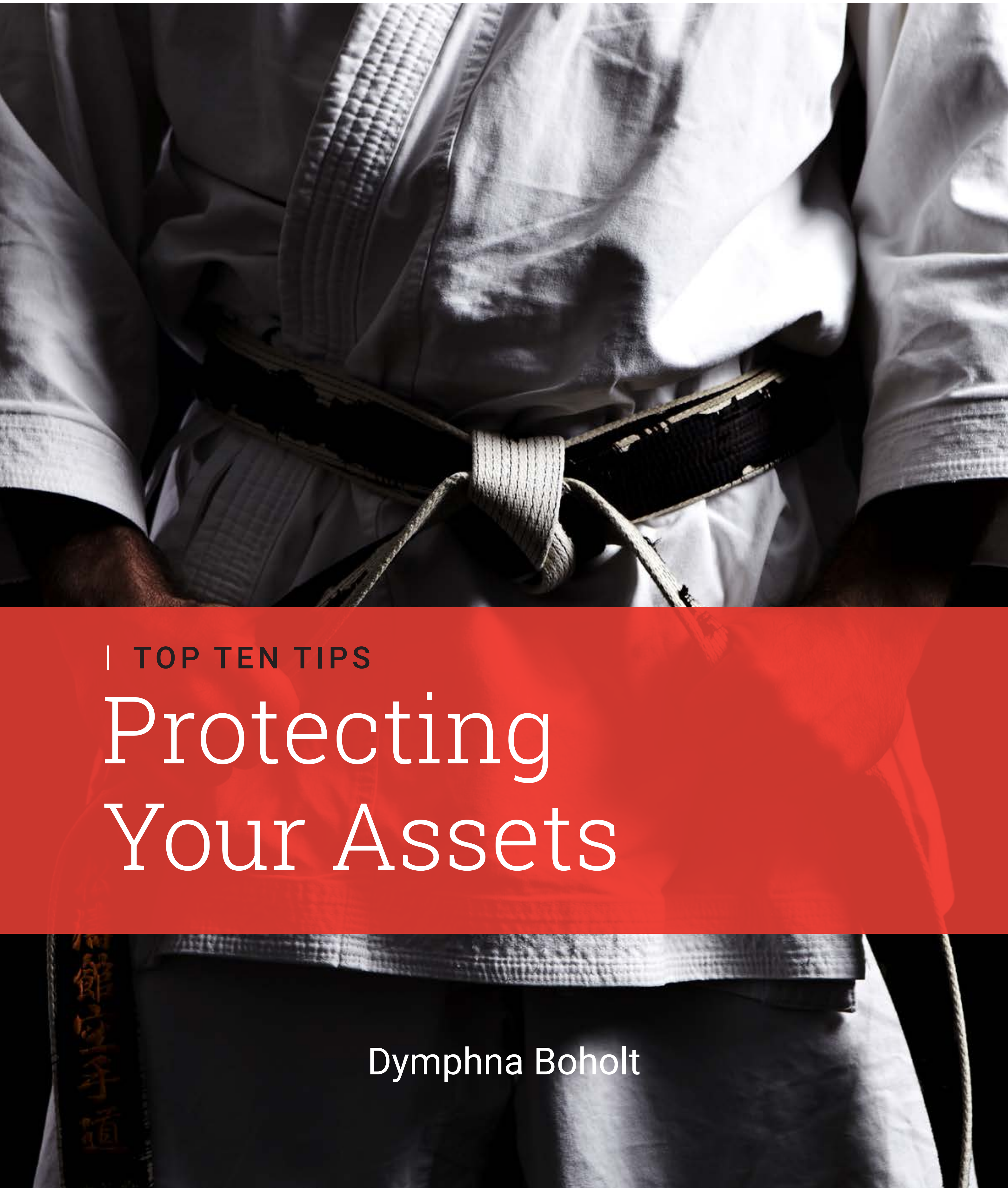
INVESTOR SERIES



TOP TEN TIPS

Protecting Your Assets

Dymphna Boholt

1. Understanding Asset Protection

Asset protection can be broken down basically into three areas:

- **Structure**
- **Debt**
- **Insurance**

Each of these has their own merits, but a combination of all three is most likely the best scenario to adequately protect your assets. Basically, asset protection is armour plating your assets. It is as much about prevention as it is about cure. It acts as a deterrent to being sued and places your assets out of the claws of creditors.

