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How to protect the family home and personal assets

5 common myths on asset protection

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Dear Business Owner,

Thank you for downloading this guide.

As a business owner, you know that ensuring your assets are protected is a must - no matter what business you are in. Unfortunately, that's where the straight-forward part ends. It can be incredibly confusing to understand what is required to protect your assets and what steps you must take to ensure that protection.

Because there are so many misconceptions surrounding the protection of personal and business assets, failure to decipher the truth behind these common myths could lead to detrimental repercussions in the long run.

To set the record straight and assist you, we've created a list of the top 5 myths on asset protection every business owner should be aware of.

MYTH 1

"I'm not rich, I don't need asset protection"

It's a common misconception that you only require asset protection if you are 'rich', but that couldn't be further from the truth. In fact, it's the opposite! The fewer assets you have, the more important it is to be protected. Think about it this way: **the less you have, the more you stand to lose** if something were to happen. Imagine having a networth of $10 million and being faced with a $1 million lawsuit. It's a position no one wants to find themselves in, but you wouldn't lose too much skin off your own back. Now imagine being faced with the same $1 million lawsuit, but your net worth is only $1 million... Those who have fewer assets stand to potentially lose everything when threatened with a lawsuit and for many, bankruptcy is the only way out.

DON'T LEAVE IT UP TO CHANCE!

Ensure your assets are protected and ensure you have something to fall back onshould the situation arise.

MYTH 2

"I've got insurance, I don't need asset protection"

If you're new to the world of asset protection, it can be easy to confuse it with insurance. While insurance protects your business against a variety of unfortunate events, **it doesn't cover everything**. Business insurance typically covers the majority of business activities, but leaves your business exposed to risk from individual and personal accidents outside your control. If you are sued due to someone being hurt in a car accident that is deemed your fault, insurance may not help you. Asset protection will help you ensure complete coverage and protection of your assets should disaster strike and events occur outside the scope of your insurance coverage.

MYTH 3

“Asset protection is expensive, I can’t afford it”

While we can see where this myth comes from, it is important to remind yourself of what you stand to lose. The cost of asset protection is a small price to pay when you consider the potential losses that you could face. Think about it… all the costs and psychological trauma involved in lawsuits, or even the ATO serving you with a directors penalty notice holding you **personally liable...**

All of these circumstances are very real and very possible for business owners no matter what industry they are in. The cost of asset protection is well worth it whenyou weigh up everything you have to lose.

MYTH 4

“Asset protection is expensive, I can’t afford it”

Some business owners plan to venture into asset protection only if they are servedwith a lawsuit. While this may seem like a good idea in theory, the fact of the matter is that it is too little too late. By the time a lawsuit has been served, it is already too late to benefit from asset protection. Think of asset protection as a preventative measure, NOT a solution to an existing problem. While there may be exceptions to this with some businesses implementing successful asset protection strategies, this is rarely the case and is far too big of a gamble. Asset protection can also protect your assets in the event of bankruptcy, malpractice, accidents, responsible heirs and so on. To ensure your business is covered, don’t leave your asset protection till the last minute as you may be too late.

MYTH 4

"I can just set up asset protection if a lawsuit gets served"

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MYTH 5

“I own a Private Limited Company, I don’t need asset protection”

While owning a Private Limited Company does provide you with some protection, you are still exposed to risk, even if you are the director! The reality is that even if you are the director, you can still be held personally liable for the business’s activity. This can see your personal assets at risk! There are many circumstances that could lead to a company director being personally liable including trading whilst insolvent, breaching workplace health and safety protocols, signing personal guarantees and more. Don’t fall for a false sense of security and think you are protected! Be sure to cover all your bases and ensure your assets are correctly protected.

REMEMBER...

Asset protection is a preventative measure. Once things go wrong, It’s too late!

If you own assets in your name, you are at risk!

