GLOBAL WEALTH
CLUB

Asset Protection

Why your assets may be more exposed than you think, and how companies and trusts keep what you have built safe.

Warren Black · Global Wealth Club

7 SECTIONS · REAL EXAMPLES · FAQ APPENDIX



Everything you need to know: the risks, the core principle, companies and trusts, protection for business owners, investors and employees, and straight answers to common questions.

OVERVIEW

What matters most

Most people have no idea that, in many situations, their hard-earned assets have no protection at all. The good news: it is simple to fix, if you act early.

1 **Anyone can be sued, including good people.**
Lawsuits, insurance gaps, tax disputes and other people's debts can reach assets held in your own name.

2 **Separate the risk from the wealth.**
The person who takes on risk should not be the person who holds the family's wealth.

3 **Companies and trusts are the main tools.**
Set up properly, you control your assets without owning them, so creditors have nothing to take.

4 **Business owners, investors and employees all need it.**
Each faces different risks, and each can protect themselves.

5 **Do it before you need it.**
Once a claim is on the way, courts can reverse transfers. Protection works best when it is in place early.



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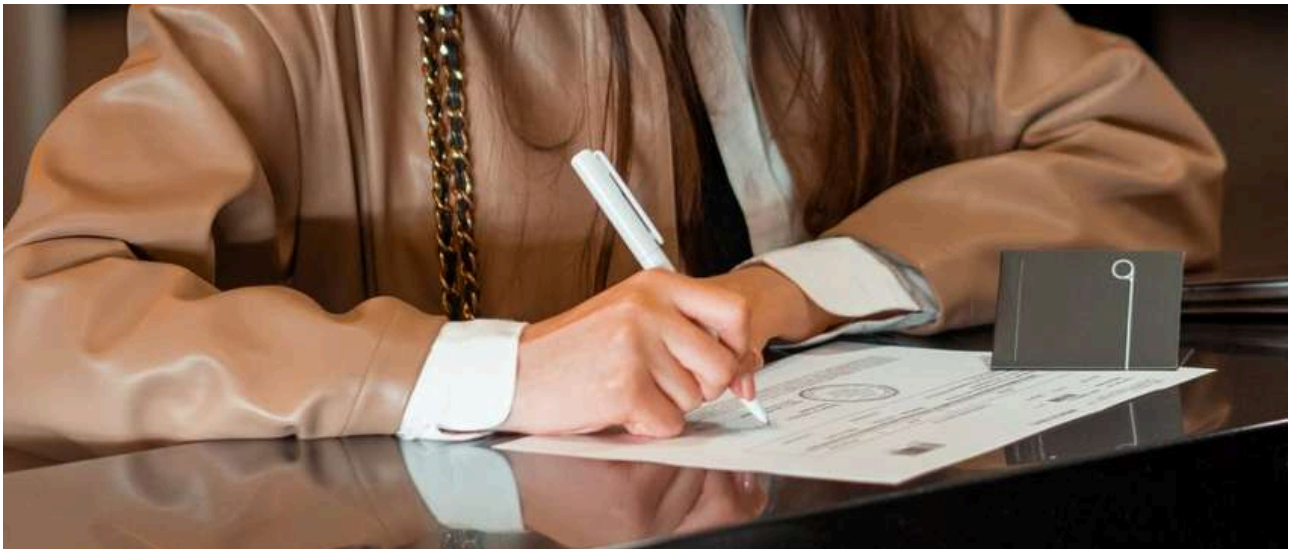
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01

SECTION ONE

Why Asset Protection Matters

Is your wealth watertight? You may be in for a shock.



Is your wealth foundation watertight against creditors and people who would happily "reap where they have not sown"? You may think so. Did you know that:

- New South Wales ranks among the highest places in the world for lawsuits per person, alongside California and Texas, and Victoria is not far behind?
- You can be liable for someone else's debts, not only in a partnership but also through a company or trust?
- Your professional indemnity insurance may not cover you if you are sued?
- Assets in your own name can cost you everything in a dispute with the Tax Office, while a correctly structured company or trust can give you options, such as an insolvency restructure, that do not affect your credit rating?
- Employees can be sued personally for careless mistakes that cause a business client to lose money?

