

ULTIMATE

REAL ESTATE SUCCESS
COACHING PROGRAM

SESSION ONE

Asset Protection





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SESSION ONE

ASSET PROTECTION

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PACIFIC LAW IPS

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, asset protection or succession planning measures.

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Asset Protection – The Basics

What is asset protection?

The illustration shows a black silhouette of a house, a stack of gold bars, a man with white hair and a magnifying glass, and a thief carrying a bag of money.


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What Does It Mean To Be Liable?

Liability → Lawsuit → Judgment

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Enforcement → Bankruptcy



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Asset Protection – The Tools

Insurance

- Public risk insurance
- Life Insurance
- Professional indemnity ins



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Protection With Legal Structures

Trusts and companies are separate legal structures



Your assets and risks





Your trust's assets and risks

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Structures – A Company

A Company has a separate legal existence.

Company

Members
(shareholders):

- Own the company.
- Appoint the directors

Directors:

- Have control
- Take on risk
 - Director's duties
 - Guarantees

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Structures – A Trust

A trust is an arrangement where a trustee holds assets for beneficiaries

Trustee: day-to-day control

Trust

Beneficiaries: receive income and capital

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Discretionary Trust

- Broad range of beneficiaries with limited rights
- Appointor appoints the Trustee
- Flexible distributions

Appointor

Trustee

Trust

Beneficiaries

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Legal Structures – The Basics

Unit Trust

- Units issued like shares in a Company
- Fixed distributions and ownership
- Unit Holders appoint the Trustee

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Legal Structures – The Basics

Hybrid Trust

- Units issued like shares in a Company
- Also discretionary beneficiaries
- Tax ALERT on gearing
- Difficulty borrowing

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Piggybank Trust

A Piggybank Trust is a protected discretionary trust.
Safe structure to hold key assets.

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Bucket Company

A Bucket Company is a company used to receive discretionary distributions and pay tax at company rates.

Shareholder

Piggybank Trust

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A Typical Structure

Trading Company

Trustee Company

Trustee Company

Trustee Company

Personal Trustees

Investment Trust 1

Investment Trust 2

Investment Trust 3

Bucket Company

Directors

Income

Dividends

Income

Income

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Technicalities Of Trusts

- Must be established correctly (Settlor, settled sum)
- Deed must have adequate powers
- The right people must be beneficiaries and appointors
- Legal changes:
 - Bamford
 - Foreign stamp duty and land tax

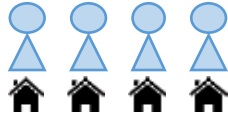
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One Company / Multiple Trusts

Use a separate company for each trust.


- Easy administration
- Land tax in Queensland
- Cross collateralisation



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One Trust / Multiple Properties



Separate trust for each investment

Risk


Multiple investments in one structure

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The Limits Of Structures

- Assets within the trust still affected by its risks
- Land tax and administration costs
- Director's guarantees
- Poor administration




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Checklist: Recycling A Structure

- Is it the right structure for your new project?
- What has the trust done before?
- Can you find the complete Deed?
- Is it properly established (signed)?
- Does it have adequate powers?
- Do the right people have control (trustee, appointor)
- Are the right people able to benefit?

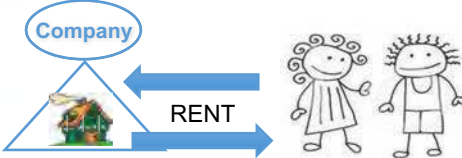


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Buying Your Home In A Trust

Long Term Lease **CAUTION – IT 2167**

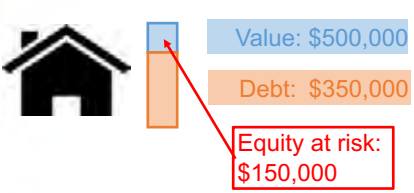


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Protection For Personal Assets

The pseudo-protection of debt.



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Contributing Funds To A Trust

Is it a gift or a loan?

- Tax deductibility of the interest
- Where is the equity owned?

