

RL NEWSLETTER

FEARLESS LAW

JANUARY - FEBRUARY 2005

Trust Splitting as an Asset Protection strategy

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One asset in a family trust that goes bad will take out all the other assets in the Family Trust. For asset protection purposes, assets are divided in 3 classes:

High Risk (e.g. a trading business).

Medium Risk (all types of real estate – if someone is injured on the property then the Trustee is often personally liable, even though the Trustee may have no beneficial interest in the real estate).

Low Risk (Shares and Managed Funds).

Only a madman would keep high-risk assets (a business) with low risk assets (shares) in the same family trust.

You can have as many family trusts as you want. However, you do suffer greater accounting fees each year. You don't want to have too much wealth in a family trust, as the more wealth in the trust, the better the target for would be creditors.

Trust Splitting

The solution we have come up with for splitting a trust is great. It has no CGT and stamp duty implications, and on the 3 occasions we have split a trust, there has been the following benefits:

- **asset protection:** A client wanted to separate his valuable business premises from his other business assets that were all sitting in the same trust.
- **land tax minimisation:** A client had 2 properties in their family trust; because of aggregation rules for land tax (ie. sliding scale tax rates), the land tax bill was \$12,000. By splitting the trust so that there were 2 properties in 2 trusts, the land tax reduced to \$4,400. We confirmed this with Land Tax before the process and the reassessment went through afterwards with no problem. Be warned—there is a land tax anti-avoidance rule, so don't do it or admit it was done just to avoid land tax.
- **estate planning:** Our most recent client had a few properties in the same trust, but when doing his Will, he wanted to have different levels of control by different children for each property. The way we solved the problem was splitting the trust so that different properties were in different sub-trusts controlled by each kid

Rosendorff Lawyers has a successful history in trust splitting. To start the ball rolling please call Alan Rosendorff on 9011 8353 or email

ARE YOU PROTECTED FROM INDEPENDENT CONTRACTORS COMING BACK TO YOU AND CLAIMING THAT THEY WERE EMPLOYEES

LEASES UPDATE EXCLUSIVITY

The answer to these questions is "read the agreement". If you don't have a written agreement then you have to rely on the law. Sadly, last week the Australian Industrial Relations Commission took a hammer to the High Court's Electrolux case. The law is such a mess that the federal government has said that it needs to introduce a new Bill to fix the uncertainty. Sadly, even if they change the law it won't be backdated. If you have no Employment Contract or Independent Contractors

Agreement then you have absolute no protection as the employer.

For every new contractor or employee it is a simple matter of building and presenting the contract to your new person. What about people that are already with you? Bad luck. They already have all the protection of the law. It is you the employer that has no protection. Why would they want to sign an agreement? Well, next time you change their conditions of employment or contract, at

that time present them with the contract. Examples are a car bay, a pay rise or other new condition of employment. Watch out for those times and try and get all your employees and contractors locked into the protection.

Alan Rosendorff has extensive experience in preparing Employment and Independent Contractor Agreements. To discuss your business' requirements please contact Alan on 9011 8353 or email alanr@rosendorff.com.au

A recent decision of the Administrative Decisions Tribunal of New South Wales indicates problems that can arise for lessors and lessees when exclusivity is granted in a lease.

The lease did not expressly confer exclusivity on the lessee, however, the lessee was able to rely on clear representations made by a senior employee of the lessor to the lessee about 2 years before the lease commenced, whilst negotiations relating to the lease were in progress.

The decision illustrates the significance of such representations, the care required when representations are made and the necessity (if possible) of having some record of such representations.

As the lessor took inadequate action to enforce the representations for about 3 years substantial damages were awarded.