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Nothing Succeeds Like Succession Planning

So you are bullet proof. You are a self-made man or woman and your business is flourishing. You put in the many necessary hours to build your business and may have family involved to assist you. You have used your own skills and expertise to be a leader in your field of endeavour. You control your own destiny – or so you think...

Thinking Ahead

Consider where you wish to be in the next ten to twenty years. For example, when do you want to retire? Will you be able to realise sufficient capital from your business to generate an income, which will in turn enable you to spend the later years of your life doing the things you were not able to whilst running your business? Succession planning is all about addressing these issues and putting things in place to avoid problems in the future. It will pay dividends later if you take the time to plan ahead now.

The Elements Of A Succession Plan

As a first step, you need to consider how to structure your business so that it offers the greatest protection to you, your family and any others you may wish to provide for. This may involve the formation of companies and/or trusts as vehicles to own and operate the business and its assets. Your lawyer and accountant will be able to provide advice on the most appropriate structure for your business and how to achieve your goals while assisting with the implementation of your succession plan.

Your health is an important factor to consider. You need to plan for the eventuality of illness, which may prevent you from working full time or even part time. If your business cannot function effectively without you then you will need insurance to bridge the gap.

In the event you are overseas or otherwise unable to make important strategic and operative decisions for the business someone will need to be appointed to make these decisions on your behalf. In the event of your death, you will need to consider the most appropriate person to assume control of your business. Both of these eventualities may be covered by a business plan, power of attorney and/or a will.

If you have family members involved in your business, the tricky question then arises as to how best the interests of those family members who are involved can be balanced against those who are not. Once decisions have been made then they should be recorded in your will. If you have a family trust, then a memorandum recording your wishes should be prepared.

Remember, it is never too early to begin planning succession issues.



Body Corporates – What Are They And How Do They Work?

Developments involving unit titles are becoming increasingly popular as more and more people elect to live in apartments or town house developments, particularly those located in inner-city areas. These developments can take the form of clusters of town houses, terraced housing or low and high rise apartment blocks. A body corporate is made up of all of the owners in a unit title development.

Unit Titles Act

Body corporates are governed by the provisions of the Unit Titles Act 1972. The Act allows for the subdivision of land into units so that each unit is owned by an individual owner and common property is owned jointly by all of the owners.

The Act sets out rules for the use and management of both the Units and the common property. If you are considering purchasing a property with a Unit Title, or you already own one, then you should be aware of your obligations as a member of the body corporate.

Costs

The cost of maintaining the common areas and the external structure of the building is the responsibility of the body corporate whereas the cost of maintaining the internal buildings are for the cost of the individual owners.

A body corporate will therefore levy a charge on an annual basis to cover the cost of maintenance of common areas. The body corporate is also responsible for insuring the whole development and indeed this is one of its most important functions. These costs are shared on a proportionate basis by the individual owners.

Explaining Powers Of Attorney

Any individual may give another a power of attorney to manage his or her affairs pursuant to the Personal Protection of Property Rights Act 1988 ("the Act").

The Act provides for two types of powers of attorney:

1. An Enduring Power Of Attorney As To Property

This confers upon the person who is appointed ("the donee") the right to act in respect of all the property affairs of the person he or she is appointed by ("the donor"). Alternatively, it can be restricted to certain types of property. For example, a person who is intending to be absent from the country may wish to appoint an attorney to negotiate the sale of a specific asset such as a house or company shares and the power of attorney would therefore be restricted to those assets only.

Rules

A body corporate also makes rules in relation to the development as a whole. There are standard rules set out in the schedule to the Unit Titles Act but these can be amended to suit the individual requirements of particular developments or from time to time as the owners may decide. You should be familiar with the matters contained in the rules as these are important in the event of any conflict or disagreement between individual owners and/or the body corporate.

Secretary

A body corporate must appoint a secretary to oversee administration. This can be one of the owners of the units or, in the case of larger developments, a professional firm is often appointed.

