phase

Member 1	Member 2	Member 3
Accumulation \$250,000	Accumulation	Accumulation \$50,000
Pension	Pension \$300,000	Pension \$450,000

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Total Superannuation Balance (TSB)

Your total superannuation balance is relevant for determining your eligibility for:

- Unused concessional contributions cap - carry-forward
- Non-concessional contributions cap & eligibility for the 2yr bring forward rule
- Government co-contributions
- The tax offset for spousal contributions

Total superannuation balance is generally calculated on the 30th June each year and is calculated as the sum of all your accumulation and pension account values.

This includes a defined benefit income stream at its commencement value.

Limited Recourse Borrowing Arrangements entered into after 1st July 2018 are also added to your TSB.

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SMSF and Land Tax

Complying SMSF's are entitled to a land tax threshold in the relevant state.

State	Land Tax Free Threshold for 20/21
New South Wales	\$734,000
Victoria	\$250,000
Queensland	\$349,999
Western Australia	\$300,000
South Australia	\$450,000
Tasmania	\$24,999
Northern Territory	No Land Tax Payable
ACT	No Threshold

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INVESTING IN PROPERTY THROUGH SMSF



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Why invest in property through a SMSF?

- Increased transparency and control
- Concessional tax rates range from 0% to 15%
- Concessional superannuation contributions
- An SMSF can purchase your business premises
- Strong asset protection
- Investment income and capital gain may be tax-free in pension phase
- Contribution can be consolidated balances of up to 4 members

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What type of property is best for your SMSF?

Dependent on your timeframe and goals to hold or liquidate in retirement.

- Age 20-40
- Age 40-50
- Age 50-60
- Age 60 and over



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What ways can a SMSF invest in property?

Direct

- Buy outright
- Limited Recourse Borrowing Arrangement (LRBA)

In-Direct

- Listed Property Trusts (A-REIT's)
- Unlisted Property Trusts
- Ungeared Unit Trust 13.22 (Related Party)
- Geared Unit Trust (Unrelated Parties)



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SMSF and Asset Protection

An SMSF is subject to the same risks from its assets as any other structure. If the asset is the source of the risk, other assets are at risk.

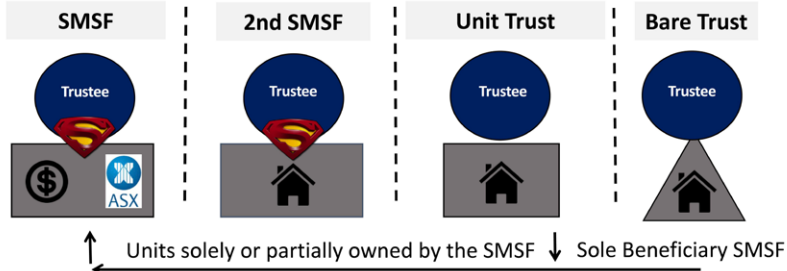


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SMSF and Asset Protection

Separate legal entities can be used to quarantine assets.
This will result in additional set up and admin costs.



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Buy outright

Ownership options:

1. Tenants in Common (not very common)
2. Directly on Title;
 - ✓ Think about the trustee structure, Trustee ATF Super Fund.
 - ✓ May consider a standalone Fund or using a 13.22c Unit Trust.



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Limited Recourse Borrowing Arrangement (LRBA)

Generally SMSF's trustees are prohibited from borrowing money, one exception is Section 67A (SIS Act);

- ✓ Must be Limited Recourse
- ✓ Must be held on trust (special holding trust)
- ✓ Must be a single acquirable asset
- ✓ Rights of the lender or any other person is limited to the single acquirable asset



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The Devil is in the detail!

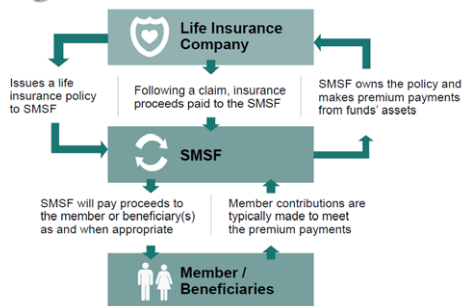


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Mitigating Risk with Personal Insurance

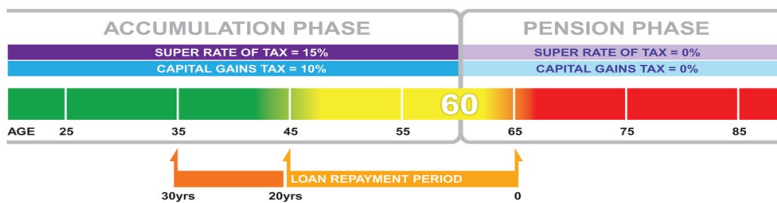


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Reducing Leverage by Retirement



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SESSION 2

**ADVANCED SELF-MANAGED
SUPERANNUATION**

**HOW TO USE ADVANCED
SMSF STRATEGIES TO
MAXIMISE YOUR WEALTH
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2 MAIN TYPES OF SUPER

CONCESSIONAL
(Before Tax)

NON-CONCESSIONAL
(After Tax)

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Concessional Contributions

Employer contributions (including salary sacrifice)
Personal contributions claimed as a deduction if Self Employed

- Annual General Cap - \$25,000 for all ages
- Beginning 1st July 2018 introduction of 'Catch-up' Concessional Contributions (rolling basis for 5 years for those with balances < \$500,000)

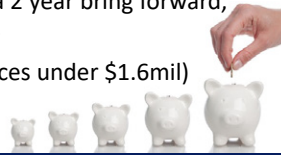
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Non-Concessional Contributions (NCC)

Personal contributions where no tax deduction is claimed for (including lump sum cash contributions, in specie asset contributions)

- If more than 1 Fund, all amounts added together and counted towards non concessional cap
- Annual cap is \$100,000 per member with a 2 year bring forward, therefore \$300,000 at any one point in time
- NCC only available to members with balances under \$1.6mil)



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Who can contribute? (Current Rules)

Members age at time of contribution	Personal member contribution (Concessional or NCC)	Mandated employer contributions (SG)	Voluntary employer contributions (Salary Sacrifice etc)
Under age 67	Permitted	Permitted	Permitted
67-70	Permitted (subject to work test)	Permitted	Permitted (*subject to work test)
70-75	Permitted (subject to work test)	Permitted	Permitted (*subject to work test)
75 and over	Not permitted	Permitted	Not permitted

*To meet the work test you need to work over 40hrs within 30 days

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Who can contribute?

From 1st July 2020, members aged 65 and 66 are able to make voluntary superannuation contributions, both concessional and non-concessional, without meeting the Work Test.

The proposal to extend access to the bring-forward arrangements was passed, which also allows those 65 and 66 to make three years' worth of non-concessional contributions (\$330,000) to their super this financial year.

You are no longer eligible to make non-concessional contributions once your total superannuation balance is equal to the transfer balance cap.

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Budget 2021 proposed changes

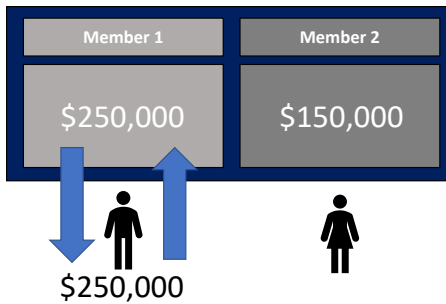
- Removal of super contribution 'work test' for those aged between 67 and 74
- Lower the age threshold from 65 to age 60 for 'Downsizer Contributions'
- Removal of the \$45 monthly income threshold
- Higher withdrawal limit for the First Home Super Saver Scheme. Under the proposed changes, voluntary contributions into a super fund will be allowed by a post-tax contribution or through salary sacrificing, up to a maximum of \$50,000 in total. For couples, both individuals will be able to utilise their caps up to a maximum of \$100,000.

Proposed start date of 1 July 2022



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Re-Contribution Strategy



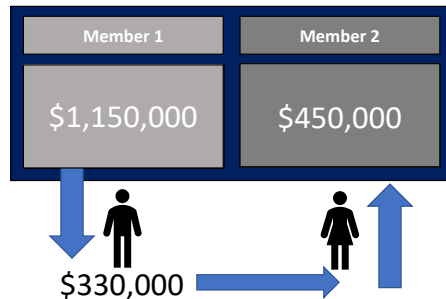
Used to convert taxable component to non-taxable component (potentially significant tax savings to adult beneficiaries).