> ★ PREVENTION BEATS CURE
>
> As advisers, we spend far more time "curing" financial cancer than preventing it. This guide explains the principles of asset protection with examples, then answers the questions people ask most, so you can tell whether you are at risk and what to do about it.

THE FACTS OF LAWSUITS

Think you are safe from a lawsuit?

Here are some real examples. They sound absurd, yet each one happened.

The furniture store

A woman tripped over a toddler running wild in a furniture store, sued the store and won compensation. The toddler was her own son.

The spilt drink

In California, a woman slipped on a drink in a fast food restaurant and successfully sued. She had thrown the drink at her boyfriend 30 seconds earlier.

The trapped burglar

A burglar was locked in a family's garage for 8 days while they were on holiday. He sued them and won damages for his distress.

The car keys (WA)

A barman refused to return a drunk patron's car keys, then gave in when he became threatening. The man crashed into a pole, sued the hotel, and won.

The church (Qld)

A church dismissed one of its ministers for going against its teachings. He sued for unfair dismissal and won. Few churches would ever expect a lawsuit.

"That sounds like America"

It is happening here, right now. Australia is fast catching up, and it is becoming an epidemic.



THE COST OF LAWSUITS

Lawsuits are big business

In the United States, the cost of liability lawsuits (damages, lawyers' fees and administration) grew from 0.62% of the economy in 1950 to about 2.09% by 2005, or $261 billion a year. The median jury award in product liability cases was $1.8 million, and people suing won 61% of the time. If you are sued, the odds are you lose.

Companies now print warning labels so silly they look like jokes, just to ward off lawsuits:

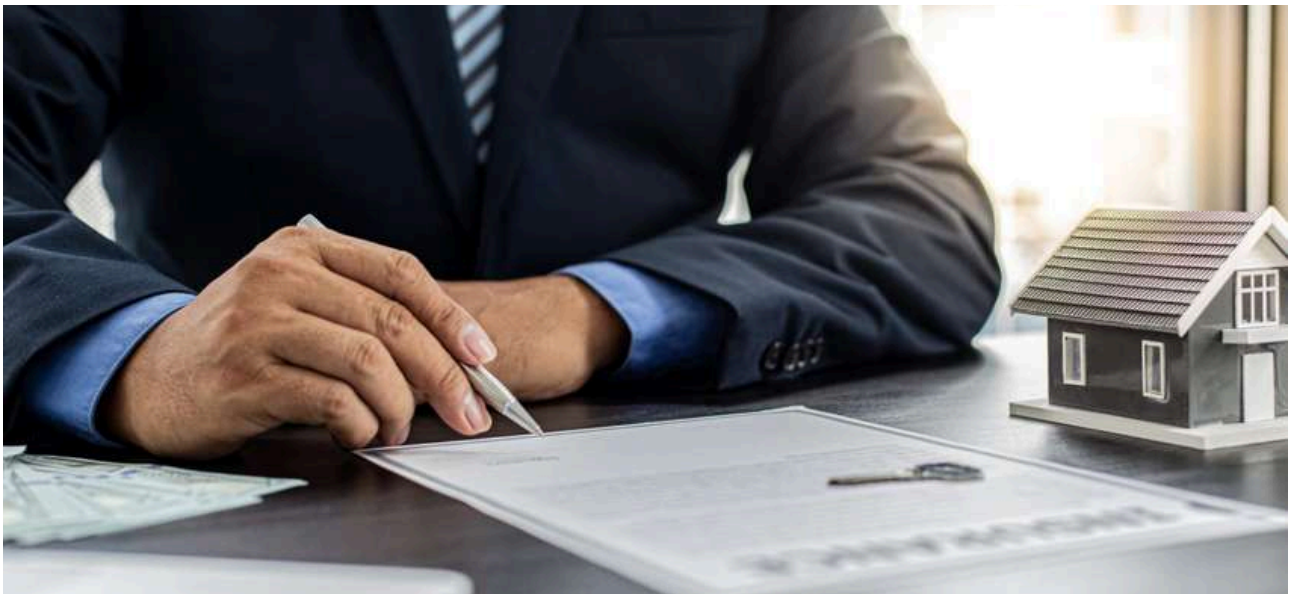
★ REAL WARNING LABELS

- "Keep pet birds out of the kitchen when using this product" (non-stick pans)
- "This costume does not enable flight or super strength" (superhero costume)
- "Do not iron clothes on body" (clothes iron)
- "This product moves when used" (scooter)
- "Do not eat" (portable music player)

WHAT CAN YOU DO ABOUT IT?

