How to effectively **protect your assets**

Asset protection is the use of smart, legal strategies to protect your assets. Most people have insurance to protect against risk, but no insurance can cover every possible scenario, and you may not know which insurances are needed to protect against the unique risks you face.

Think asset protection doesn't apply to you? Think again. ***If you have assets in your name, you could be at risk.*** There is no surprise that protecting assets against frivolous creditors and lawsuits is increasingly becoming a common concern. To avoid significant losses, it is important to have reliable and effective asset protection strategies so you can continue to grow your wealth and achieve your financial objectives.

- What are the safest asset protection strategies?
- What is the risk without having asset protection strategies in place?
- Do I still need asset protection if I have insurance?

What's the best approach to protecting your assets? | The Investax Solution

There are several myths and mistakes regarding asset protection – in particular, owning assets in individual names, the use of company ownership and the improper use of certain types of trusts in the absence of sound tax planning and estate planning advice.

The best way to protect your assets is to be aware of the all the tax and legal ramifications of using particular types of property investment trusts and structures and ensure you get personal tax advice from an asset protection specialist with regards to your investment portfolio and wealth creation plan.

1. Asset Protection – Using Trusts

Trusts are one of the more beneficial asset protection strategies as the person does not legally own the assets – the assets are owned by the trust – therefore the asset is not theirs to lose in the event that they get sued. The trust is controlled by the individual but they have no ownership of the assets inside the trust.

- Discretionary Trusts
- Unit Trusts
- Hybrid Trusts
- Family Trusts
- Testamentary Trusts

In general, trusts offer reliable asset protection, but some fail to provide the flexibility and tax advantages that property investors can be entitled to.

For example, the use of a discretionary trust does provide asset protection as well as the ability to claim the 50% CGT General Discount, however discretionary trusts does not allow any tax credits to the individual for negatively geared assets.

Land tax is also a concern in that NSW does not receive the land tax threshold and Victoria only receives a relatively small threshold.

In the absence of property specialist asset protection advice, many people build up their wealth in their own names- leaving them exposed to high risk of losing assets. With changing views on asset protection and estate planning, many people are now looking at how they own assets and are looking for better asset protection strategies.

2. Investment Properties or Assets | Purchased in an individual or company name.

A simple solution is to sell those assets to a trust, but that is not without a substantial cost.

When you sell assets you:

- Pay tax on the profits
- Pay stamp duty, which again is substantial on property.
- Malso need to refinance if you have debt as the “legal owner” of the asset changes and if the finance market is tight this refinancing may not be easily completed.

As Australia's leading property specialist accounting and wealth advisory group, Investax has developed a number of asset protection strategies and structures to benefit our clients.

These range from simple protection strategies for assets which are low in number or value (i.e. the family home and one investment property), to more complex solutions for larger asset bases where an individual wants both asset protection, estate planning and the ability to redirect who receives distributions.

3. Property Ownership without asset protection

Unfortunately, many property investors stand at a major disadvantage when it comes to asset protection.

Firstly, while property is a great vehicle to hold and grow wealth, it's also among the most cumbersome of assets. Unlike shares or cash, property cannot be easily sold or traded in and out of in case of a crisis. As we know, there are also invisible costs like stamp duty, legal fees and other expenses due at purchase or sale time.

This creates a problem for asset protection.

Everyone from property investors to mum-and-dad home owners typically tends to hold the title of the properties they own in their own names. This means that their significant equity in property (the part that they own, free of the mortgage to the bank) is totally exposed to creditors in times of crisis. Anyone pursuing t heproperty owner can try to seize their wealth by registering a caveat on the title to the property they own.

There are many different opinions about asset protection and different approaches to protecting assets. But there are prevailing myths and dangerous fallacies about asset protection that have led many people to believe that their assets are adequately protected. You need to be aware that there are many factors that will impact on your asset protection strategy.