The secretary is responsible for convening meetings of the body corporate, preparing minutes, effecting insurance, collecting levies and paying accounts as well as other administrative tasks. If a professional firm is appointed a management fee will be payable and the cost of that is added to the charges collected from the owners by the body corporate.

If you are considering purchasing a property which is part of a unit title development, it pays to make enquiries as to how the body corporate is run and the charges which are levied as in the case of larger developments, these can sometimes be quite significant.

So long as they are properly run, body corporates are an extremely effective way of managing property and minimising the maintenance headaches and hassles that can be associated with home ownership.

2. An Enduring Power Of Attorney In Relation To Personal Care and Welfare

This confers upon the donee the right to make decisions concerning the personal care and welfare of the donor of the power of attorney. It can be particularly useful in the case of elderly people who wish to appoint family members to make decisions concerning the sort of care they should receive.

However, there are certain matters which are specifically excluded. For example, the donee cannot refuse consent on behalf of the donor to any standard medical treatment or procedure intended to save life or prevent serious damage to health.

In both instances, the donor may stipulate that the power of attorney is not to be revoked even if the donor becomes mentally incapable.

Who Should You Appoint?

Given the wide powers that the donee of a power of attorney can exercise on behalf of the donor, it is most important that if you are considering appointing an attorney then the proposed person should be someone whom you implicitly trust. You should know them well enough to be confident they will carry out your wishes and generally deal with your property and personal affairs in a manner that you desire.

Only one person can be appointed at any given time as an attorney for personal care and welfare but two or more can be appointed to deal with property. In that instance, you should consider whether they should be appointed jointly (which means both attorneys must act together) or jointly and severally (which means they can act either together or separately).

A power of attorney may be revoked at any time by the donor giving written notice to the donee. However, if you wish to do this it is prudent to inform your bank as well as any other third parties who may have dealt with your attorney. A power of attorney is also revoked on the death of the donor.

A power of attorney can only be used for a property owned by the donor in their personal capacity. It cannot be used to deal with property in which the donor has an interest in another capacity, for example as a trustee of a trust. Furthermore, it can not be used to authorise the donee to act on the donor's behalf in his or her capacity as a director of a company.

Do You Need A Power Of Attorney?

A power of attorney is useful particularly if you are travelling or living overseas and wish to ensure there is someone available to deal with your affairs in your absence. It is also useful in case of illness or mental incapacity.

However, before appointing an attorney, careful consideration should be given as to whether it is appropriate to give the donee general power to act on your behalf or restrict it to specific matters only.

The appointment of an attorney is an important step and you should always seek advice from your solicitor before signing a power of attorney.

Are You At Risk From House Finance Fraud?

A house finance fraud is one which involves the provision of false or misleading information to a homeowner, bank or other lending institution for financial gain. These frauds appear to be on the rise in New Zealand and they are becoming increasingly elaborate.



Who Is At Risk?

Those at risk include the following:

- Individuals who wish to own their own home, but either do not have enough money for a deposit or have a poor credit history and therefore find it difficult to obtain a loan;
- Homeowners struggling with mortgage repayments and other debts;
- Purchasers of investment properties or parents wishing to assist family members to purchase a home;
- Banks and other lending institutions.

Types Of Housing Finance Fraud

There are many types of housing frauds, including:

- Mortgage fraud;
- House equity fraud;
- Buy back schemes; and
- Disposing of property by falsely assuming the true owner's identity.

One of the more common frauds is mortgage fraud. This occurs when false information is given to a bank or lending institution in order to secure a loan to purchase a property.

There are several ways it can be perpetrated.

Example A

An agreement for the sale and purchase of a property, containing an inflated purchase price, is submitted to the bank (often accompanied by a "valuation"). The bank, relying on the valuation, may lend up to 80% of the false and inflated purchase price. The surplus funds after the house has been purchased are then used to pay the initiator of the scheme. Although the borrower is now able to purchase a house, he or she may struggle with the mortgage payments on the higher amount borrowed.

