



**Allan Swan**  
Estate Planning and  
Structuring Principal  
**MOORESLEGAL**

# structuring for 'At Risk' clients

**Melbourne - Stamford Plaza**  
16 April 2008

**Sydney - Amora Jamison**  
30 April 2008

**Brisbane - Conrad Treasury**  
1 May 2008

A seminar specifically  
designed to help professionals  
understand the structuring  
issues for an 'At Risk'  
investor including:

Asset Protection Planning  
Family, Unit and Hybrid Trusts  
Self Managed Super Funds Planning Issues

## Why attend this program

- A seminar exclusively presented by Allan Swan
- Achieve greater control of assets through effective structuring
- Avoid losing assets to creditors
- Learn about the cumulative effect of taxation and other reforms impacting on trusts
- Comparative investments in Self Managed and APRA regulated funds

**Official Publication**

**Lawyers Weekly**

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Professional Development

# structuring for 'At Risk' clients

8:30

## Seminar Registration

855

## Welcome and Opening by Allan Swan

9:00

### Asset Protection Planning

The risk of professionals and corporate directors and executives losing everything they have personally accumulated or inherited would appear to be steadily increasing in respect of non-superannuation assets, as is evidenced by professional indemnity policy premiums and exclusions. The impact (in the event that the risk eventuated) can be minimised by careful attention to asset protection issues.

#### Key Learning Outcomes

At the conclusion of this session participants will be able to:

- Define what assets can and cannot be claimed by a creditor;
- Discuss the impact of recent bankruptcy and family law legislation changes;
- Describe ways for different occupations to minimise risk;
- Demonstrate how to structure the asset ownership to achieve asset protection;
- Understand how to protect against failed domestic relationships and hostile family members

#### Assets at Risk

- Personally owned assets
- Assets subject to mortgage, guarantee or indemnity
- Unpaid trust allocations
- Loans, eg to trusts and companies
- Future inheritances
- Superannuation (in limited circumstances)

#### Excluded Assets – S116(2) of the Bankruptcy Act

#### Anti-Avoidance Provisions – ss 120, 121 & 121A

#### Bankruptcy Clawbacks of Asset Transfers

- Definition of transfer
- Gifts and forgiveness of debts
- Guarantees and mortgages
- Preference dealings
- Power of trustee in bankruptcy to trace source of funds
- Clawback periods – nil, 4 years, 5 years or no limit
- Accumulation of wealth generated by assets subject to clawback
- Clawback of superannuation
- Implications of recent cases, eg Cummins and Richstar

#### Companies and Corporate Trustees

- Extent of limited liability
- Trading while insolvent
- Employment risk

#### Enforceability of Loans

- Application of Statute of Limitations
- Exceptions
  - Secured loans
  - Unsecured loans meeting key requirements
    - Documented loans (as distinct from journal entries)
    - Loans subject to payments of interest
    - Loans subject to repayments of principal

10:45-11:00

## Morning Tea

### Alternatives for Achieving Asset Protection

- Personal ownership
- Superannuation
- Family trusts
- High or negative gearing
  - Friendly creditors, eg family trust
  - Priority – registered mortgage or charge v unsecured loans
- First option and agency agreements
- Inheritances
- Testamentary trusts – crisis protection
- Superannuation death benefits, eg pensions and annuities
- Unallocated reserves – self managed funds
- 2nd generation control of family trusts

### Minimising Risk

- Product, service or file management and review
- Professional indemnity insurance
- Restrictions on financial advice
- Identifying risk areas

### Non-Asset Protection Considerations

- Income tax minimisation
- Retention of income at 15% or 30%
- Capital gains tax discounts
- Capital gains tax small business CGT concessions
- Flexibility and accessibility

### Estate Planning Issues – Consequences of Absence of Personal Assets

11:30

## Family, Unit & Hybrid Trust Assets

The cumulative effect of a series of taxation and other reforms impacting on trusts means that they have an important ongoing role for people generating or accumulating wealth, but needing to gear the generation of wealth, needing access to that wealth prior to retirement or wanting to hold or finance residential property used by family members. For these people, trusts provide a vehicle for asset protection, streaming of income and capital gains and estate planning.

#### Key Learning Outcomes

At the conclusion of this session participants will be able to:  
Understand the establishment, maintenance and ending of both trading and investment family trusts in the light of all these changes.