Must meet a full condition of release



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Spousal Re-Contribution Strategy



Also used to rebalance superannuation balances between spouses



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Downsizing contributions into super

- From 1st July 2018, if you are 65 years old or older and meet the eligibility requirements, you may be able to choose to make a downsizer contribution into your superannuation of up to \$300,000 from the proceeds of selling your home.
- The downsizer contribution is not a non-concessional contribution.
- It can also still be made if the member's total super balance is already greater than the transfer balance cap (\$1.6m).
- Must be from proceeds of the sale of your PPR (that you have owned for 10yrs or more) and made within 90 days of receiving the proceeds.

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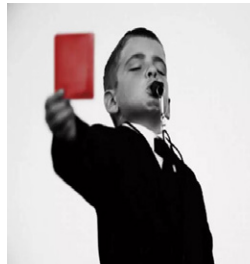
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Excess Contributions

Excess - Concessional

- Any excess now included in assessable income, taxed at marginal tax rates plus an excess contributions charge
- If left excess will count towards your non concessional cap
- Can release 85% of the excess, with 15% tax offset



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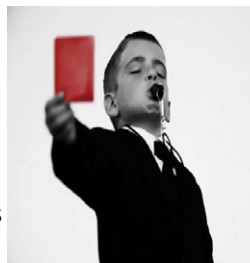
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Excess Contributions

Excess - Non-Concessional

- Can elect to release, with no financial penalty
- Earnings linked to the excess until refunded included in individual's assessable income
- If left in the fund, then excess contributions will be taxed at the highest marginal tax rate plus Medicare levy (47%)



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Are there any other ways to get money into superannuation?

Sale of a Small Business Active Asset CGT Exemptions

- Retirement exemption – Lifetime Limit \$500,000
- 15-year asset exemption - \$1,515,000 (2021 FY)

What is a Small Business Active Asset?

This can either be proceeds from the sale of the business itself or a commercial property used in the business.

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In-Specie Contribution

In-specie contributions are contributions to your fund in the form of an asset other than money.

Generally you must not intentionally acquire assets from related parties of your fund (including in specie contributions).

There are some significant exceptions

to this rule, including:

- listed shares and securities
- business real property



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Business Real Property

What does business real property mean?

The definition of BRP for superannuation purposes includes any freehold or leasehold interest in real property where the property is used wholly and exclusively in one or more businesses.



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Business Real property In-Specie Contribution

An in-specie contribution changes the legal ownership of the asset from the individual contributing to the SMSF.

Therefore in the case of Business Real Property, you may have stamp duty payable by the Fund depending on the asset (and state that you are in) and capital gains tax may be payable by the contributor (as this is a disposal of the asset for CGT purposes).

State	Section of the State Duties Act	Details
NSW	Section 62A	\$500 concessional flat rate
VIC	Section 41	Exemption
WA	Section 122	Nominal duty of \$20
QLD	Stamp Duties Act 2001 (QLD)	No exemption
SA	Stamp Duties Act 1923 (SA)	No exemption

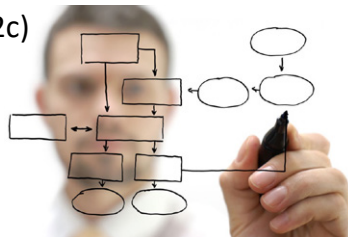
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Using Unit Trusts to structure property ownership

- Related Party Unit Trust (13.22c)
 - *Ungeared
- Unrelated Party Unit Trust
 - *Geared



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SMSFs and Property Development

Can an SMSF undertake a property development project?

There is no specific prohibition on a SMSF conducting a business, but the activities of the project may involve a breach of SISA (Superannuation Investments Supervision Act) requirements.

In conducting the project, the SMSF must:

- Comply with the **sole purpose test**
- Enter **arms length dealings**
- Comply with the SMSF's **investment strategy and trust deed**



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Related Party (Ung geared) Regulated 13.22c Unit Trust

An SMSF can acquire units in an ungeared unit trust to acquire direct property.

- ✓ Can include other unit holders (including related parties)
- ✓ Can acquire Commercial or Residential Property
- ✓ Can manufacture growth:
 - Renovation | Subdivision | Construction

Needs to adhere to the strict requirements outlined in SISR 13.22C

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SISR 13.22c Key Requirements

- ✓ Fund must have < 5 Members; and
- ✓ Asset cannot be leased to a related party unless business real property (BRP); and
- ✓ If BRP, then lease agreement must be legally binding with a related party; and
- ✓ The Units can be transferred across to the SMSF over time, even if it holds residential property (must be at market rate)
- ✗ **CAN NOT** Borrow (watch out for accidental borrowings)
- ✗ **CAN NOT** invest in another entity including purchasing shares
- ✗ **CAN NOT** loan to another entity, unless it's a deposit with an ADI

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SMSF's and Property Development using a Unrelated Party Unit Trust



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Unrelated Party (Geared) Unit Trust

- This is where no member or related parties control the trust
 - - i.e. own > 50% of the Units
- Can have more than 2 parties and can comprise of SMSF, Company, Discretionary Trust and Individual ownership
- Generally treated as a normal Unit Trust for borrowing but you must be dealing at a Commercial Level
- Considerations
 - Make sure your funds trust deed/investment strategy allow it
 - All unit subscriptions must always be at market value

Unrelated Party (Geared) Unit Trust

To make it very clear, the unit trust will be unrelated if the fund trustee and its associates do not:

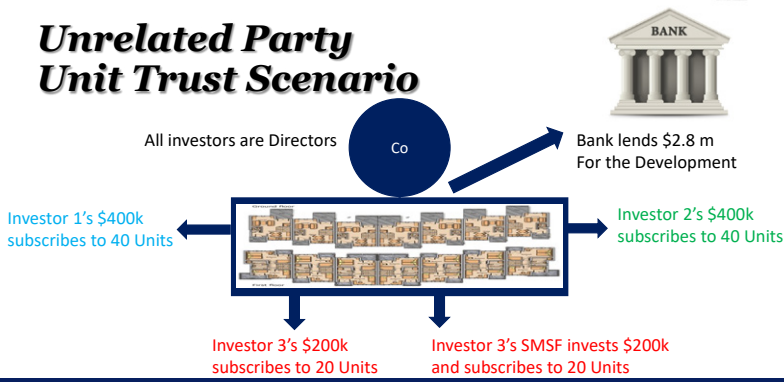
- exercise Sufficient Influence; or
- have a fixed entitlement to **more than** 50% of the income and capital of the unit trust; or
- have the power to remove or appoint the trustee for the unit trust (Chairperson not able to have a casting vote)
- So each SMSF or related group of investors can own up to 50% in combination between them and still maintain an unrelated trust and meet the above requirements.

Unrelated Party Unit Trust Scenario

3 unrelated investors/business partners are coming together to complete a development of 10 Townhouses and need \$1.2 mil of funds and a \$2.8 mil in development finance to complete the project.

- Investor 1 has \$400k in his family trust
- Investor 2 has borrowed \$400k from equity
- Investor 3 has \$200k cash and a \$500k SMSF

Unrelated Party Unit Trust Scenario



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SMSF Annual Compliance

As a trustee you have a number of administrative obligations. Including, but not limited to:

- Appoint an SMSF auditor
- Value the funds assets annually
- Lodge SMSF annual returns
- Accounting records and minutes
- Notify the ATO of changes



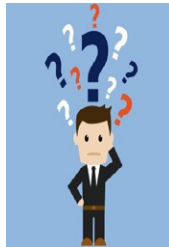
NOTE: ATO take activities in a SMSF VERY seriously and actively monitor for breaches

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Existing SMSF's Housekeeping

- Are your reporting requirements up to date?
- When was your **SMSF's Trust Deed** last updated? Does it take into account all the recent super reforms?
- Have you got a **Special Purpose Trustee Company** acting as Trustee?
- Is your **Investment Strategy** current? Does it need updating?
- Have you got a valid **Death Benefit Nomination**?