2. Structuring Can Protect You

Buying assets is an important part of your wealth creation, but how you buy them is also an important aspect of asset protection. For example, if you buy an asset in your name as an individual or a partnership, you have little or no protection whatsoever; and in partnerships particularly, you bear unlimited liability for the actions of the other partners.

These laws are always changing, and it is up to the specialists in the area to constantly keep track of them. For now, at least, the most protected structure we have available to us in Australia is called a 'discretionary trust' with a company acting as a corporate trustee, or a variation thereof.

The use of structures is generally the most popular choice of asset protection, and provides the most bulletproof protection from litigation and creditors. It is also the most complex and misunderstood area of our legislation, which is why many professionals often only take into account taxation as a reason for structuring, and asset protection becomes a poor second reason, or at worst, is completely overlooked.

3. Debt Can Be An Effective Means Of Asset Protection

I understand that it may sound like a strange way to protect your assets. However, when used correctly, debt can be an extremely effective means of asset protection. Of course, before starting the litigation process, a solicitor will generally conduct a search to determine the value of a potential target's assets. If these assets are tied up with debt, and the person is penniless on paper, then the chances of being sued are greatly reduced.

It all comes down to 'friendly' debt and 'unfriendly' debt. It can be categorised as both, and equates to whether or not the tax is deductible. 'Friendly debt' is when you lend money to yourself or your business through the use of trusts and other structures. 'Unfriendly debt' is when you are actually in debt to another person or entity such as a bank.

4. Insurance Is There To Help

Insurance is everywhere. There's not much that goes on that isn't covered by insurance. Whether it is your weekly game of soccer, buying a new car, going to a concert, chances are you've paid for insurance either in your annual fees, ticket price or through a conscious decision to pick up the phone and cover yourself.

I believe that thoroughly reading and checking your insurance policy is vital. The legal jargon and professional waffle can be over the top, but give it a go and if you are having trouble, ask for the assistance of your insurance broker. After all, that's what they are paid to do. By asking for your broker's help to fully understand the fine print, you will be able to determine whether your particular broker or agent really knows their stuff, or whether they are merely a salesman who is there purely for their commission cheque.

I also recommend having an insurance review on an annual or bi-annual basis with a representative from your insurance company. It is important to know exactly what you're covered for and what you aren't. Have you recently changed your car in some way? Done a minor renovation? You may not be covered, and it is important to notify your insurance company.

Finding the right insurance is often quite hard, and there is no easy

answer. You have to find the right combination so that you are completely covered. You need to work out how much you are prepared to spend, and prioritise which types of insurance policy you wish to purchase.

5. Worst Case Scenario

In Australia, there are two ways in which people can become bankrupt:

- **Voluntary Bankruptcy** – People can voluntarily declare themselves bankrupt
- **Forced Bankruptcy** – People can be declared bankrupt as a result of legal action taken against them by creditors to whom money is owed.

The advantages to declaring bankruptcy are that you are released from your debts and no longer have to deal with your creditors directly (this is the role of your trustee in bankruptcy). However, the disadvantages far outweigh the short term advantage. Not only is there a stigma attached to bankruptcy, but it could also affect your career path. It will most certainly have a negative effect on your credit rating and may also result in certain restrictions being placed on you.

