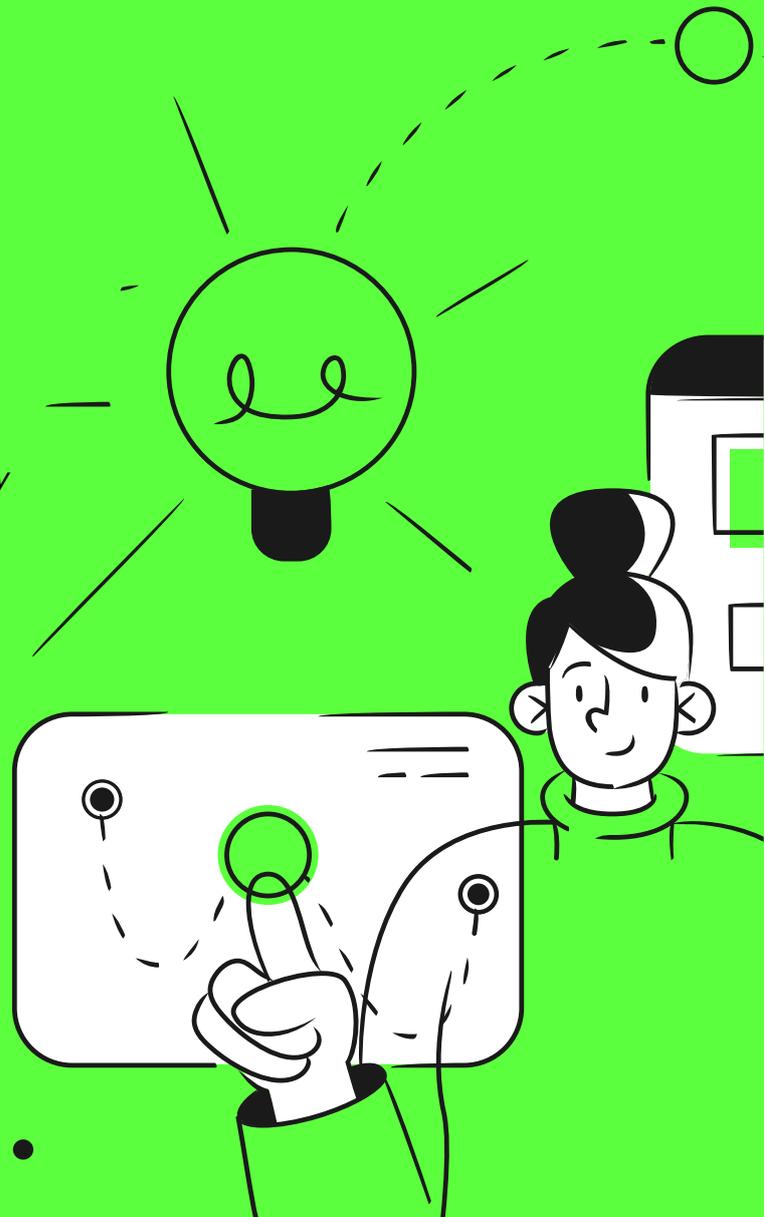


# The guide to protecting Family Wealth



# Contents

3	<i>Introduction</i>
4	<i>Family wealth – is yours protected?</i>
4	1. Litigation
5	2. Incapacity
5	3. Bankruptcy
6	4. Death
6	5. Family Law
7	<i>Solution – The protector</i>
7	<i>Protecting family wealth with The Protector</i>
8	1. Establish a Family Protection Trust
8	2. Calculate Family Wealth
9	3. Gift Net Wealth to the
9	Family Protection Trust
9	4. Loan to Asset Owners
9	5. Securing the Loan
10	6. Special use of Call Option
11	<i>What to do next?</i>
12	<i>Contact</i>
13	<i>Sample data capture: Determining your Net Equity</i>





# Introduction

Building Family Wealth takes time. But how easily can it be torn down in expensive litigation, legal challenges and regulatory and economic threat?. It is not unheard of for a \$1M deceased person's estate to be challenged and when that happens, expect upward of \$200,000 in legal fees and years of litigation.

The bigger the estate, the larger the fees. And anyone with a business or profession, from a doctor advising patients to a property developer with their latest project to a hairdresser who may have spread Covid to clients, may be exposed to lengthy and costly lawsuits.