Control your assets, but don't own them

Warning labels are one answer. A better one is to understand the basic principles of asset protection, so that you regain control and protect your wealth: you **control** your assets, but you don't **own** them.



02

SECTION TWO

The Principles of Asset Protection

Making wealth is half the job. Keeping it is the other half.



1. How we make our wealth

Building businesses, creating cash flow, and investing in shares, property and other growth assets.

2. How we keep our wealth

Managing money, cutting costs, reducing tax legally and, most importantly, protecting what we have built from claims and creditors.

Most people focus only on the first. Asset protection is about the second.

THE CORE PRINCIPLE

Separate the risk from the wealth

The person who takes on risk should not be the person who holds the family's wealth. Asset protection specialists call these two roles the **strawman** and the **person of substance**. It works well for married couples and business partners in many situations.

THE STRAWMAN

At risk, but controls nothing.

Signs everything: the company director, the trustee, the signatory to risky deals.

THE PERSON OF SUBSTANCE

Not at risk, yet controls everything.

Signs nothing risky, but holds or controls the assets.

As a general rule, the most effective way to put this into practice is through companies and trusts.

AN EXAMPLE

Egbert and Edwina

Egbert is a doctor. His wife Edwina stays at home with the children.

Egbert is the one at risk of being sued, so he should be the strawman. Edwina is not at risk, so she should be the person of substance.

They could hold the family home in a family trust or a company, but they would usually lose the capital gains tax exemption for the main residence if they did. Another option is to keep the house in Edwina's name, because she is not at risk.

> ★ IMPORTANT
>
> If the home is in joint names or in Egbert's name, he could transfer it to Edwina, but he must be very careful. Courts can reverse transfers that were clearly made to avoid creditors or a pending lawsuit. Tax outcomes also depend on how the transfer is structured, so get expert advice first. For other ways to protect a home, see *Protecting Your Property: The Complete Guide*.



03

SECTION THREE

Using a Company to Protect Assets

A separate legal person with limited liability.



A company is a separate legal entity from its shareholders. It has its own name and ABN, can sign contracts, and can sue and be sued. It has limited liability: shareholders only have to pay any amount still owing on their shares, and cannot be forced to pay the company's debts from their personal assets.

Directors

Manage the company's day-to-day business for the shareholders. Directors are the ones at risk.

Shareholders

Own the company, with a fixed interest in its assets in proportion to their shares. Shareholders are not at risk.

For a company trading in its own right (not as trustee of a trust), the director should be the strawman, or an entity the strawman controls. The shareholders should be the person of substance, or an entity they control.

BACK TO EGBERT AND EDWINA

Egbert runs his medical practice through a company

- **Director:** Egbert should be the sole director. Edwina should not sign cheques or attend company meetings, so she is not treated as a director by the law.
- **Shareholder:** Edwina should be the sole shareholder, as she is not doing business that could get her sued.

04

SECTION FOUR

Using a Trust to Protect Assets

No one owns the assets, yet your family benefits.



Trusts have been used to build and keep family wealth since medieval times. They can protect assets, reduce tax and build an estate for generations. The main trusts in business are discretionary (family) trusts and unit trusts, plus hybrids of the two.

A discretionary trust protects assets because no one actually owns them. The trustee holds them for a group of beneficiaries and decides, at its discretion, who receives income and capital.

WHO'S WHO

The parties to a family trust

- **Settlor:** creates the trust.
- **Trustee:** holds and manages the assets for the beneficiaries.
- **Beneficiaries:** the people who benefit from the trust.
- **Appointor:** the puppet master. The trustee is the puppet, and the appointor can replace the trustee at any time.
- **Guardian:** controls the appointor. In most trusts the guardian and appointor are the same person.

> ★ IN SIMPLE TERMS
>
> The appointor and guardian should be the person of substance. The trustee should be the strawman, or a company the strawman runs.

BACK TO EGBERT AND EDWINA

Edwina holds the strings

Egbert is the trustee, or the director of the trustee company. Edwina is the appointor and guardian, so she can remove the trustee if there is any risk of a lawsuit.