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Common Contraventions

The ATO actively monitors SMSFs and takes breaches seriously. Examples of activity they often find includes, but is not limited to:

- Providing benefits to members prior to meeting a condition of release
- Related party transactions entered into on non-commercial terms
- Limited recourse borrowing arrangements that are not structured correctly
- Funds not paying minimum pension payment
- Timely lodgement of SMSF annual returns

ATO's Regulatory Powers

- Rectification directions
- Education directions
- Administrative penalties will be imposed for specific contraventions - \$1200 to \$12,600



ATO's power to apply fines

Some examples of penalties include:

- failure to properly prepare financial statements \$2,100
- failure to keep SMSF money separate \$4,200
- provision of loan to member or relative of members \$12,600
- failure to keep proper trustee minutes and records \$2,100
- Contravention of the in-house asset rules \$12,600

* The trustees or directors of corporate trustees will be personally liable for the above penalties

Trustee Responsibilities

SMSF Trustee Education

We encourage new and existing Trustee's about SMSFs and the environment they operate in. The Self-Managed Superannuation Fund Trustee Education Program, is a free program designed to educate trustees of SMSFs to understand their role and responsibilities.

<http://www.smsftrustee.com/cpa/htm/home.asp>



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Retirement and Pensions



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When can you get access to your superannuation?

Must meet a Condition of release.

Common ones include:

- Reach 65
- Transition to Retirement Income Stream
- Retirement once reached Preservation Age
- Death



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Minimum Pension Payments

Once a pension has begun, the minimum percentage must be taken otherwise the SMSF will lose its concessional tax status and will be taxed at 45%



Age	Minimum Pension (% of account balance)
Under 65	4%
65 – 74	5%
75 – 79	6%
80 - 84	7%
85 – 89	9%
90 – 94	11%
Over 95	14%

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Tax on 'Income Stream' withdrawals

- If retired under 60 (and of preservation age), tax-free component is tax free
- Transition to Retirement Income Stream (TRIS)
 - under age 60 taxed at Individuals Tax Rate
 - after 60, tax free
- Income from Superannuation assets supporting a TRIS are taxed at the 15% Accumulation tax rate.

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Tax on 'Lump Sum' withdrawals

- Tax free if fully retired after preservation age
- Tax free after 65
- Tax free on death, if paid to a financial dependent
- Tax free component always tax free
- Members with account balances above \$1.6m may pay some CGT on sale of capital assets

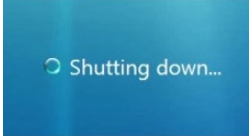
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Winding up your SMSF

- Complete any requirement that the deed specifies about winding up the fund
- Assets will need to be sold or transferred
- Cash either rolled over to a complying superannuation fund or paid to the member if they meet a condition of release (leave sufficient amount to pay final tax or expenses if required)
- Appoint an SMSF auditor to complete the final audit
- Final Tax Return Lodged with the ATO (with wind up details)
- Close Bank Account
- Deregister Trustee Company





SESSIONS 3 & 4

**ADVANCED STRUCTURING, TRUSTS,
ASSET PROTECTION & LEGAL STRUCTURES**


**HOW TO USE STRUCTURES
TO KEEP AND PROTECT
ALL THE WEALTH
YOU'VE CREATED**

– DEREK SKY

THE SMSF & ADVANCED STRUCTURE ONLINE TRAINING EVENT



I LOVE REAL ESTATE **WIZDOM** Accounts | Finance Strategists | Advisors **PACIFIC LAW** **Knowledge Source**




Derek Sky and Hilary Somerville


The information provided is of a general nature only. This is not intended to be a substitute for legal advice. You should take legal and accounting advice specific to your situation before undertaking any investment decisions based on this presentation.

What is Asset Protection ?


Asset protection is the separation of assets from risk.

Assets





Risks



PACIFIC LAW

Life Without Asset Protection

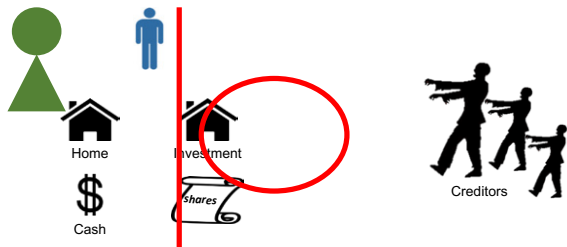
All of your assets are exposed to your personal risks.
If you face liability, your assets may be lost.



PACIFIC LAW

Life With Asset Protection

All of your assets are still exposed to your personal risks.
However, assets held in structures are protected.



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Asset Protection – Why Bother ?

Asset protection is something that should concern everyone.
Some examples are relatively rare...



**Sydney Surgeon Wins \$450,000
for Online Defamation**
Online reviews lead to significant damages award.

Road Rage Incident Leads
to Liability for Victim

Tenant sues over electric
shock from light fitting
The 50 year old suffered an electric
shock after touching an exposed wire he
had asked to be repaired.

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Common Risks – Business Risk

If a business fails, the business owner will be at risk from:

- lenders (the business overdraft or equipment finance);
- clients who have not had their products or services delivered;
- the landlord of the business premises;
- suppliers of trading stock or materials;
- business partners;
- employees for unpaid wages or superannuation;
- the ATO for unpaid taxes and super guarantees.

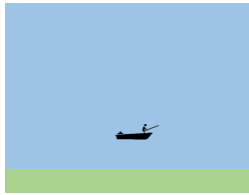


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Common Risks – Loss of Value

Investments may fail.

If an investment loses value, that can impact on other assets you own.



If a flood, for example, causes the value of a property to drop, you may not have sufficient equity in the property to pay out a loan.

If the loan must be repaid, other assets of yours will be used by the bank to meet the debt.

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Who Needs to Protect their Assets ?

Everyone should consider asset protection.

More than 27,000 personal insolvencies in Australia in 2018-19.

Consider your risks:

- business
- investments
- hobbies
- spouse
- family



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The Asset Protection Tools

Separation of assets from risks:

- trust and company structures.

Minimising risk:

- insurance for professional risk;
- good practices, such as a safety checklist; and
- document for business relationships:
 - shareholders agreement;
 - joint venture agreement;
 - buy / sell agreement.



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What are Structures ?

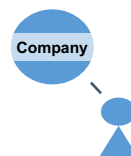
Asset protection structures might be called 'structures', 'entities', 'vehicles'.
They are separate legal entities.



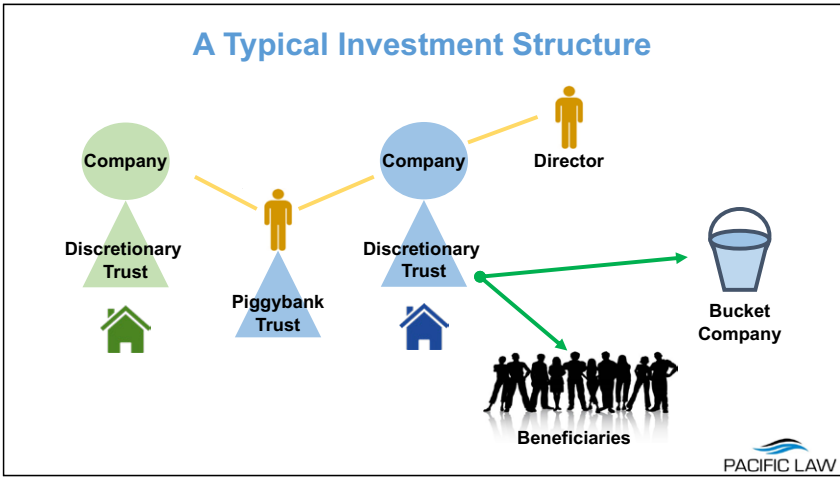
PACIFIC LAW

Types of Structures

- Companies
- Trusts, which include...
 - Discretionary trusts
 - Unit trusts
 - Hybrid trusts
 - Bare trusts
 - SMSFs



PACIFIC LAW



The Piggybank Trust

A discretionary trust with limited risk.

- No borrowing
- No property
- No businesses or vehicles
- No contracts

Safe to hold:

- Private shares
- Listed shares/managed funds
- Cash

The icon shows a blue person labeled 'Personal trustee' with a red arrow pointing to a blue triangle containing a piggybank icon. The Pacific Law logo is in the bottom right corner.

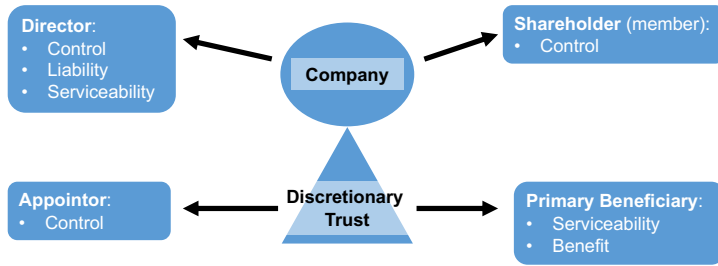
Who is Involved in a Structure ?