**This does not have to happen!**





# Family wealth – is yours protected?

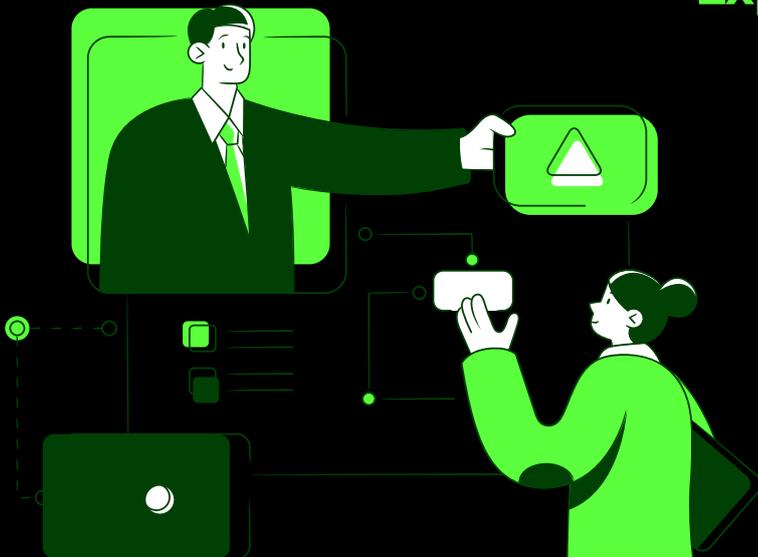
*There are five ways that family wealth can be attacked – each a potential time bomb on a family's wealth and health.*

## 1. Litigation

We live in an era where our employees, children, spouses, neighbours, government, councils, tenants and regulators can sue you, and there is no end of No Win No Fee lawyers ready to take up the case. You may not know it, but Australia produces more law students per capita than any other nation on earth. That is why Australia has a very strong legal industry that earns more than \$23Bn in revenue each year. Even managed investment vehicles enable investors to pool monies together to invest in class action litigation.

### Exposed:

Litigation exposes all assets in your own name. The biggest threat is not the litigation itself, but the time taken in the legal system, the stress and escalating legal fees.





## 2. Incapacity

Where a person suffers from mental incapacity, then they cannot be a trustee or director of a company. Medical events can put people out of action for long periods. Now consider these things:

- What happens if they are the sole director or a director of a trustee company for a discretionary trust or an SMSF?
- Who is going to run the show?

Without any strategic solution put in place before the incapacity, any business, trust, super fund or investment is at extreme risk.

**Exposed:** Assets, investments, companies, trusts, super funds are exposed where a key person, director or Trustee becomes incapacitated.

## 3. Bankruptcy

For many business owners and professionals, Covid has impacted their income and the strength of their business or career. We are moving into uncharted waters, and many insolvency practitioners are talking about the significant uptick in their business – at the expense of family wealth. It is heartbreaking to see family businesses go to the wall through government lockdowns and actions with no protection in place.

**Exposed:** Assets, investments, companies, trusts and even super funds are exposed where a key person, director or Trustee is in the throes of insolvency or bankruptcy.



## 4. Death

On death, most people who have a Will would expect that all of their personal assets, including home, investments and superannuation, would be paid out in accordance with their Will. Wrong!!! Every State in Australia allows a disaffected person (someone who did not benefit from a Will or get what they believe they deserved) to claim against an estate. Any claim overrides the provisions of a Will.

A Real Case in Point: A family provision claim on estate assets may result in lengthy and costly court proceedings. In 2018, a WA Supreme Court Judge castigated lawyers who had taken five years and \$500,000 in legal fees to challenge a \$600,000 estate consisting only of the deceased's home. This same scenario happens every day around the country. What you decide to do with your family's assets on death should be your choice - not the choice of a Supreme Court judge looking for the persons who "needs" the assets.

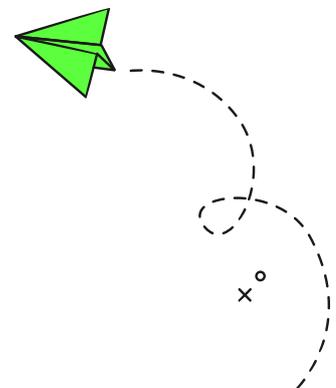
**Exposed:** Assets, investments, companies, trusts, super funds are exposed to family provisions litigation where a key person, director or Trustee dies.