AN EXTRA FIREWALL

Use a company as trustee

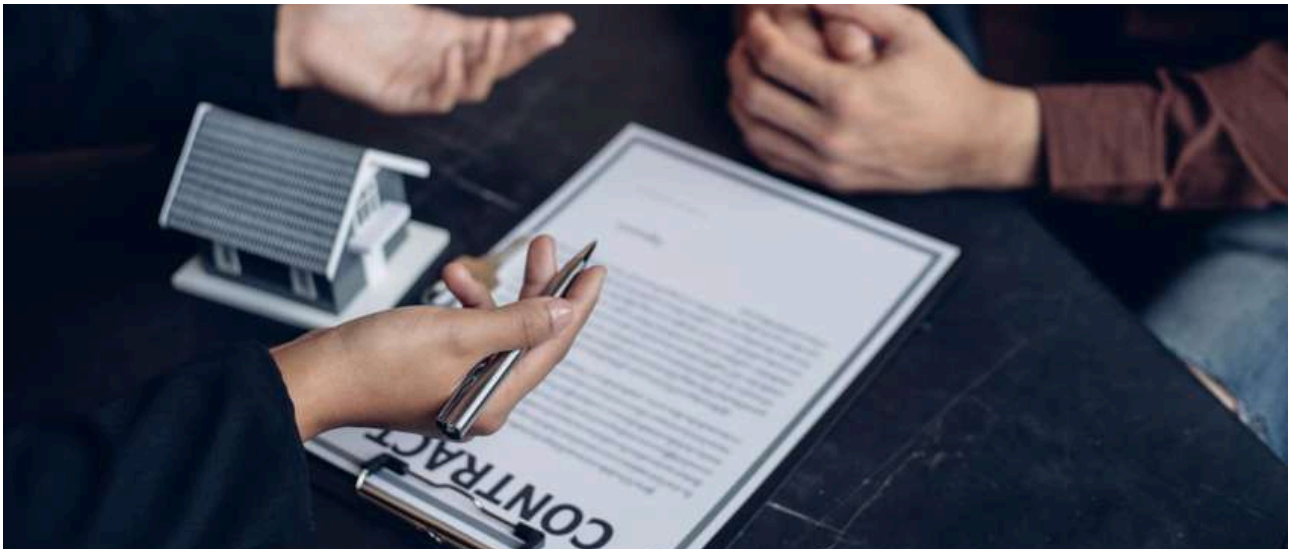
For family trusts, we highly recommend a company as trustee in most cases. It adds an extra firewall between your creditors and your assets. The director of the trustee company should, of course, be the strawman.

A WORD OF CAUTION

Trusts are strong, but not unbreakable

Courts have held that, in exceptional circumstances, a trust can be "looked through" so that its assets are available to creditors. This followed a well-known case where investors lost money and the regulator pursued the person behind the trusts. Courts stress this is rare, but it puts everyone on notice: think ahead and get proper legal advice when you set up your structures.

> ★ IMPORTANT: PROPOSED TRUST CHANGES
>
> The government has proposed a 30% minimum tax on trusts from 1 July 2028. It is not law yet. If it goes ahead, many trusts lose much of their tax benefit, and paying money out to a "bucket company" can mean paying tax twice. That is why we now often recommend a holding company owned by a trust, with a company as trustee. If you already have a trust, now is the time to have it reviewed.



05

SECTION FIVE

Asset Protection for Business Owners

Enter business, and you enter a litigation minefield.



Once you are in business, you become a target. You are responsible for what goes wrong, including your employees' mistakes. Protecting your personal assets from business lawsuits keeps the wealth you have worked hard for intact.

A REAL EXAMPLE

One mistake in a whole career

A client came to see us. He and his wife had $2 million of assets, built up over a lifetime as an investment adviser. Then he made one error of judgement advising a client. Just one.

He may not be covered by his professional indemnity insurance, because he did not follow the strict conditions of his policy. If he is sued, most of his assets are exposed because they are in his own name. Even his wife's assets are at risk, because she was a director of his company until recently. Suddenly his hard-earned wealth does not seem so secure.

> ★ PROTECT THE BUSINESS TOO
>
> It is not only your personal assets that need protection. If you spend years building a valuable client list or goodwill in a business name, one lawsuit can wipe it out. Simple planning prevents that.