Example B

Using a false valuation, the purchaser of a property may elect to immediately on sell it for a price much greater than that shown in the mortgage application. The new buyers are duped into believing the house value is correct because they have been provided with a copy of the false valuation. The person committing the fraud makes a profit because they have used that false information to convince the bank and the new buyers that the house is worth more than it is.

Example C

A fraudster may follow the same procedure outlined in Example A. However, he or she deliberately defaults on the mortgage repayments. The bank then attempts to sell the house at mortgagee sale but finds that it is not worth as much as they were lead to believe. As the bank has advanced more than the property is worth, the bank will suffer a loss. The fraudster has long since pocketed the difference between the amount loaned and the sale proceeds.

All of the above schemes are fraudulent if the promoter of the scheme makes any false representations to the participants or knowingly supplies false information in order to raise finance. In cases where the fraudster has falsely assumed the homeowners identity, the homeowners house may be sold without their knowledge. Other homeowners are tricked into transferring their home to the fraudster, believing that the fraudster is obtaining finance on their behalf.

The Penalty

If the homeowner/borrower is aware of the fraud then they and the promoter of the scheme may be convicted of fraud which carries with it the possibility of a jail sentence. A real estate agent found to be involved in a fraudulent scheme (by providing a false sale and purchase agreement) risks cancellation of his or her licence.

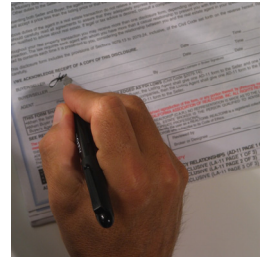
How To Identify Potential Fraudulent Schemes

Schemes such as those listed above often prey on those who are desperate for finance. The schemes may be advertised in newspapers or be promoted through church or cultural groups. Scheme

organisers often appear to be legitimate professionals and may state they are associated with recognised institutions or use a professional front person to give the appearance of credibility. The homeowner or borrower is not encouraged to seek independent legal advice and may be asked to sign numerous documents without any explanation as to the effect of those documents.

To avoid becoming a victim of a fraud and risking the loss of your home, you should bear in mind the following:

- Never sign any document unless you fully understand it.
- Read all documents and ask questions if you are not sure.
- Never be persuaded to include false information on any loan application, regardless of time pressures.
- Never leave any signature lines blank.
- Before signing a loan agreement, check the monthly repayments are not higher than you had expected.
- Always seek independent legal advice.



News in Brief

Proposed Statutory Probationary Period For New Employees

New Zealand is one of the few OECD countries that does not have a statutory probationary period for new employees. However there is a Private Members Bill before Parliament which proposes to change that and would align New Zealand with the majority of the OECD countries.

In March 2006, the National Party's Employment Relations (Probationary Employment) Amendment Bill ("the Bill") was voted to select committee for consideration. The Bill introduces a 90 day probationary period for all new employees during which, or on the conclusion of which, either party may terminate the employment. The Bill provides the probationary period is not to form part of any new individual employment agreements or collective agreements under the Employment Relations Act 2000 ("the Act") and it repeals the existing provisions for probationary employment arrangements contained in the Act. It also allows the parties to agree to a lesser period of probationary employment.

During the probationary period, the Bill excludes either party from recourse to dispute resolution procedures contained in the Act – including personal grievance claims for unjustified dismissal. The parties may agree to a longer probationary period but

the law relating to unjustified dismissal will apply to any probationary period that exceeds 90 days.

Submissions on the Bill close on 19 May 2006.

Landonline

Landonline is an online service used by surveyors, lawyers and other professionals. It provides access to the electronic land titles register, maintained by Land Information New Zealand, and enables a registered user to search certificates of title, lodge title dealings and survey data.



Landonline has been introduced gradually over the last few years. However the Government has recently announced that the electronic lodgement of all land title transactions and survey plans will be compulsorily phased in by 1 July 2008. This means that all dealings in land will be registered electronically and there will no longer be any paper based dealings.

One of the principal benefits of electronic registration is that all information is processed in real time. This means that information held on the register is always up to date and the processing of dealings is faster and easier.

If you have any questions about the newsletter items, please contact us, we're here to help