## 5. Family Law

Most people are not aware that a simple de-facto relationship that has lasted two years means both parties of the relationship, in the event of a relationship breakdown, have full recourse against the other's property under the Family Law Act in Australia.

Giving adult children money, inheritances, help with purchasing a property, or having an unpaid present entitlement in a family trust may add fuel to the fire in a relationship breakdown. The same with marriage and more so, with second and third marriages. The old asset protection strategy of putting assets in a spouse's name to protect from litigation can be a disaster in the making from a Family Law perspective.

**Exposed:** Assets, investments, companies, trusts, super funds are exposed to family provisions litigation where a key person, director or Trustee dies.





# Solution – The protector

*In partnership with LightYear Docs, Abbott & Mourly have developed “The Protector” - a family wealth protection package, which not only provides asset protection but ensures that your assets are held for the benefit of those beneficiaries in your lineage or bloodline that you want. This will ensure that your assets are kept in the hands of your lineage.*

## Protecting family wealth with The Protector

Line of Succession is important

1. Leading Family Member (LFM)
2. Successor LFM
3. Second Successor LFM

*Trustee Company  
for longevity*

*Loan*



Value \$1M

4. Lend \$1.5m back

5. Secure the assets  
with mortgage

*Family protection  
Trust to hold the  
crown jewels*

*Gift*



Value \$150k

1. Set up the Family  
Protection Trust (FPT)

3. Gift \$1.5 value to  
the FPT with cheque

2. Value assets less  
money owing

Let's go through each of the steps of The Protector so you understand why and how it works.



## 1. Establish a Family Protection Trust

A trust can be a great vehicle if structured properly to protect assets, a business, investments and family wealth as well as to look after bloodline lineage. However, if not structured properly, it can be a disaster in the making. The Protector uses a special purpose Trust for the beneficiaries of your lineage or bloodline that you desire, including yourself and your spouse. If you have an existing trust, this may prove suitable unless it is also potentially openly exposed because it runs a business or service.

The key person in the Trust is not the Trustee but the Family Protection Appointor who can control who is a beneficiary and who is Trustee. With family in mind and longevity, succession is the key. How are we going to pass and protect family wealth for the benefit of future generations? This requires building a line of succession of Family Protection Appointors (FPA). If an FPA comes under attack legally, becomes incapacitated, or dies, the next line FPA takes automatic control, ensuring the security and strength of the Trust.

A crucial feature of the trust set-up is having a Corporate Trustee to match the longevity of the trust structure. As assets are to be in the Trustee's name, having individuals is administratively problematic and raises concerns if they are sued, become incapacitated, or die. On the other hand, a company lives on forever with directors moving in and out of the Corporate Trustee. There are also other strategic reasons for having a company, including the orderly transition between FPA controllers as the FPA is the only holder of the trustee company shares.

## 2. Calculate Family Wealth

The Australian tax system provides tax advantages if you hold, in your own name, a family home (no capital gains tax – CGT) or negatively geared investment properties (tax deductions for interest and 50% CGT discount). The same goes for shares and other investments.

**BUT as we have learned, while in personal names, these assets are exposed.**

If possible, we want to protect assets by transferring them into the Family Protection Trust by way of a gift - but not all assets as there could be tax issues. There is no gift tax in Australia; however, the Family Protection Trust is a separate entity or person, so any gift of an asset involves a change in ownership. This means that we only want to transfer shares or other assets into the trust provided:

- There are no capital gains tax or other taxation issues
- There are no stamp duties or other State taxes.

However, many assets, particularly property, cannot be transferred to the Family Protection Trust without capital gains tax and stamp duties, which we do not want to pay – even though family wealth protection is all-important.

**Instead** - we do not transfer the assets but only their underlying value. The way it works is like this. We determine the valuation of all assets in a person's legal name, including the family home, investment properties, cars, jewelry, private company shares, investments, unit trusts, and other assets. Then we deduct any loans or borrowings on those assets to determine the net wealth or net equity that the legal owner of the assets has across their entire asset portfolio.