Asset Protection Myths

A. INVESTMENTS OWNED IN INDIVIDUAL NAMES

For starters, property investors that own investment properties in their personal name have virtually no asset protection. This is the biggest mistake of them all.
If you were to be sued by an unsecured creditor, subject to a falling out in a business partnership, or sued by an injured tenant or disgruntled employee, customer, etc. – you could potentially lose all assets held in your own name. Some people argue the tax benefits for owning property in an individual name. *But what do those tax benefits count for, when you are at risk of losing it all?* Many people think that by just buying an investment property or assets in their spouse's name or de-facto partner's name, would naturally give them adequate asset protection.

This is not a reliable and effective asset protection strategy.

In certain circumstances, many litigators and creditors have the power through the courts to lay claim to assets held under spousal or de-facto partner names.

Furthermore, if you were subject to a family law court as a result of a bitter family dispute or relationship breakdown, you could potentially lose control over all assets. Who would want the in-laws to get control over your wealth? If you are seriously concerned about asset protection, you should avoid having assets like investment properties owned in any individual's name.

B. PROPERTY INVESTMENTS OWNED IN A GENERIC TRUST

However, there is no one size fits all when it comes to Trusts and their specific uses. Some Trusts are great for one particular use as they provide certain advantages over others, but in the end fail to truly provide tax effective asset protection.

This is particularly true for property investors. If you want your property assets to be protected in a tax effective and investment vehicle, then you need to consider a property specific trust. A trust that is designed specifically for property investors. Likewise, for business owners operating a business and controlling assets, a business specific trust is recommended.

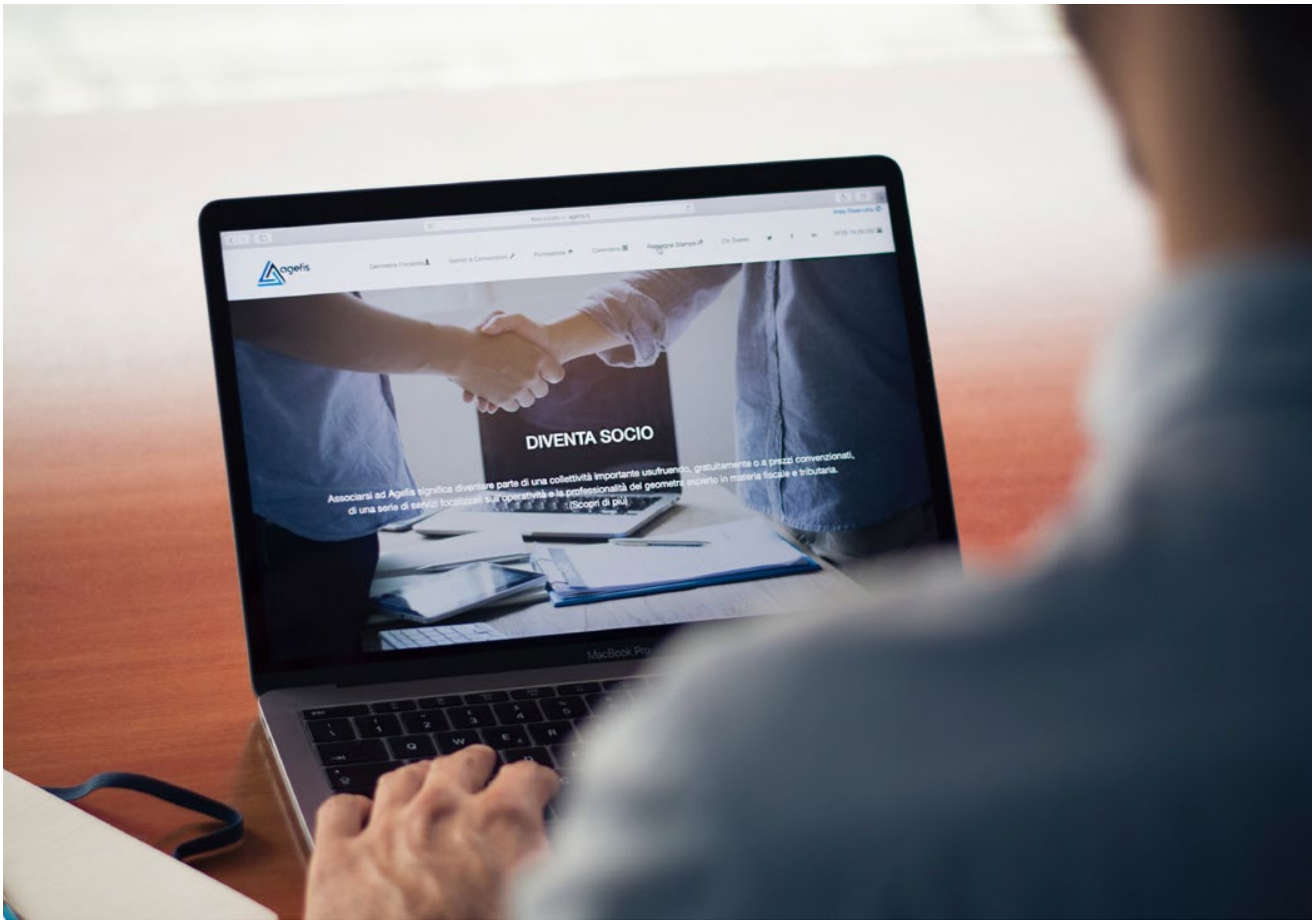
At Investax, we found that property investors could benefit even more from their investing if they had an optimal tax environment in which to safely control their assets. For instance, there are certain tax benefits that property investors would not be able to reliably claim if they are using the wrong trust. One such example of a tax benefit, is the negative gearing tax benefit.