AN EXAMPLE

Dick's finance business

Dick is starting a finance consulting business, with consultants on commission and online loan approvals. His plan is to build cash flow and invest it in property, shares, currencies and gold.

1. **An asset-holding trust.** The "I Hold Assets Trust" owns the business name, the premises and other valuable assets.
2. **A separate trading trust.** The asset trust licenses the name and premises to "My Trading Trust", which runs the business. If anyone sues, they sue the trading trust. It only holds cash and does not own the name. There are no cookies in the jar.
3. **Start again if needed.** If the trading trust loses a claim, Dick ends the licence, sets up a new trading trust with a new licence, and carries on.
4. **Separate trusts for investments.** A Property Trust for his properties, and an Investment Trust for his shares and trading.
5. **Protect the family home.** Through a family trust, or by borrowing against the home and putting the funds through his trusts.

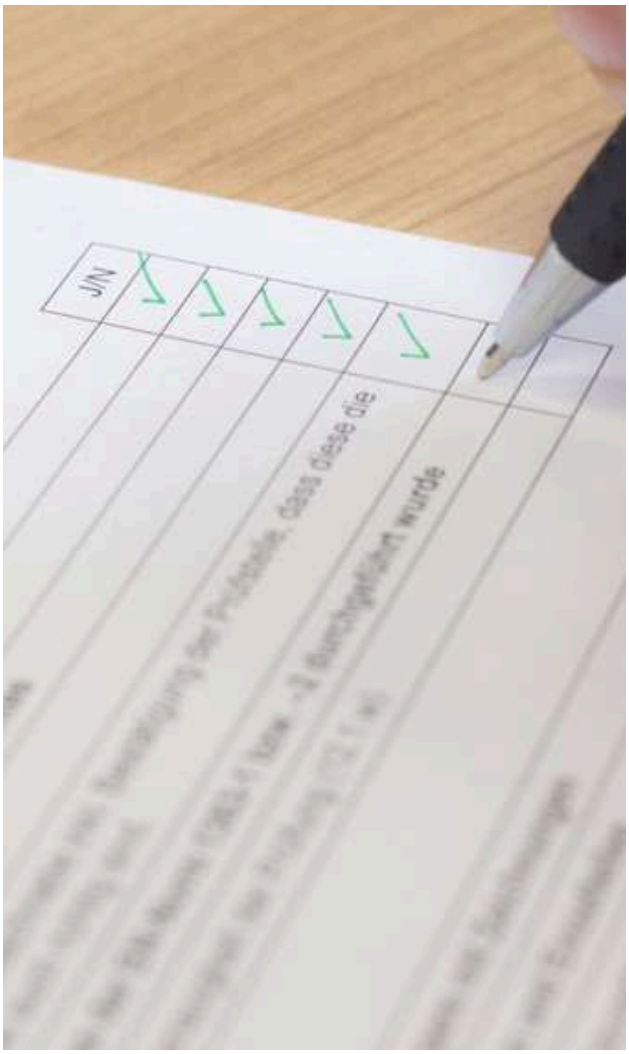
★ GOING INTO BUSINESS WITH A PARTNER?

A partnership makes Dick liable for his partner's debts. He is far better off with a structure that protects them both and keeps their affairs separate.

> *A car thief will usually choose the car with no alarm over the one with the high-tech alarm system.*
>
> Make your assets the harder target

The beauty of asset protection is that it is not about avoiding moral responsibility. It gives you the power to decide whether you are responsible. Not the client, a court or somebody else.

Your choice, not someone else's





★ IN SIMPLE TERMS

Keep your business risk away from your personal wealth, and keep your valuable business assets away from the entity that trades. If one part is attacked, the rest stays safe.

06

SECTION SIX

Investors and Employees

Lower risk is not the same as no risk.



INVESTORS

Your properties can be targets

Investors face less risk than business owners, but they are still at risk. Owning shares is low risk, but tenants and visitors can sue you over an investment property, and your insurance may not cover you. Companies and trusts can protect your properties.

Example: John owns 3 investment properties in his own name. A visitor slips on a banana peel a tenant left on the stairs and sues John as the owner. His landlord insurer refuses the claim because of some fine print. Suddenly all 3 properties are at risk.

EMPLOYEES

Do employees need asset protection?

Most employees don't think they are at risk. In practice, employers usually cover their staff, and people suing usually go after the employer with the "deep pocket". But there is no certainty of that.