### 3. Gift Net Wealth to the Family Protection Trust

Once the net wealth or equity value in all the owner's assets is determined, this is gifted to the Trust using a cheque like instrument called a promissory note – also known as a legal IOU. Once this is done, the person gifting the net equity still owns all the assets (remember, there is no transfer) but their personal wealth has been reduced to zero or a very low number. This is where the real protection comes from.

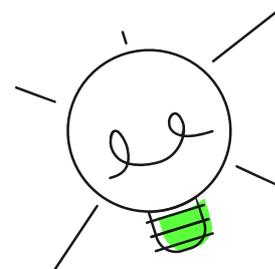
### 4. Loan to Asset Owners

Suppose the asset owners wish to continue to use the property. In that case, the Trustee of the Family Protection Trust will lend the corresponding net equity in the gifted assets back to the legal title-holders of the assets (the original gifter). This is the same as what happens with a bank when you buy a home. You buy the home using borrowed monies from the bank, and the bank lets you use the home provided you continue to service the loan.

### 5. Securing the Loan

Just like a bank, it is crucial for the Trustee of the Family Protection Trust to secure the loan by registering a mortgage overall real estate. If a bank currently holds a mortgage on the property, the Trustee will hold a second mortgage and may be required by the bank to complete a Deed of Priority ensuing the bank retains first mortgage rights.

Personal property like shares, cars, jewellery, collectibles, and other assets can be secured through the government's Personal Property Securities Register. We have specialists that can register mortgages and lodge PPSR registration on behalf of the Trustee.



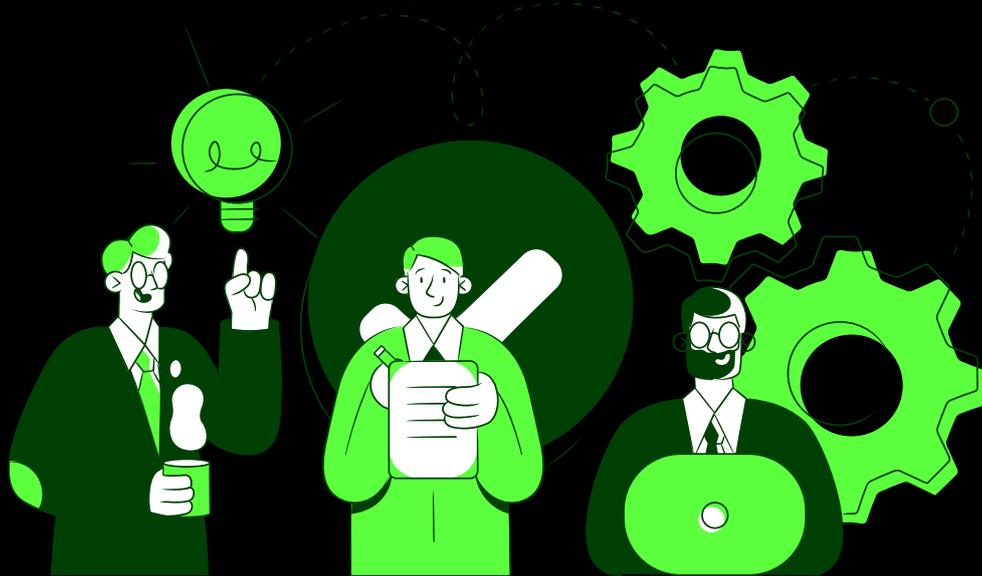


## 6. Special use of Call Option

Over time assets may increase in value, which would require an ongoing gift loan back of the increased value over time. An alternative is for the legal owner to offer a call option to the Trustee of the Family Protection Trust. The way it works is the Trustee and the owner enter into an option agreement where the Trustee can acquire by way of purchasing the assets for an amount equal to their market value at the time of the option.

For example, John Smith owns a house worth \$1M with a \$200,000 bank mortgage. John has set up the Smith Family Protection Trust and gifted the net equity in his home - \$800,000 into the Trust, which has been lent back to John and secured with a second mortgage. John enters into a call option agreement with the Trustee, who pays \$100 for the option to acquire the property at some time in the future for \$1M. If the property goes down in value, then the Trustee loses its \$100. But if the property goes up to \$1.2M then the value of the option is now \$200,000 (less its cost). The key element here is that the increased value has gone to the Trustee.