C. TRUSTS & STRUCTURES TO PROTECT FAMILY WEALTH

Ask yourself this question: what would likely happen to the inheritance you leave your children, if they are subject to family breakdown or get personally sued, etc?

Do you really want your hard earned wealth lost within the next generation, or potentially allow current or future unscrupulous inlaws from getting control of your family estate?

When buying assets, such as property in a Trust, it is important that the investment vehicle you use, that it would give you reliable asset protection for future generations and protect assets within the family.



For property investors and business owners, our asset protection specialists has developed and built specific lineage clauses into property specific and business specific trusts, that stipulates only the relatives (of blood relation only) of the original trustees are eligible beneficiaries or future appointment as trustees.

D. ALL TRUSTS EXPIRE – VESTING DATES

When a typical Trust expires it would automatically pass the assets down to the nominated beneficiaries. In such an event, the transfer of assets would trigger Capital Gains Tax and Stamp Duty.

This is a nightmare for long term property investors. Just think about the huge tax bill you will leave the next generation, in terms of capital gains and stamp duty. They will be forced to pay those enormous taxes just to retain the accumulated wealth within the family estate. A strategy needs to be in place to tackle this.

4. Basic Asset Protection

So how can you shield yourself from such dangers? Here are four basic asset protection strategies in Sydney, Brisbane, Melbourne, Perth and Adelaide residents can apply.

Umbrella liability insurance can be bought from home and auto insurance providers and gives you added protection against personal-injury claims.

When buying an umbrella policy, take note of the inclusions and make sure that you are protected from all types of claims. If you are to come upon an inheritance, it's best to do this ahead of time and make sure that your coverage amounts to a value that is at least equal to your net-worth.

Consider separate accounts

Some would advise transferring assets to your spouse's name to keep them safe, but this can have the opposite effect should you end up in divorce.

The wiser choice, in this case, would be to have separate accounts. This ensures that your assets stay with you and your next of kin despite a divorce. The same goes for joint accounts with business partners or other connections. These can be at risk should the joint owner incur a tax lien or lawsuit judgment. But if it is absolutely necessary to have a joint account, at least keep the balance to a minimum.

Create a business entity

If you own a small business or rental property make sure to create a formal business structure (Pty. Ltd. or Propriety Limited Company). By forming this entity, your personal assets are protected against business lawsuits, which can now only target the assets of the entity.

Establish an asset protection trust

Trusts are asset protection solutions that have been used for years. They protect your wealth from being taken from you in the event of a lawsuit. Since you don't own the assets but merely control them through the trust, you cannot lose them.

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