The roles in a structure are critically important. The choice of person will affect:

- Serviceability
- Control
- Succession planning
- Who can receive income

The icon shows a row of many hands of various skin tones raised in the air. The Pacific Law logo is in the bottom right corner.

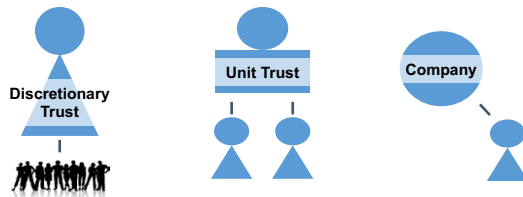
What do the Roles Involve ?



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Types of Structures

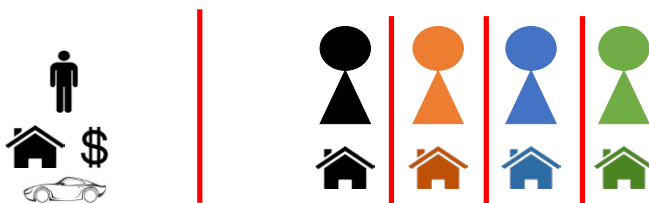
- Companies
- Trusts, which include...
 - Discretionary trusts
 - Unit trusts
 - Hybrid trusts
 - Bare trusts
 - SMSFs



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Asset Protection Through Structuring

Structuring works because there is a legal difference between you and your structures.
 The assets and liabilities of your structures are separated from you.
 The structures are also separated from one another.



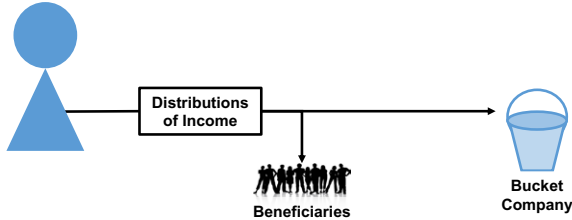
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Other Benefits of Structures – Tax Planning

Asset protection structures also provide tax planning advantages.

Discretionary distributions can be made to beneficiaries with lower tax rates.

Corporate beneficiaries (bucket companies) can allow access to the company tax rate.



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Other Benefits of Structures – Succession Planning

Asset protection structures may make succession planning simpler.

You can leave control of structures to certain beneficiaries.

Asset protection structures may protect your estate from a claim or the impact of a claim. (Except in NSW.)

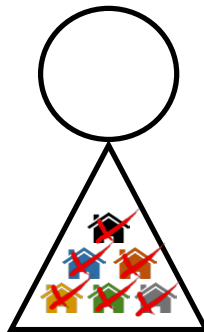
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Limits on Structures – Risk Within the Structure

The assets owned by a structure are all vulnerable to that structure's risks.

Consider the risks within the structure.

Assets within one structure should be limited.



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Limits on Structures – Your Roles of Risk

Directors of companies can be held liable.

Biggest risk for the director of the corporate trustee of an investment trust is guaranteeing borrowings from a bank.

A personal guarantee allows a bank access to the director's personal assets to pay the structure's debts.



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Limits on Structures – Tax Planning Limits

Structures may not be useful for negative gearing.

If you have a tax strategy which requires offsetting personal income with losses, a structure may not assist.

Discretionary trusts cannot distribute losses.

Take accounting advice.



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When to Consider Asset Protection

The best time to consider asset protection is right now.

There are important events to re-consider your asset protection:

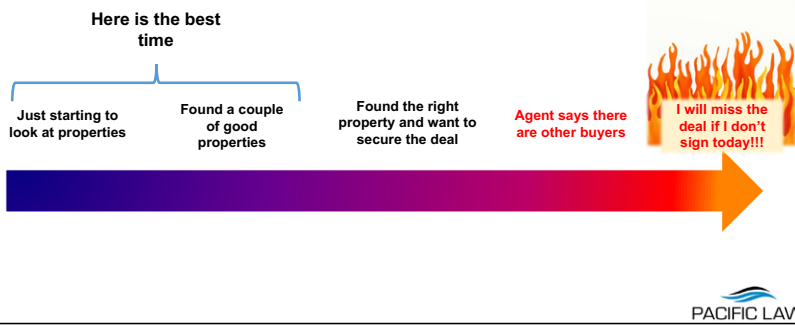
- receiving a lump sum of money (inheritance, sale of an asset)
- when you are acquiring an asset (property, business or your home)



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When to Establish a Structure

Get market ready when you are ready to go to market.



How Long Does it Take to Establish Structures ?

It depends upon the type of structure.

A good timeframe is 1 – 2 weeks.

Structures can be established urgently.



In States with nominee provisions, you may have more time.

Take advice from your lawyer or conveyancer on the process.

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What if You Have Already Signed a Contract ?

In States with nominee provisions, you may be able to set up the trust after contract and nominate the trust as the buyer.

Take advice from your lawyer or conveyancer on the process.

In the other States, it may be too late.

You may be able to rescind the contract and enter a new one.

Beware double stamp duty!

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How is a Structure Established ?

You should establish structures with professional assistance.

You require legal and accounting advice.

It is not 'one size fits all'.



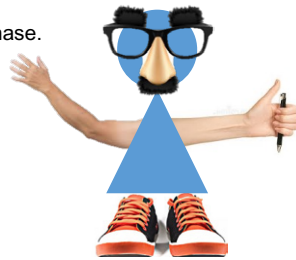
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Running Your Structure

The structure is a separate entity.

The structure applies for finance.

The structure signs the contract for purchase.



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Structures Must be Run as a Separate Entity

You must run your structure as a separate entity.

Decisions should be reflected in Minutes.



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You Have Your Structure, Now What ?

The next steps might be:

- deciding upon the right investment strategy
- finding the right investment property
- applying for finance
- contributing funds required for the investment



Contributing Funds to a Trust

You have your investment structure, now what?
Where does a trust get money to purchase property?



Gift or a Loan ?

Is the interest tax deductible?
Where is the equity held?

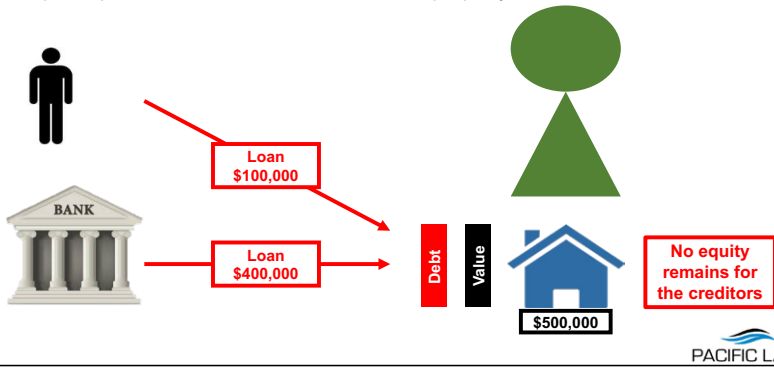
Depends upon the source of the funds.

Interest on a loan is tax deductible.
Interest on a gift is not tax deductible.



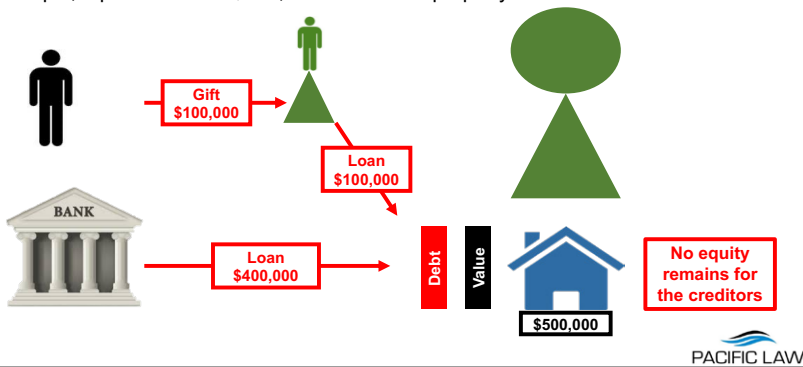
Loaning Funds to a Trust

Example, a purchase of a \$500,000 investment property.