Asset Protection

The goal of asset protection is to significantly reduce or prevent risk to your business by insulating both your business and your personal assets from the claims of creditors. The best time to protect your assets is when things are smooth sailing and running well. If you wait until you are being sued to protect or move your assets, you could find yourself in even more hot water if you are found to be avoiding legitimate obligations to creditors. The only way to ensure your assets are protected is to get protected before your ship starts sinking!

Are you thinking to yourself: “I pay my taxes on time and do the right thing, that’ll never happen to me. I don’t need asset protection” ?

While it can be comforting to know that you are following the law and required regulations, the harsh truth is that honest business owners get sued all the time! Think of it the same as driving: no matter how good of a driver you are, you could still get into an accident as a result of another driver. Asset protection is the same!

Did you know that since 2012, the ATO has implemented a zero-tolerance policy on small businesses who fail to pay their BAS debts on time? Not only can they wind up your business, but they can also go after your home and lead you to bankruptcy.

Thepossibility of losing your hard-earned assets is very real. If you don’t plan for asset protection, your financial security is at serious risk.

Why do you need an asset protection strategy still

In the current economic and legislative environment, it is critical to have an effective asset protection strategy. 50% of new businesses fail. As a result, families lose everything. Not just their businesses, they lose their homes, their personal assets, their marriages, their families and their health. Each year, 1000's of people lose their homes when a simple asset protection strategy would have saved it. An effective asset protection strategy should be tailored to an individual and their risk profile.

What are the key factors in an asset protection strategy

01 Review your trading structure

Sole Trader

Simplest business structure, indistinct from owner

Business income or losses included with other income in individual's tax return and taxed at personal tax rates

Individual is personally liable for business debts

Partnership

Similar to sole trader, but with two or more people (or other entities) as co-owners

Share of business income or losses from partnership included in each partner's individual tax return and taxed at their personal tax rates

Partners are joint and severally liable for business debts

Company

Distinct legal entity

Company profits are taxed at the flat corporate tax rate

Profits can be passed through to shareholders as dividends (where they are taxed at marginal personal tax rate, less franking credits)

Losses cannot be distributed to shareholders, but are retained and offset against future profits

Shareholders' liabilities are limited, although there are duties imposed on directors

Trust

Obligation imposed on a trustee to hold assets for the benefit of others (the beneficiaries) - established by a trust deed

Earnings are passed through to beneficiaries, added to their individual tax returns and taxed at their personal income tax rates

Losses are not passed through to beneficiaries

Earnings retained in the trust are taxed at the top marginal tax rate

In a discretionary trust, the trustee can choose how earnings are distributed between beneficiaries

02 Review your shareholders

Often shareholders are asked to give guarantees leaving them exposed. Your shareholders also play a vital role in tax minimisation.

03 Review your asset holding entity

A business's assets should not be owned by the trading company. Plant and Equipment, Motor Vehicles and Intellectual property should all be held in a separate entity. This way, if the business fails, the assets are not lost to creditors

04 Review the Directors

If you are trading as a company, it is vital that you ensure your directors form part of your asset protection strategy.

05 Have you loaned funds to the business

If so, are these secured with a charge?

06 Do you lend machinery to other Businesses

If so, have you registered a charge under the PPSA?

Still not convinced?

Below are some shocking statistics that may change how you view the importance of asset protection:

On average, 1 out of every 4 people get sued

The average Australian business owner gets sued 3 times in their lifetime

There is a lawsuit happening every minute

NSW is in the top 3 most litigious states in the world

Asset protection is an incredibly important factor for any business, no matter the size. Ensure your business is protected before a claim or lawsuit arises to prevent the seizure of your personal and business assets.

Nexus Private Accountants are here to help

We put together this free download to help hundreds of business owners, just like yourself decipher the truths regarding asset protection.

If you would like more assistance and information about asset protection and how you can ensure your business is covered, contact the team at Nexus Private Accounting for a review on how asset protection can help you and your business.

Book a Consultation

Call us on 1300 473 347