Courts have confirmed that employees can be personally liable. In one case, a web designer gave a business client wrong information about what its website could do. The client lost $58,000, and because the employer was broke, the client sued the employees. The court held them personally liable for the loss.

> ★ FOREWARNED IS FOREARMED
>
> Employees who invest in property or shares should consider asset protection too. And employees don't always stay employees: many go on to start a business.

07

SECTION SEVEN

Summary and Next Steps

Protect what you have built, before you need to.



- ✓ Asset protection should be considered by everyone, especially people in business.
- ✓ Companies and trusts are a tremendous way to protect assets for business owners, investors and employees.
- ✓ Separating the risk-taker from the wealth-holder is critical in every asset purchase.
- ✓ Done well, structures can also bring tax savings when moving family assets, and some protection for your loved ones if a relationship breaks down.
- ✓ Act early. Bankruptcy clawback rules let courts reverse transfers made too late.

★ DON'T FORGET

To make sure your affairs are properly handled while you are still living, consider an enduring power of attorney. If you have a partner, consider a back-up power of attorney too.

NEXT STEPS

Ready to protect what you've built?

- ◆ **Become a free member at www.globalwealthclub.com.** You will find our free Asset Protection Principles videos in the Asset Protection section, and you will be notified of free podcasts, masterclasses, events and updates on the topic.
- ◆ Any questions? Email clients@globalwealthclub.com and we will be in touch to discuss.
- ◆ Let us know if you would like a proposal with our package price.

Yours in freedom,

The Global Wealth Club

APPENDIX

Frequently Asked Questions

The cold, hard truth about asset protection: straight answers to the questions people ask most.

Why do I need asset protection? I am a good person. Why would anyone sue me?

Being a good person doesn't stop you being sued. Quite the opposite: good people try to be "nice" and are often seen as having something worth taking.

Warren has been sued three times. Two claims were dismissed as absurd. In one, a woman sued him for not giving family law advice on a tax matter, even though his letter said he wasn't a family lawyer. She had run out of time to sue her family lawyer and hoped his insurer would pay. In the third, the lawyers advised settling because one document had been overlooked among many thousands. Insurance covered it, but he still paid a $15,000 excess.

What other risks should I know about?

- Lawsuits are increasing, and Australia is catching up with the United States.
- Insurance may not cover you, for example if you didn't tell the insurer everything (your duty of disclosure).
- You can be liable for other people's debts, for example as a partner in a partnership.
- Governments change rules. A friend of Warren's was fined $4 million when spam laws were changed and backdated.
- You may be unjustly sued and lose because the other side has a better, more expensive lawyer.



I believe we should all pay our debts. Why would I do something dodgy to avoid them?

You shouldn't do anything dodgy or illegal. It matters, for your conscience and your reputation, to do the right thing. But not everyone thinks like you. Many good people are sued by someone who believes they are responsible for their misfortune.

You insure your car against an accident or a moment's lapse. Asset protection insures your net worth. With it in place, **you** decide your moral responsibility. Not the government, not an adviser, and not someone who thinks you or your insurer should fix their problems. You are the captain of your financial ship.

If I protect my assets, aren't I expecting the worst?

Expecting good things is a great mindset, and you need it to grow wealth. But nobody expects to be robbed, crash their car or have their house burn down, yet they insure against all three. Calamity comes when we least expect it, and it feels good to know you are covered: total peace of mind.

Isn't asset protection only for people already in a legal dispute?

No. It is not a shield for the paranoid. It is a sensible step for people who understand that life is unpredictable. Complacency leaves people defenceless, and we have seen it happen. If you have a lot to lose, protect it.

Won't it attract attention from the tax office or my opponents?

Only if it is done illegally. Done correctly and within the law, it is the opposite. Regulators are concerned with dodgy schemes set up after a problem arises, not with preventative protection put in place in advance.

What if I don't understand the legal and financial strategies?

That's okay. You don't need to learn it all on your own. Without the right experts, it is like running a marathon with a 10kg backpack: you can do it, but it is much harder. In the same way you see a health professional for your health, work with experts to guard your wealth.

What could happen if I am not protected?

Put simply, you could lose everything and have to start again from scratch. Car insurance covers your car and home insurance covers your house, but without asset protection everything is exposed.