These restrictions can include among other things, the following:

- You may be required to surrender your passport to the trustee
- It can affect some insurance contracts
- On going contributions from your salary may be required
- You cannot be the director of a company

6. Business Structures

There are six basic types of business structures that are used in Australia:

- **Sole Trader**
- **Partnership**
- **Company**
- **Trading Trust**
- **Co-operative**
- **Incorporated Association**

Sole Trader

As a sole trader the individual named as the legal proprietor of that business is personally liable to ensure the debts of the business are paid. Legally, as a sole trader, you are acting on your own behalf and are therefore holding up yourself and all of your assets for everyone to see and potentially litigate against.

Partnerships

Partnerships are a very common form of business structure but one that tends to leave your assets exposed to the threat of loss. Partnerships can vary greatly, from very simple to very complex. As partnerships are not a separate legal entity and the partnership of individuals has the same risks when it comes to asset protection as the sole trader structure, there are provisions allowing for limited liability partnerships that act more like companies than sole traders.

Company

A company can be a highly effective vehicle for both asset protection and tax saving purposes, depending on how it is used. A company is a separate legal entity in its own right, where shareholders have limited liability and are therefore not responsible for the company's debts. When you really start to get your asset protection ticking, and your structures are making good money, you will find you will have need of a bucket company. This is a company specifically set up to receive trust distributions. It pays tax at a rate of 30% (the current company tax rate).

Trading Trust

The ultimate solution for both asset protection and tax advantage is to set up a company as a corporate trustee to control or manage a trust that runs the business. What type of trust you decide to use will depend on the style of business, who the owners of the business are, and whether they are related or not. If the owners of the business are Mum and Dad and maybe some kids, the trust selected will usually be a family trust which is a type of discretionary trust.

Co-operative

A co-operative is a registered legal entity like a company, but there must be at least five shareholders and all shareholders have equal voting rights.

Incorporated Association

An incorporated association is a registered legal entity, usually for recreational, cultural or charitable purposes, with at least five members and all profits are applied to the purposes of the association.

7. Wills As A Form Of Asset Protection

I'm often surprised about people's views on Wills. "Who cares? I'll be dead." is a statement that I've heard many times. It is ultimately a legally enforceable declaration directing the disposal of a person's property upon their death. If you die without a Will, or with an invalid Will, according to the law, you will be considered 'intestate' and your estate will be divided up according to the legislation in the state or territory in which you lived by the public trustee's office. Estate planning has two main aims:

1. **To try to avoid the likelihood of any next-of-kin suffering financially; and**
2. **To minimise the risk of family squabbles about who gets what.**

Estate planning was initially used when there were death and estate duties, and even though these no longer exist, there are other taxes, such as Capital Gains Tax, that make estate planning just as worthwhile now.

An estate plan should:

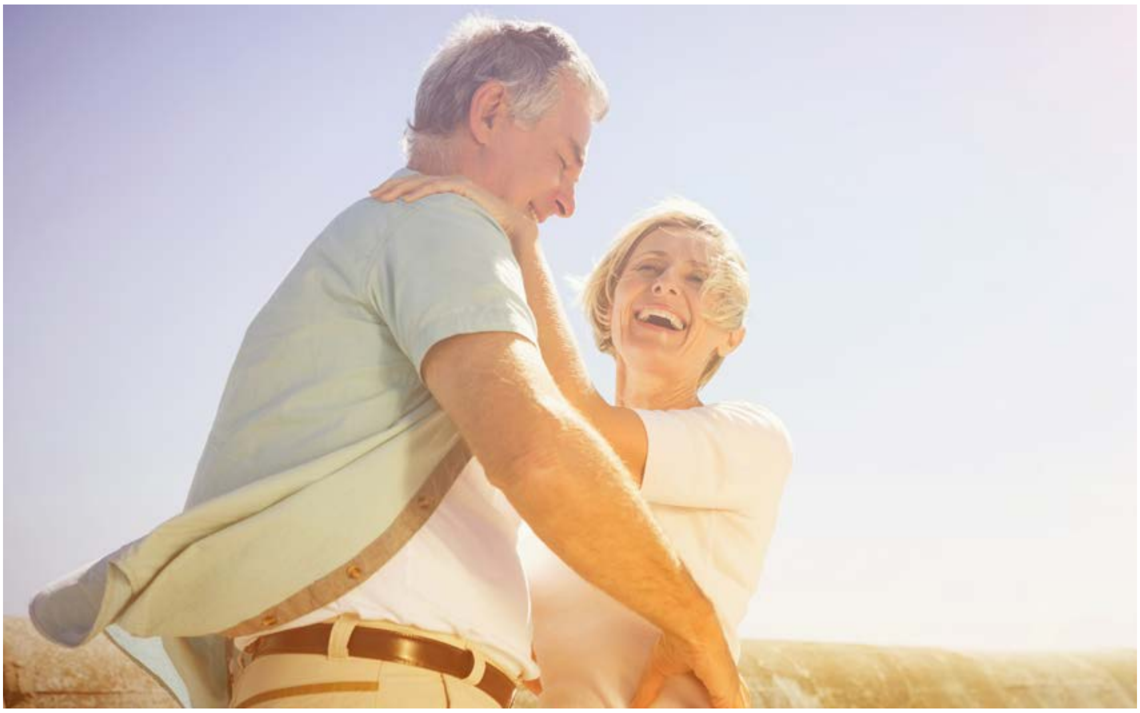
- Be administratively simple to operate;
- Not be too expensive to maintain;
- Balance lifetime enjoyment of assets/income with preserving assets for family after death; and
- Be regularly reviewed