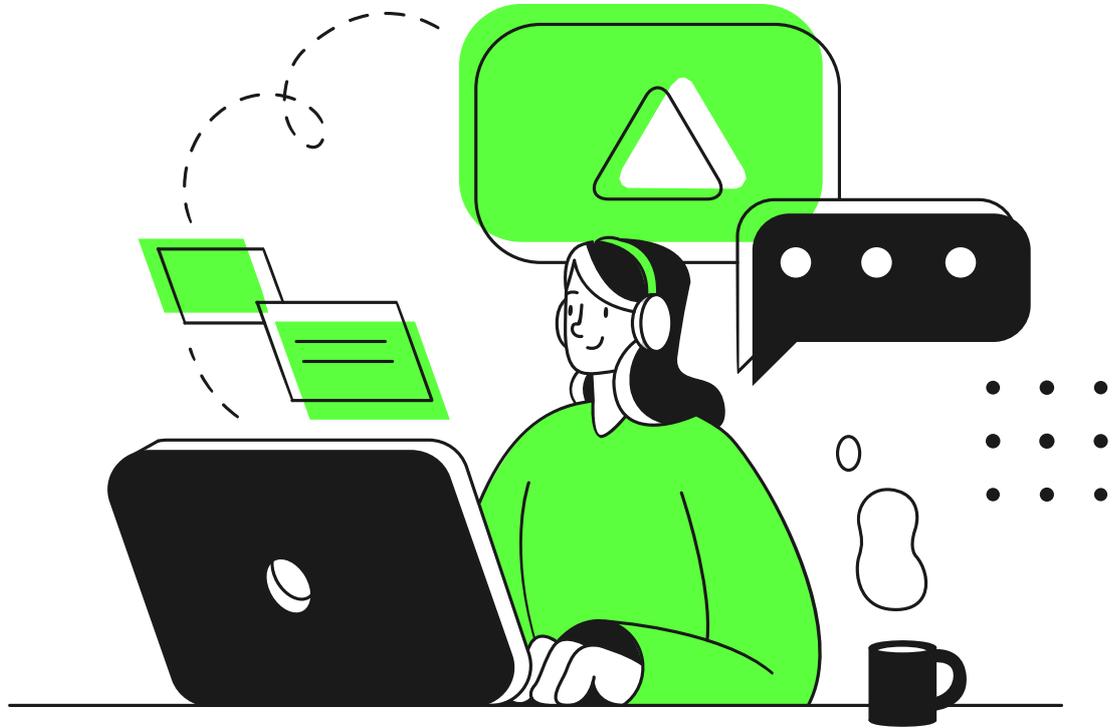




## What to do Next?

The Protector is only solution to protecting your Family Wealth against the Big Five exposures listed above. It is absolutely vital and should have been completed by everyone yesterday. Who could not benefit from having a Family Wealth Protection solution in place – even if it is only for your family home?

Don't delay and get the weight lifted off your shoulders now. A sample data capture for calculating net wealth has been provided below. You can then use the LightYear Docs platform to complete the required documentation, and then utilise our partners at Eventum Optimum to register the mortgage and PPSR. Abbott & Mourly are available the whole way to help you succeed in setting up this strategy.



## Contact

**Abbott & Mourly (via LYD): [legal@LightYeardocs.com.au](mailto:legal@LightYeardocs.com.au)**

(please note, as this strategy needs to be set up through the LYD legal automation platform, we recommend you contact Abbott & Mourly direct through LYD to ensure your query is flagged as top priority)

**LightYear Docs: [support@LightYeardocs.com.au](mailto:support@LightYeardocs.com.au).**

If you do not have a LYD account, **[sales@LightYeardocs.com.au](mailto:sales@LightYeardocs.com.au)**

**Eventum Optimum: [registrations@eventum optimum.com.au](mailto:registrations@eventum optimum.com.au)**



# Sample data capture

## Determining your Net Equity

This is a simple process and the exact value of an asset such as a family home does not need to be determined, just an approximate amount. All major assets should be included such as:

- Family homes
- Investment properties
- Shares, managed funds, unit trusts and other investments
- Cars
- Artwork
- Bikes, furniture and other items that are of a reasonable value

\*The below boxes are editable

Asset - Name	Value \$	Liability \$	Net Value \$
<b>Net Equity – Sum Of All Net Values</b>			

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**We've got  
a doc for  
that.**

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