



# Estate Planning Strategies for Principals in Tough Times

Many Business or Professional Practice Owners (Principals) view their Business as the main asset that will provide for their family security in the event of their sudden demise.

Yet few Principals have planned for their personal or family security. In tough times following the global meltdown of Financial Markets the loss of value in the Capital markets and the consequent knock on effect of possible recession and of lack buyers of Business or Business Assets at a suitable value planning is crucial.

What follows is a review of the Principles of Business Estate Planning and a checklist of items that Principals of Business or Professional Practices may need to consider when reviewing or preparing their Estate Planning and preservation plans.

## **1. Understand Business Estate Planning Principles**

There are three guiding Estate Planning principles that must be considered in respect to any Principal of a Business or Professional Practice:

### **Implication:**

**Family Needs** - The most critical factor is the preservation of the accumulated wealth of the Principal for the surviving family.

### **Business or Practice**

**Continuity** - However the unexpected demise of a Principal can create demands for working capital to keep the Business or Professional Practice going in order to transfer the Business or Practice in an orderly manner or liquidate the Business for maximum value.

**Cash Liquidity** - Hence the third principle - the provision of capital liquidity for both the family and the business. If the wealth of the Principal is linked substantially to the Business or Practice preservation of the Business and or the Business Assets will become critical to avoid the forced sale of the Business or Professional Practice in order to preserve the accumulated wealth of the Principal for the surviving family.

### **Action Required:**

**Family Needs:** - Estimate the family's future needs and ascertain the means to provide for the family



**outside of the Business or Professional Practice.**

**Business or Practice Continuity:** - Estimate the Working Capital requirements of the Business or Professional Practice and

**Provide Capital liquidity:** - for both the Personal and Business needs of the Principal

## **2. Revisit Past Assumptions**

**Implication:** In a financial downturn a Business or Professional Practice may not be able to be easily obtaining finance to continue or be sold for full value in the event of the death or illness of the Principal.

**Action Required: Consider Contingent Funding Strategies to create working capital and planning with appropriate transfer strategies**

## **3. Review Current Assets and Liabilities**

**Implication:** Lost Value in Assets or increases in debt may create the need to review current contingent funding strategies to prevent capital shortfalls

**Action Required: Review**

- **Assets for possible lost value,**
- **Asset Titles,**
- **Liability and Debt Levels,**
- **New Loans - Documented and Undocumented**
- **Personal Guarantees, and**
- **Overdraft and other Finance Arrangements.**

## **4. Rethink Current Dispositions**

**Implication:** With diminished values in uncertain and tough times current dispositions need to be reviewed.

**Action Required: Check the following dispositions:**

- **Within the Estate - Consider - Changing, Reallocating or Reducing**
  - **Recipients of Specific Gifts or Bequests**
  - **Primary and Secondary Beneficiaries**
  - **Residuary Beneficiaries**
  - **Executors - Appropriate**
    - **Powers**
      - **Investments**
      - **Business or Practice**
        - **Divestment to Beneficiaries**
        - **Sell to third parties**
        - **Liquidation**
- **Non Estate Dispositions - Check**
  - **Superannuation Fund Nominations**
    - **Binding and**
    - **Non Binding**
  - **Adequacy of Benefits**
  - **Appropriate Life Cover**
- **Trusts - Change, Reallocate or Reduce**
  - **Beneficiaries**
  - **Trustees**
  - **Appointment Powers**
  - **Assets and Liabilities**
- **Corporate Entities - Change, Reallocate or Reduce**
  - **Directors and Guarantees**
  - **Assets and Liabilities**



- Shareholders
  - Transfer Documents (Buy/Sell Arrangements) - Change, Reallocate or Reduce
    - Last Date Reviewed
    - Parties
      - Addition or Deletion
      - Guarantees - Joint, Several, Limited or Unlimited
      - Indemnities from the Business and between parties
    - Business Entity - Changes or Additions to
      - Structure
      - Business Activity
      - Assets or Liabilities
      - Other
    - Business Value - Appropriate as to Method
      - Agreed Value
      - Formula or
      - Valuation by Qualified Valuer
    - Triggering Events
      - Retirement
      - illness
      - Death or
      - Conduct
        - Professional
        - Business/Practice - Performance
        - Regulatory
        - Personal
      - Other
    - Funding
      - Retirement
      - Illness or
      - Death
      - Payment
        - Full Amount
        - Short Fall Considerations
  - Instalment
  - Interest
  - Other
  - Agreement - Check
    - Last Review Date
    - Parties
      - New - Additions
      - Old - Deletions
      - Associate - Aligned Entities
    - Business Entity - Changes
    - Business Value - Changes
    - Triggering Events - Changes
    - Funding - Changes - Shortfall Considerations
    - Other
      - Tax
      - Repayment of Debts
      - Guarantees and Release
      - Third Party Claims
- 5. Re organize Current Contingent Estate Programme**
- Implication:* A review and reorganization of the current programme may overcome shortfalls with lost values, possibly reduce costs and ensure that the correct benefits are received by the right party.
- Action Required: Re-organize current programme where appropriate in respect to**
- Dispositions,
  - Contingent Events
    - Death,
    - Illness
      - Total Permanent and Disablement



- Trauma,
- Disability
- Coverage of Shortfall,
- Funding Vehicle
  - Superannuation
  - Non - Superannuation
- Diversity of Carriers,
- Costs

### **Conclusion**

In tough times help clients control what they can control by planning and funding for the shortfall of wealth in the event of the sudden death or illness of a Principal of a Business or Professional Practice in order to provide the liquidity and transfer arrangements needed to maintain the value of the Business or Professional Practice and thus secure adequate provisions for the Principal's family.

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