The only person who doesn't need a Will is someone who will not die.

8. Liquidating Assets

Liquidating assets can be a way to avoid going into more debt to afford a lump sum. If you get sued for whatever reason, or have to pay a large lump sum, you need to decide whether you're better to sell off part, or all of your portfolio, or whether you should use the equity you've built up in those properties over the years to borrow against in order to pay out those obligations. It will always be a tough choice without a perfect answer.

The best blanket advice I can give is to sit down with an experienced real estate agent who can tell you what you can sell, how long it will take, and for how much. You will then contact a skilled mortgage broker, who will be able to tell you how much is available for additional borrowing on each property, and how much that borrowing will cost. From there you would formulate your plan of attack.



9. Planning For The Future

Whatever stage you are at in life, you can always be planning for the future through wealth creation strategies, tax savings, retirement and estate planning and most importantly, asset protection.

With such a complex range of insurances and other asset protection choices, to put the pieces of the puzzle together for yourself and achieve your financial and lifestyle goals, you will need an action plan which will determine what is most important and relevant to your particular situation.

The key to an effective action plan is to start off with the right advice, and the key to getting the right advice is to make sure you have enough knowledge on the subject yourself so you ask the right questions, and understand the financial decisions and their implications.

Don't ever become complacent about your assets either, or you may end up regretting it. Asset protection planning simply means taking steps to preserve your assets before they are threatened.

10. Create An Action Plan

Step One:

Determine what assets you have and how they are owned.

Step Two:

Identify and write down your asset protection goals. You may wish to keep the family home in your own name (even with all the associated pitfalls) but want to secure your other investments. You may also feel that certain assets are not worth insuring, because their value is too low. A clear outline of what you want to achieve will give your professional advisor a more defined starting point.

Step Three:

Determine what insurance policies you have and what you are specifically covered for – Ensure that you read and understand the fine print. Then make a list of anything that is not covered and prioritise the items on this list.

Step Four:

Work out who your assets will go to upon your death and ensure that you have a current Will and Power of Attorney in place.

Step Five:

Educate yourself! With a little effort, you can learn enough to make educated decisions that may affect your overall asset protection plan. I am a big believer in self-empowerment through education.

Step Six:

Educate your kids and those around you, including friends, colleagues and other families. The greatest gift you can give your children is to educate them.

Step Seven:

Take action. Based on the knowledge you have acquired, make an appointment to see a professional such as an accountant, financial adviser or solicitor and set the wheels in motion for a more secure future.

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Yours in success,

Dymphna.

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