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Gift vs Loan

Borrowing — **LOAN** —> Investment Trust

ASSET HELD HERE

- Equity is retained by the lender
- Interest is tax deductible

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Gift vs Loan

Cash — **GIFT** —> Piggybank Trust — **LOAN** —> Investment Trust

ASSET HELD HERE


- Equity moves to recipient
- Interest is not tax deductible

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Protecting Existing Investments

- Is it worth protecting?
- Transfer to a Trust or lower risk spouse?
 - Duty and CGT
 - Transfer costs
- Clawback

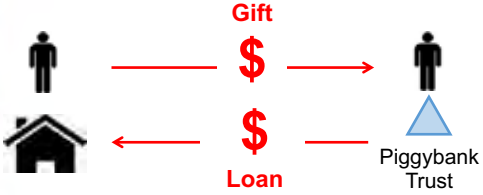


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Gift And Loan Back Arrangement

Creates a friendly debt which can be secured.



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Security For Loans

Loans are only as secure as their security

- Mortgage
- Irrevocable Mortgage
- Caveat
- Registered vs registrable



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Contract Of Will

Securing a promise to make a gift under your Will.

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Protecting Existing Assets

What not to do – owning all assets together...

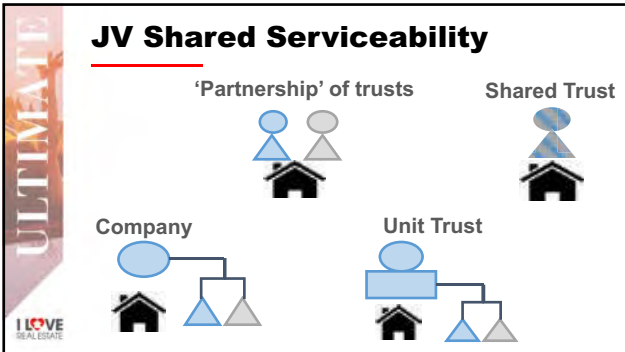
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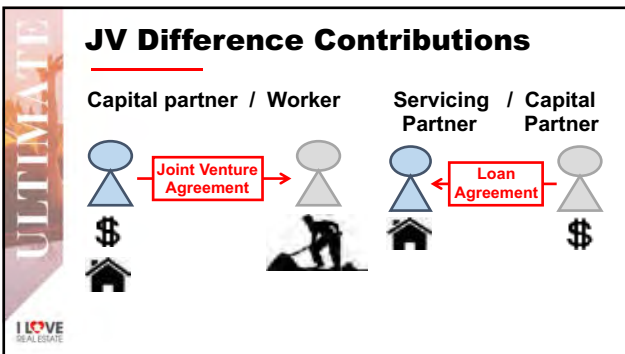
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Joint Venture Structures

- Structure will be driven by the deal.
- What is each party contributing?
 - Capital
 - Borrowing capacity
 - Time / Skills
 - Finding the deal
- Equal contribution or unequal?

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- ### Running Your Structures
- Structures must be administered as a separate legal entity
 - Recording decisions in formal minutes
 - Separate bank account
 - Documentation of transactions
 - Loan Agreements, Deeds of Gift, minutes
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Structures And Divorce

- The power of the Family Court
 - Who has the actual control?
- What can be done?
 - Third party appointors
 - Bloodline trusts
 - Binding Financial Agreements

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Structures And Death

On death or incapacity, you cease to be a director, appointor or trustee.

Who takes over?

Do you still have a role in a JV structure?




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Intestacy

- What happens if you do not have a Will ?
- What happens if you do not have an EPA ?



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Death And Wills

Wills cover personal assets, they may not cover:

- Trust assets
- Superannuation
- Joint tenanted property
- Life insurance



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Testamentary Trust Wills

- Tax advantages
- Asset protection advantages
- Bloodline restrictions



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Incapacity

- Enduring Powers of Attorney
 - Financial decisions
 - Healthcare decisions
- More than 340,000 Australians with dementia



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Succession Planning Claims

- Family Provision claims against Estate
- NSW – the notional estate



A word cloud centered around the words "Estate Planning". Other words include: Value, Will, Insurance, Administration, Goals, Plan, Anticipating, Assets, Decedent, Probate, Family, Disposition, Property, Transfer, Beneficiary, Qualify, Testamentary, Discretion, Estate, Assets, Distribution, Creditors, Debts, Obligations, Expenses, Taxation, Dependent, Support, Confusion, Retain, Assets, Life, and Plan.

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Establishing Companies and Trusts



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