Gifting Funds to a Trust

Example, a purchase of a \$500,000 investment property.



The Terms of a Loan

The loan from you to your investment trust:

- should be in writing
- should specify the terms (interest rate, repayment date)
- can include interest (eg the same rate as the source of funds)

Evidence is required for:

- ATO, State Revenue
- Creditors

Details are required for your accounting records.

Protecting Existing Assets

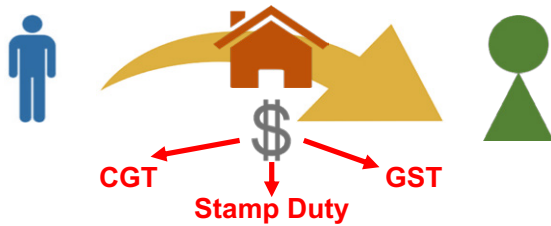
If you are already in a position where you hold assets and you are concerned about risk, there are steps which can be taken.



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Asset Protection by Transferring Assets

Transfer of assets can move the asset away from risk.
However, the cost of the transfer is likely to be high.
A transfer of a fixed asset **may** attract capital gains tax, stamp duty and GST.



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Protection of Equity in Existing Assets

A **Gift and Loan Back** arrangement is used to protect the equity in existing assets.

The arrangement involves a gift of funds to the piggybank trust and then borrowing those funds back again.

This works in two ways:

1. it reduces equity exposed to your risks; and
2. allows for security to be registered over existing assets.

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Gift and Loan – Example 1

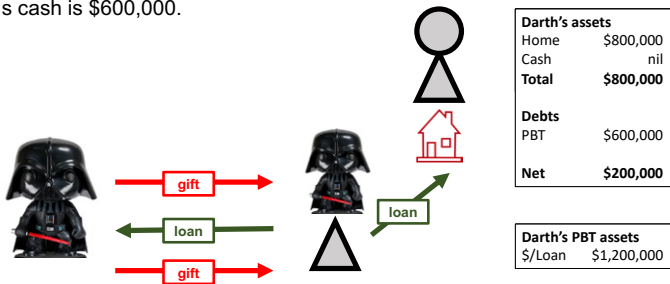
This is Darth.
 He has a property he recently acquired.
 He has saved some cash, too.
 He has no debts



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Gift and Loan – Example 1

Darth's home is worth \$800,000
 His cash is \$600,000.



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Gift and Loan – Example 2

This is Luke.
 He has a home he inherited, which has debt.
 He has a valuable vehicle.
 He also has gold.



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Asset Protection for a New Home

Your home will generally be held personally rather than by a trust.
The owner should be the lower-risk spouse.

Consider:

- past risks
- current assets
- borrowing capacity

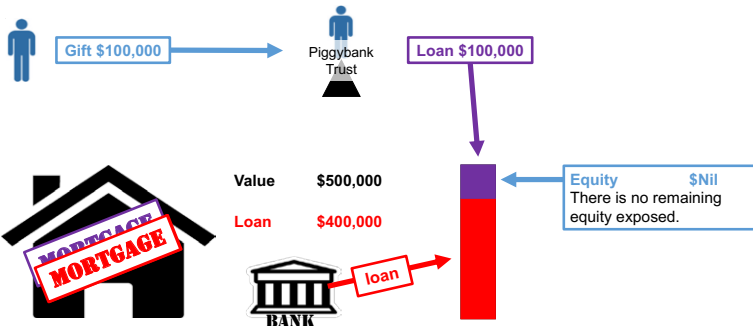


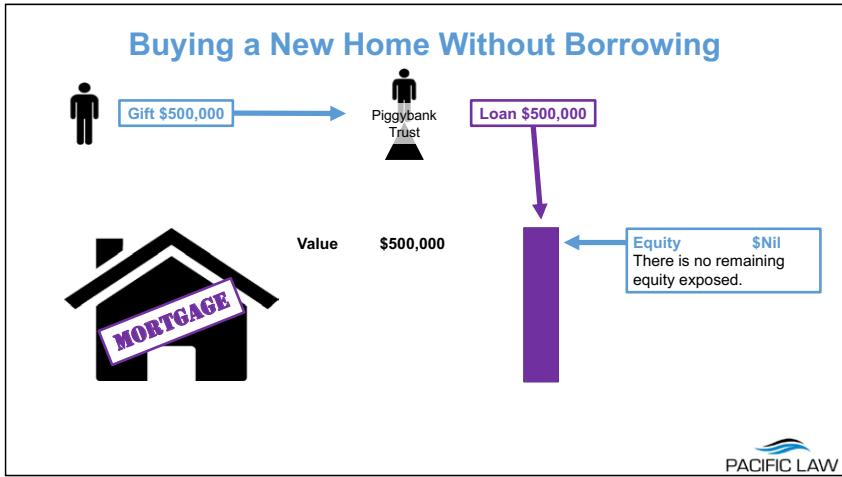
The Equity in a New Home – What is at Risk ?

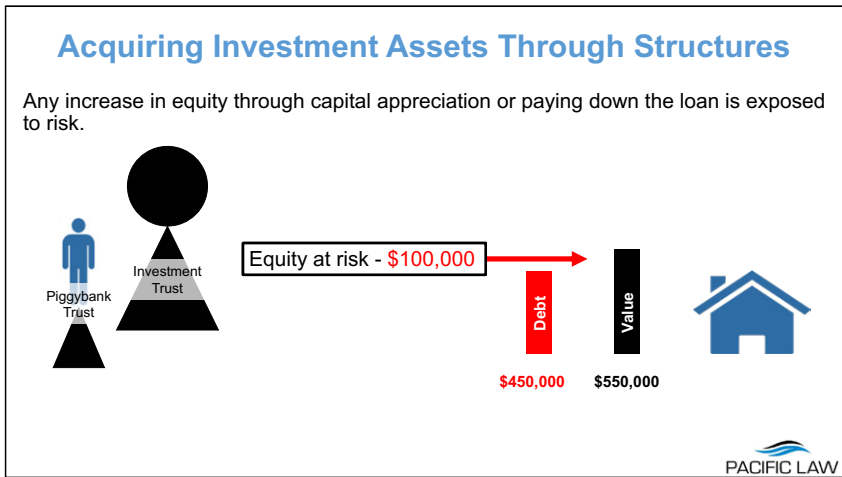
Funding a new home provides an opportunity for asset protection.
Remember, it is the equity in the property which is subject to your risks.

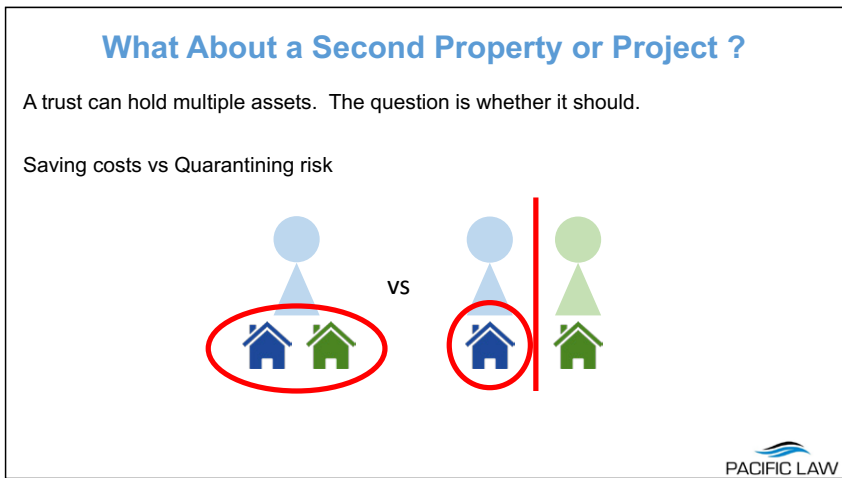


Protect the Equity in a New Home





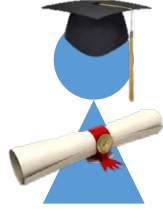




Advanced Structures

More advanced structures include:

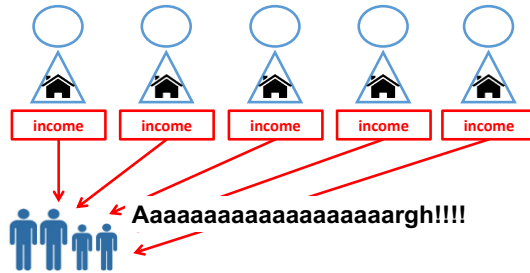
1. Larger project structures, such as unit trusts;
2. Structures to make your career as a property investor easier, such as:
 - Admin trusts; and
 - Consulting trusts;
3. Joint venture structures.



