



# Principles of Wealth Preservation Post GFC

Issue 16 – 14 May 2010

In times of uncertainty Professional and Business Owners (Principals) and their families maybe unnecessarily exposed to risks that may be outside of their control. Without asset protection and preservation planning Principals and their families are at a distinct disadvantage.

What follows is an overview of the 15 Principles of Wealth Preservation post the Great Financial Crisis (GFC).

## 1. Understand, Monitor and Review Asset Protection Preservation Plans.

**Implication:** The best laid out plans will never work unless they are understood, implemented and reviewed against the Principal's changing needs and circumstances. Given the nature and complexity of many Business and Professional practices very few Principals understand their plans and structures.

**Action Required:** Review in the first instance all personal and business assets, liabilities and business risks.

## 2. Understand the Assets that Need Protection

**Implication:** Very few Principals understand what Assets are actually held in the Practice or Business. One area

which should be considered, but rarely is, is that of Intellectual Property. In this respect there are five areas of Intellectual Property including copyright, trademarks, designs, patents and trade secrets. Intellectual Property is a product of the mind. Furthermore Intellectual Property can be far more valuable than Real Property if it can be protected and thus transferred for value.

**Action Required:** Increase the value of the Practice or Business by carefully protecting assets such as Intellectual Property.

## 3. Consider Other Needs and Circumstances

**Implication:** Asset Protection Planning should not be taken in isolation. Care needs to be taken to ensure that the intent of the transaction is not to solely to preserve assets from creditors.

**Action Required:** Plan your Wealth Preservation Plan around commercial and personal needs including estate planning and in a timely manner well before any need arises, by correctly understanding and anticipating risks.



#### 4. Time the Transfer Correctly

**Implication:** 'Timing is Everything' Given how quickly the financial landscape can change careful timing and planning may not be possible. Under the Bankruptcy Act creditors may have access to assets if there was an intention or defraud creditor to or transfer assets away from creditors.

**Action Required: Commence and implement Wealth Preservation Planning well before the need arises.**

#### 5. Title Assets Correctly

**Implication:** Unless Assets are structured and held in the appropriate entity, assets maybe unnecessarily exposed to risk.

**Action Required: Ensure Assets are held outside the control of persons or entities that are at risk or are financially exposed.**

#### 6. Separate Assets from Liabilities

**Implication:** Maintaining Assets in the balance sheet of the Trading Entity of a Business or Professional Practice may inappropriately expose the Principals to risk that the Business or Professional Practice may suffer in a financial downturn at some stage in the future and such effects may spill over into personal affairs.

**Action Required: Hold Assets in a separate entity from the main trading or financially exposed entity.**

#### 7. Utilise the Correct Legal Entity

**Implication:** Unless all the considerations for effectively choosing a legal structure are carefully considered the most appropriate legal entity structure or multiple structures may not be appropriate for the particular need at hand. Therefore consider the following ten (10) guidelines when selecting legal entities:

- Control
- Asset and Liabilities
- Benefit flow - Legal or Beneficial
- Size of the Asset or Transaction
- Costs
- Taxation
- Transfer and Liquidity
  - Lifetime
  - Death
- Capital Raising
- Financial Reporting
- Administration

**Action Required: Carefully select the entity structure or multiple entity structure required by considering all the relevant factors pertinent to the need or transaction.**

#### 8. Transfer Assets at Market Value

**Implication:** If assets are transferred at less than market value or are incorrectly transferred with poor documentation the transaction may not be effective from an Asset Preservation perspective.



**Action Required: Ensure assets are transferred correctly - in respect to market value, purpose and timing.**

#### **9. Minimise Transaction Costs**

**Implication:** Transferring and restructuring assets and entities can be subject to various transaction costs including Capital Gains Tax, Good and Services Tax, Stamp Duty, Legal, tax and accounting advice and other disbursements.

**Action Required: Ensure transaction costs are appropriate to the need to restructure.**

#### **10. Correctly Extract Wealth**

**Implication:** Extracting wealth from one entity to another involves an understanding of the three taxation points including:

1. Tax Deductibility and payment of tax on transfer
2. Tax Management; and
3. Tax on End Benefit

**Action Required: Prevent unnecessary taxation costs by correctly extracting Wealth utilising and understanding the three taxing points.**

#### **11. Security Over Assets**

**Implication:** Assets that are at risk or financially exposed should be protected.

**Action Required: Ensure Assets that are not financially exposed have as much as possible security over assets in entities that are at risk or financially exposed.**

#### **12. Joint and Several Liability**

**Implication:** Directors and Trustees (including defacto Directors - such as Senior Executives) could be liable for debts both jointly or severally.

**Action Required: Mitigate against the possibility of being liable severally for debts of the company of Trust Entity by seeking the correct indemnity for the Corporate or Trustee Entity as well as a cross indemnity from fellow Trustees or Directors. Furthermore fund for the contingent event of death, TPD or Trauma Illness to the total value of the total debt or liability.**

#### **13. Personal Guarantees**

**Implication:** Liability for business guarantees may overlap to personal circumstances.

**Action Required: Seek the correct indemnity between the business, practice or Trustees or Directors and protect personal assets from business dealings.**

#### **14. Protect and Preserve for all Contingencies**

**Implication:** The inadvertent death or illness of a Principal may produce revenue or capital shortfalls which if not readily available may significantly devalue the business or practice to the extent that the Business or Practice is sold for Fire Sale Value.

**Action Required: Correctly cover contingent events such as death and total and permanent disablement or trauma cover with the appropriate cover.**



## 15. Simplify Structures

**Implication:** Most Principals act in varying capacities, either personally or as trustees of Trusts (Fixed, Discretionary or Self Managed Superannuation Funds) or as directors of single or multiple corporate entities. Unless the reasons for the establishment of the legal structures are known and simplified, wealth preservation may not be possible.

**Action Required: Understand and simplify legal entities held and structured.**

Without Wealth Preservation Planning any HNW Client or Principal maybe unnecessarily exposed. For more information on Wealth Preservation Planning see the ili website - [www.ili.com.au](http://www.ili.com.au)

### Copyright Notice

©ili.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, transmitted or copied in any form or by any means (graphic, electronic, mechanical, photocopying, microcopying, scanning or otherwise) except as permitted under the Copyright Act, without the prior written permission of ili. Any enquiries should be addressed to ili.

### Disclaimer

This publication is designed to provide accurate information regarding the subject matter which it covers. It is distributed on the understanding that ili is not engaged in rendering professional or expert services or advice (legal, accounting, financial planning or otherwise). The information provided in this publication does not constitute such advice or services and should not be relied on as such. If professional or expert assistance is required, the services or advice of a competent person should be sought.

Neither ili nor its directors, employees, associates, agents or other representatives and affiliates are liable for any liability, loss, damage or injury arising from or in relation to the direct or indirect use of, or reliance on, the whole or any part of the information contained in this publication. Without limiting the generality of the above, neither ili nor its authors, consultants and writers are liable or responsible for anything done or omitted to be done by any person in respect to this publication.

**For Further information please visit [www.ili.com.au](http://www.ili.com.au)  
or contact:**

Melinda Wood - ili Enquiries (02) 9251 3611  
[enquiries@ili.com.au](mailto:enquiries@ili.com.au)