The financial stress can then flow into the rest of your life: your marriage, your health, selling sentimental possessions to cover costs, and rebuilding your business. In extreme cases, a director can even face criminal charges, for example for insolvent trading.

I have insurance for professional indemnity and rental properties. Surely that protects me?

You may get a surprise. Insurers are businesses, and their profits depend on paying only a share of claims. When claims run high, they look for any legal reason to refuse. You may breach the fine print, or face a large excess and still have to defend an unfair claim.

We have seen it happen: a financial planner who recommended an investment not on the approved list, a doctor operating outside the scope of his policy, and someone who simply forgot to pay a premium. Little mistakes become big problems.

I already have a company and trust. Am I protected?

Not necessarily. Having a company, trust, foundation or SMSF doesn't mean you are protected. It depends on how it is set up. In our experience, most structures we review have problems, for example:

- business and personal assets in the same trust, so personal assets are exposed to business claims;
- property held in the same trust as other assets;
- investments held in a company rather than a trust, paying up to twice as much capital gains tax on sale;
- assets left in your own name, with no structure or mortgage protecting them.

Look at who the directors and shareholders are. And with the proposed trust changes, now is a good time to have your structures reviewed.

I am an employee. Surely I don't need asset protection?

You most certainly do. The courts have made it clear that an employee can be personally liable. Employees are not sued often, but they can be, and they can lose.

I'll wait until I make some money. Doesn't that make more sense?

That is like building a house on sand to save on the foundations. You save money in the short term, but in the long term the house won't stand. Changing things later costs more and can take years to work, because bankruptcy clawback rules let courts reverse transactions.

Surely there's no rush?

Everyone is one day away from calamity. Nobody expects to die tomorrow, yet people buy life insurance. Nobody expects a cancer diagnosis, yet they have health insurance. Asset protection is no different. If you protect yourself and nothing happens, the worst outcome is some money "wasted", and you had peace of mind the whole time.

Why can't I just change things when I see a lawsuit coming?

If a lawsuit is pending or under way and you move an asset into a company, a trust or your spouse's name to avoid losing it, the court can reverse the transfer, and courts have shown they are willing to. Deliberately defeating creditors can even be a criminal offence.

Set up correctly from the beginning. Once a lawsuit is pending, it is usually too late, and protecting your assets then is expensive with no certainty of success.

Can a trust keep the Family Court away?

Only with great difficulty. The Family Court can look straight through trusts, and it takes a dim view of transactions it sees as "shifty" attempts to stop a spouse getting their lawful entitlement. This needs immense care and the right experts, so the strategy is both legal and effective.



What if I already own a house in my own name?

You can transfer it into a trust, but you will pay stamp duty and possibly capital gains tax. Other options are to create your own mortgage over the home, a caveat or a lien. See *Protecting Your Property: The Complete Guide*.

Another approach is to arrange your borrowing carefully:

	House 1 your own name	House 2 bought in a trust
Value	$400,000	$500,000
Loan	$400,000, secured over House 1	**Nil**
Exposed to creditors	Little equity left	**Protected in the trust**

You borrow to buy House 2 in a trust, but secure the loan over House 1. House 2 sits in the trust debt free, while House 1 carries the debt. You become far less attractive to a creditor, because the bank gets "first bite of the cherry" if House 1 has to be sold.

Can I just use an overseas structure?

It depends. Overseas structures can be useful when you buy assets overseas, or as part of a Plan B, and in some cases to protect Australian assets. But buying Australian assets through an overseas structure can cause problems. There are legal limits on buying Australian residential property through an overseas company or trust, and you can run foul of the Australian Taxation Office if it is used to avoid tax. Always speak with a specialist in asset protection and overseas structures.



I don't have time to work through all of this. Why bother?

You are right: doing it on your own would be tough. That is exactly why you work with people who have spent years mastering it. Taking shortcuts can lead to costly mistakes that leave you exposed. When it comes to your wealth, don't speculate.

I know I need to protect my assets. How do I get started?

Start with the Next steps on page 15: become a free member, watch the free videos, and email us with any questions. We are happy to send you a proposal with our package price.

Yours in freedom,

The Global Wealth Club

General information only, not personal tax, legal or financial advice. Laws change. Figures are examples only and vary by state and situation. Confirm with a qualified adviser before acting.