Admin Trusts

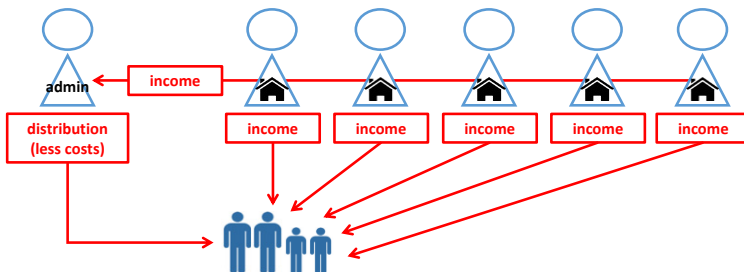
An admin trust is used to simplify administration of multiple investment properties.

Usually...



Admin Trusts

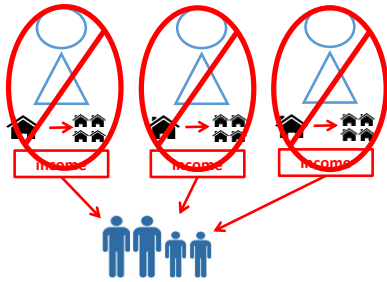
With an admin trust...



Consulting Trust

A trust used to provide a steady stream of income.

Usually...

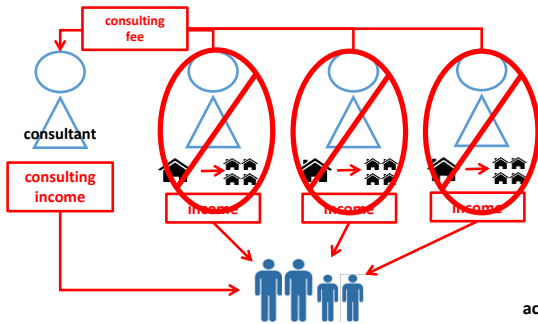


Each structure's income is separate.

The banks will not be comfortable treating the profits as a steady, reliable income for borrowing purposes.

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Consulting Trust



The consulting trust is kept long-term.

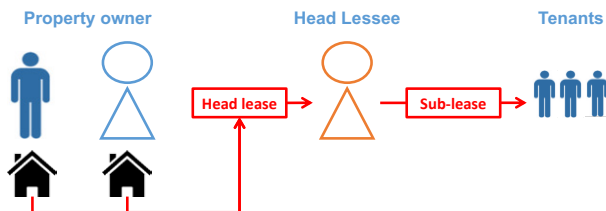
The bank will treat the income as a steady source of income for borrowing purposes.

Take advice from your accountant and loan broker

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Head Lease Trust

The head lease trust is used to take a lease of the property from the property owner and then sub-lease the property to the tenants.



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Joint Venture Structures

The structure for the project will be driven by the deal itself.

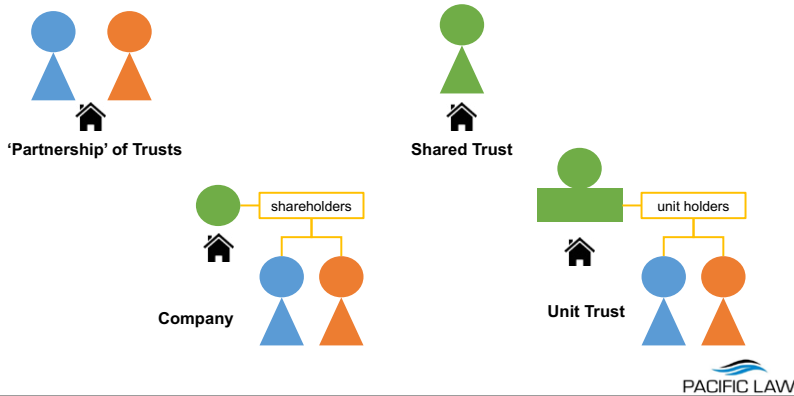
What is each party contributing ?

Capital **Borrowing capacity**
Time **Skills**
Finding the deal

Are the parties contributing in the same way?

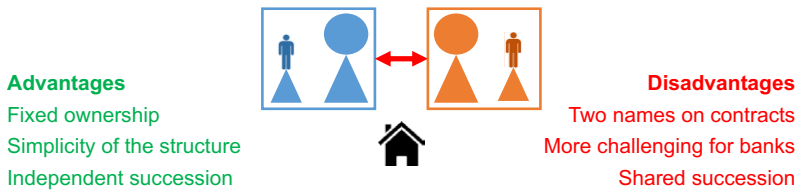


Joint Ventures – Joint Serviceability



Partnership of Trusts

Two or more independent structures hold property as tenants in common.



Shared Discretionary Trust

Two parties shares the benefit and control of the trust.



Advantages

- One name on contracts
- Flexible distributions

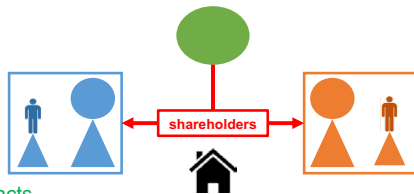
Disadvantages

- No fixed ownership
- Dealing with losses
- Joint succession in control



A Company Directly

Two parties share the control and ownership of a company.



Advantages

- One name on contracts
- Fixed ownership
- Company tax rate

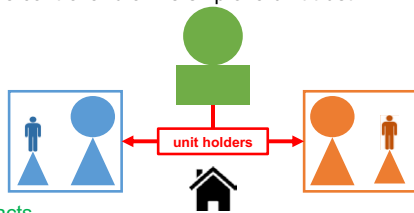
Disadvantages

- No CGT discount



A Unit Trust

Two parties share the control and ownership of a unit trust.



Advantages

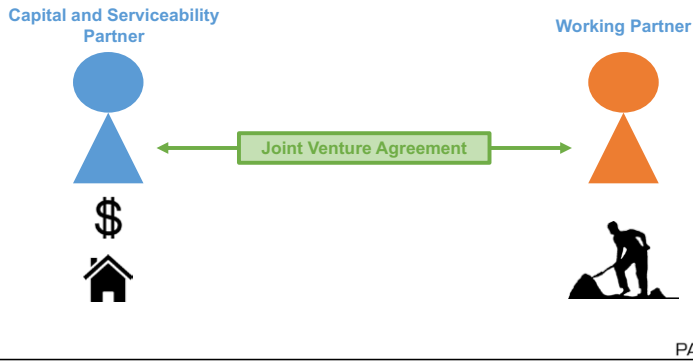
- One name on contracts
- Fixed ownership

Disadvantages

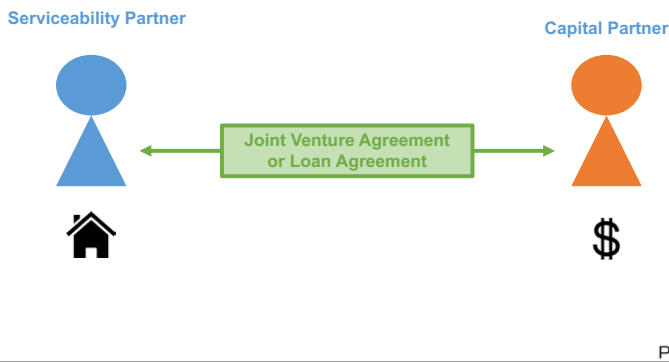
- Establishment cost
- Administration Costs



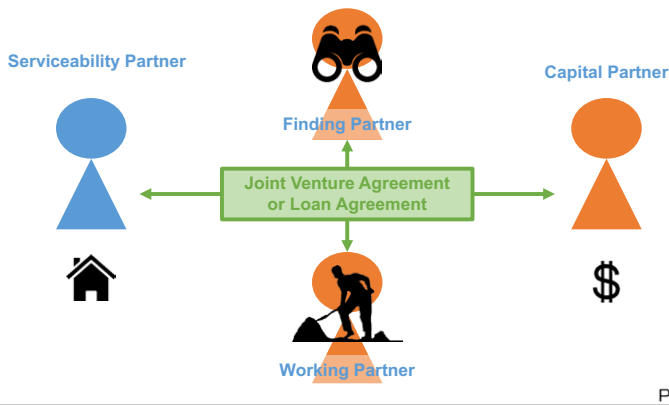
Joint Ventures – Worker / Capital



Joint Ventures – Serviceability / Capital



Joint Ventures – Complex Projects



Joint Ventures – The First Steps

What is the deal?

Do you all have the same project in mind?



Common areas of dispute:

- Initial capital contributions
- Further capital contributions
- Managing the project
- When to sell
- How the profits are divided

Joint Venture Agreement Information Sheet: www.pacificlaw.com.au

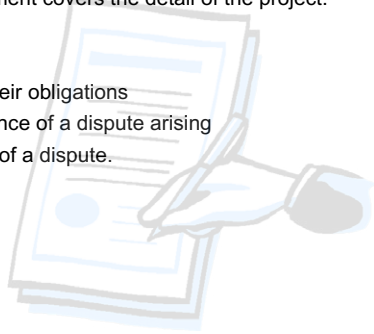


Joint Venture Agreements

A Joint Venture Agreement covers the detail of the project.

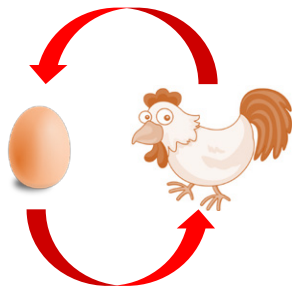
The advantages are:

- the parties know their obligations
- it minimises the chance of a dispute arising
- it reduces the costs of a dispute.



When is the Joint Venture Agreement Signed ?

Do you secure the property first or sign the JV Agreement first?



Joint Ventures – The First Steps

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Do you all have the same project in mind?



Common areas of dispute:

- Initial capital contributions
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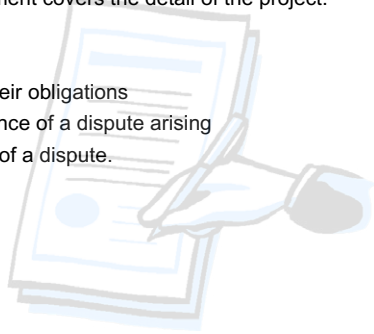


Joint Venture Agreements

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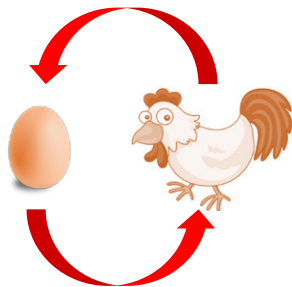
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- the parties know their obligations
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- it reduces the costs of a dispute.



When is the Joint Venture Agreement Signed ?

Do you secure the property first or sign the JV Agreement first?



Tailored Structures

Sometimes specific advice is required to tailor a structure to particular circumstances.

This allows consideration of specific issues to do with:

- longer-term intentions
- taxation and stamp duty considerations



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Tailored Structures – Example 1

Adam is purchasing a property in **Queensland** for \$600,000.

The unimproved land value is \$480,000.

Adam will subdivide the property, keep the existing house, build a new dwelling on the subdivided lot and retain the properties in the longer-term.

After subdivision the properties will have an unimproved land value of \$280,000 each (total \$560,000).



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Tailored Structures – Example 1

Key issue: after the project is completed, the combined holdings will attract land tax of \$5,020 (on \$560,000).

Option: use two trusts to attract separate land tax thresholds.

Each trust holds a half share in the property with an unimproved land value of \$280,000.

This is below the threshold in Qld.

No land tax is payable, saving \$5,020 per year (less the cost of administration of the second trust).

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Tailored Structures – Example 2

Anna and Bodhi are purchasing a property and undertaking a joint venture in **New South Wales**.

Anna and Bodhi will subdivide the property, retain the existing dwelling, and build a new dwelling on the subdivided lot.

Each of them wants to retain one of the separate dwellings in the longer-term.



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Tailored Structures – Example 2

Key issue: Anna and Bodhi want to separately hold property after the subdivision however a transfer of each property from both of them to each of them separately will attract stamp duty.

Option: Anna and Bodhi can take advantage of NSW partitioning provisions to obtain a stamp duty concession.

The property is purchased in separate structures as tenants in common in equal shares. Assuming that each of the two lots created in the subdivision are of equal value, no stamp duty is paid on the partition.

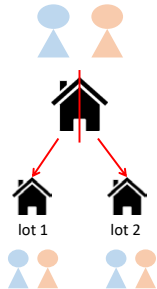
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Tailored Structures – Example 2 – the Process

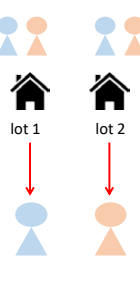
Property purchased as tenants in common



Subdivided lots also held as tenants in common



Transfer lot 1 to blue & lot 2 to red.



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Tailored Structures – Example 3

Charlotte is purchasing a property and undertaking a development in Victoria.

Charlotte will subdivide the property, retain the existing dwelling, and build a new dwelling on the subdivided lot.

Charlotte will either sell or retain the old dwelling but wants to retain the new dwelling as her principal place of residence.



Tailored Structures – Example 3

Charlotte can take advantage of a stamp duty concession in Victoria.

Charlotte can transfer a lot from a discretionary trust to her name personally with a stamp duty concession.

Charlotte can undertake the project, with its associated risks, in a trust structure but then take ownership of the PPR in her name personally.

This will ensure access to the capital gains tax exemption for her PPR.



Premium Foreign Stamp Duty

Additional stamp duty on the purchase of certain residential land by a foreign buyer.

A foreign buyer might include individuals, companies and trusts.

The premium applies in all Australian States.



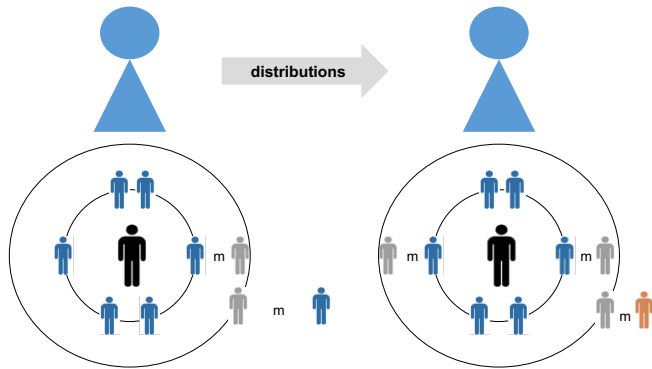
Premium Foreign Duty and Discretionary Trusts

The premium has a very broad application to discretionary trusts.

What is a Foreign Trust?	
Qld	50% of primary beneficiaries are foreign
NSW	foreign person holds an interest of 20% or more
Vic	foreign person holds an interest of 50% or more
SA	trustee, appointor, named beneficiary or default beneficiary is foreign
WA	foreign person holds control or more than 50% of takers in default
Tas	foreign person has 'substantial interest' (all discretionary trusts)

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Foreign Stamp Duty in NSW, Victoria & Tasmania



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Premium Foreign Stamp Duty Rates

Stamp Duty assuming a purchase price of \$500,000.

State	Rate	Duty	Premium Duty	Total Duty
NSW	8%	\$17,707	\$40,000	\$57,707
Vic	8%	\$25,070	\$40,000	\$65,070
Qld	7%	\$15,925	\$35,000	\$50,925
S.A.	7%	\$21,330	\$35,000	\$56,330
W.A.	7%	\$17,765	\$35,000	\$52,765
Tas	8%	\$18,247.50	\$40,000	\$58,247.50

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Discretionary Trusts and Land Tax

The use of discretionary trusts can lead to higher land tax.

State	Individual Threshold	Trust Threshold
NSW	\$755,000	Nil
Vic	\$250,000	\$25,000
Qld	\$600,000	\$350,000
S.A.	\$482,000	\$25,000*
W.A.	\$300,000	\$300,000



*SA has new provisions from 1 July 2020.

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Land Tax in NSW

Land tax has the biggest impact on discretionary trusts in NSW.
Assume a purchase of property with an unimproved land value of \$500,000.

NSW Land tax for a discretionary trust - \$8,000
NSW Land tax for an individual - nil

Does the asset protection and income tax advantage outweigh the land tax burden?

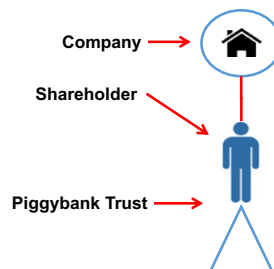
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NSW Land for a Company

A company has a land tax threshold in NSW of \$755,000.

Shares can be owned by your piggybank trust.
Will provide asset protection.
Will provide tax minimisation.

Companies do not have the same CGT discounts.



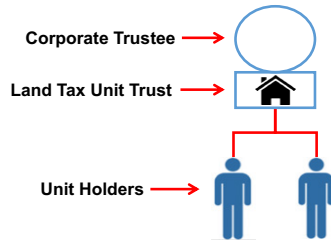
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NSW Land Tax Unit Trust

A unit trust structure which can access land tax threshold in NSW.

Units must be personally owned.
This reduces asset protection.
The units are exposed to the unit holder's risk.

No discretionary distribution of income.
Tax minimisation is limited.



Premium Foreign Land Tax

Additional land tax each year on holding land.

State	Rate	Applies to
NSW	2%	Foreign owners
Vic	2%	Absentee owners (narrower definition than Stamp Duty)
Qld	2%	Absentee owners
ACT	.75%	Foreign owners
SA, WA, Tas	NA	Not Applicable



Foreign Investment Review Board

FIRB rules apply to the purchase of real estate in Australia.

A foreign trust is where a foreign person has an interest of 20% or more.

FIRB rules apply throughout Australia.

The FIRB rules are complex and vary depending upon the purchasing entity and the type of land purchased.



Premium Foreign Duty and Land Tax - Actions

- for **new purchases** – review trusts for premium duty
- for **existing holdings** in Victoria, NSW and ACT review trusts for premium land tax
- for purchases throughout Australia consider FIRB
- amend trusts where necessary



Succession Planning



Succession Planning

Succession planning is the process of making sure that in the event of your death or incapacity:

1. the right people have control of your affairs;
2. the right people receive your assets; and
3. the right people take control of your structures.

It is asset protection for your family and loved ones.



Succession Planning for Companies

A **director** is replaced by the shareholders.



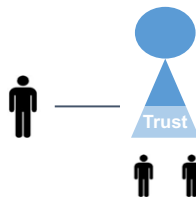
A **shareholder's** shares pass to their estate or continue to be held by the trust.



Succession Planning for Trusts

A person who is **trustee** is replaced by the appointor.
A company trustee continues as trustee.

An **appointor** ceases to hold that role.
The successive appointor takes over.



The **primary beneficiary** role does not change.



The Key to Succession and Trusts

Control the control.

Who will become the appointor?

Whoever takes control of a trust has discretion.

- Will the new controllers **know** what you want?
- Will the new controllers **do** what you want?

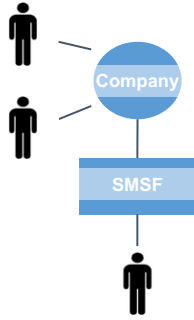


Succession Planning and SMSFs

A director ceases that role.
A sole director must be replaced.

The member's share in the corporate trustee passes under their Will.

The member's death benefit is paid out.



How is a Death Benefit Paid

The trustee of the SMSF pays the death benefit to:

- spouse
- child
- financial dependent
- the legal personal representative of the deceased

Depending upon the recipient, the payment might be a pension or a lump sum.
It is important to consider new changes to the rules regarding Transfer Balance Caps.



Death Benefit Nominations

Binding vs non-binding

- Certainty vs flexibility

Highly technical provisions

- Rules at law
- Rules under the trust deed.



Taxation of Death Benefits

The tax on death benefit payments depends upon:

- whether the recipient is a dependent
- whether the payment is a lump sum or income stream
- whether the funds are taxable or tax-free
- the age of the deceased person and the recipient

For a non-dependent receiving a lump sum, it may be as high as 30%.



Succession Planning – The Role of the Will

Your Will is part of your succession planning. It will deal with:

- appointment of your executor;
- funeral directions;
 - burial cremation;
 - unusual requests;
- guardianship of children;
- gifts of your personal estate.



Smarter Wills – Testamentary Discretionary Trusts

A discretionary trust created by your Will.

Advantages:

- Asset protection
- Tax minimisation
- Bloodline features.



Testamentary Trusts – An Example

Charles dies with net assets of \$2,000,000.

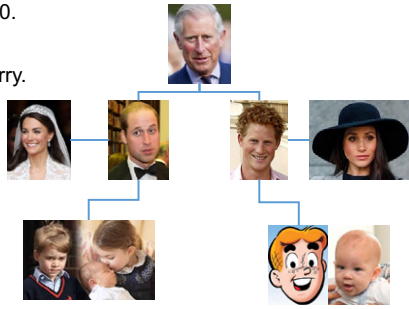
Charles has two children, William and Harry.

William is married.

William has three children:

- George
- Charlotte
- Louis

Harry is married and has two children, Archie and Lilibet.



TDT Advantages – Asset Protection

Personal assets of beneficiaries are exposed to their risks.

Assets held by a trust are not. The funds are protected from risk.



TDT Advantages – Tax Planning

Charles's estate has a value of \$2,000,000.

His two beneficiaries are William and Harry.

Each will receive \$1,000,000.

Assuming a simple Will, the funds are inherited personally.

Assuming income of \$60,000 for Harry and \$150,000 for William and a return of 5% on the inheritance (\$50,000 each), the tax consequences are:

- For Harry, additional tax of \$16,250. (At the rate of 32.5%.)
- For William, additional tax of \$20,100. (At the rates of 37% and 45%.)



TDT Advantages – Tax Planning

Harry and William each inherit \$1,000,000 through a Testamentary Discretionary Trust structure. The income of \$50,000 is earned in the trust. The tax consequences are:

For Harry, Archie receives \$18,200 tax-free and Lilibet receives \$18,200 tax-free. The remaining \$13,600 is paid to Harry himself and he pays \$4,420 in tax. (Meghan has independent income.) This is a tax saving of \$11,830.

For William, George receives \$18,200 tax-free, Charlotte receives \$18,200 tax-free and Louis receives the remaining \$13,600 tax-free. No tax is payable. This is a tax saving of \$20,100.



TDT Advantages – Bloodline Trust

Commonly in Testamentary Trusts, spouses are excluded from benefit.

This has two advantages:

- protecting assets for bloodline descendants; and
- preventing (to some extent) the assets being exposed to the breakdown of a relationship.



Protecting an Estate from a Claim

You can minimise the likelihood or impact of a claim through:

- proper succession planning
- structuring an estate (except in NSW)

NSW Notional Estate.



Protective Trusts or Special Disability Trusts

Protective Trusts or Special Disability Trusts can protect vulnerable beneficiaries.

Very specific terms are required.



Enduring Power of Attorney

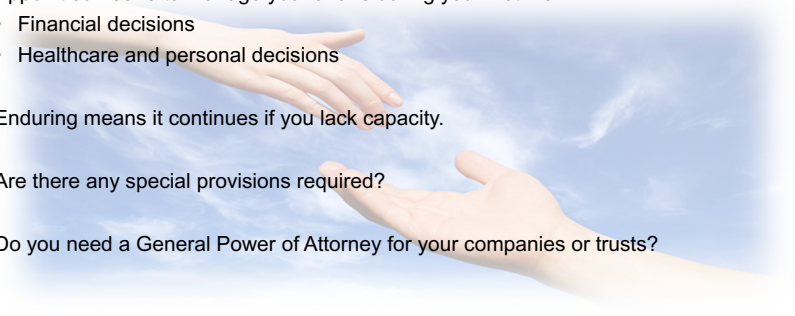
Appoint someone to manage your affairs during your lifetime.

- Financial decisions
- Healthcare and personal decisions

Enduring means it continues if you lack capacity.

Are there any special provisions required?

Do you need a General Power of Attorney for your companies or trusts?



Advance Health Directive

An Advance Health Directive allows you to specify your healthcare wishes in a legally binding way.

The effectiveness varies State to State.

A directive will help to prevent disputes among family members, as your wishes are known.





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- Property Development
- Conveyancing
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- Option Agreements
- Asset Protection
- Succession Planning
- Deceased Estates
- Franchising
- Leases
- Business Transactions

The information provided is of a general nature only. This is not intended to be a substitute for legal advice. You should take legal and accounting advice specific to your situation before undertaking any structuring or asset protection measures.

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