#### Choosing a Trust

- Fully discretionary (family) trusts
- Fixed unit trusts – with or without SMSF unitholders
- Hybrid trusts – voting, income and capital
- Non-fixed unit trusts
- Capital reserved trusts
- Special disability and other protective trusts
- Other Deed and testamentary trusts

#### Comparison with Superannuation

#### Fixed v Flexible Trusts

- Involvement of SMSFs
- Minimising CGT on eventual sale of assets
- Gearing by unitholders
- Minimising impact of CGT event E4

### Establishment Issues – New Trusts

- Control provisions – appointor v voting unitholders
- Asset protection and estate planning considerations
- Use of gearing
- CGT – reduction of capital rules
- State duty
- Land tax – penalty rates in NSW, Vic and Qld
- Checklist of drafting issues

### Review Issues – Existing Trusts, Funding the Trust

- Loans to trust – choice of lender and terms of loans
- Gifts (if permitted under Deed)
- Subscription of capital

### Trusts and Family Homes

- CGT and land tax considerations
- Trust ownership v trust funding via loans

### Options for Creditors Dealing with Family Trusts

### Asset Protection and Family Trusts

12:30-1:30

## Lunch

### Distributions of Income and Capital

- Accounting v tax income – implications of differences
- Trust distribution resolutions – constraints
- Division 152
  - “Connected with you” provisions
  - Significant individuals
  - Charitable distributions
- Trusts in partnership
- Implications of PS LA 2005/1 (GA) – 3 options for Deed trusts
- Company beneficiaries – unpaid entitlements
- Implications of section 109XB
- Payments to shareholders or associates
- Loans and forgiveness of debts
- Repayments
- Family trust and interposed entity elections
- Operation of CGT events E4 and E5

### Family Law

- Court orders binding on 3rd parties, eg accountants
- Lending to parties of a relationship, eg children
- Child support (maintenance) trusts

### Estate Planning and Family/Hybrid Trusts

- Problems with 2nd Generation family/hybrid trusts
- Estate planning options for family/hybrid trusts

### Resettlements v Administrative Amendments

- ATO Statement of Principles
- Recent case law, eg appeal in Lam & Pym
- Amendment v resolution

### Cloning and Splitting Trusts

- Division of trust assets v shared control by 2nd generation
- Cloning v splitting
- ATO view – TR 2006/4
- State duty

### (Victorian) Farm Transfer Trusts

2:30

## Self Managed Super Funds - Planning Issues

Self managed superannuation funds (SMSFs), in comparison to APRA regulated funds, can offer the prospect of greater control and flexibility for a person's investment, retirement and estate planning strategies and have specific advantages in relation to the purchase of commercial property and the residual benefit from complying pensions. They are, however, subject to very specific access and taxation restrictions applicable to all superannuation funds and can be costly to maintain where the funds held are relatively small.

### Key Learning Outcomes

At the conclusion of this session participants will be able to:

Discuss the key strategic and planning issues for SMSFs

### Overview of SMSF Constraints

#### Restraints on Provision of Advice re SMSFs

#### New SMSF Deeds – Key Attributes

#### Existing SMSF Deeds – Review Issues

#### Control Issues & Options

#### SMSFs and Non-Residents Contributions

- Cash v in-specie
- CGT, State duty & GST issues
- Options for partly employed/partly self employed
- Concessional
- Non-concessional
- Bring forward rule (if under 65)
- Sale of business – \$1 million limit
- CGT ETPs – \$500,000 lifetime limit
- Compensation proceeds
- Excessive contributions – tax penalties
- Splitting of contributions
- Bankruptcy clawback – ss128B & 128C

#### Investment Strategies

- Unlisted securities
- Offices, factories & medical clinics
- Farming properties & residences
- Vineyards & hobby farms
- Non-income generating assets, eg works of art

#### Leases of Business Real Property

- Key terms
- Options for “arm’s length” terms

#### Funding & Security Alternatives

- Terms contracts & tenancy in common arrangements
- Options
- Listed securities
- Real estate – fixed unit trusts

#### Investment Strategies – Growth Phase

#### Segregation v Non-Segregation – Growth Phase

#### Managing SMSF Breaches

#### Use of Investment & Other Reserves

- Establishment & reserving policies
- Accessing reserves

#### Contingency Planning for SMSFs

- Need for liquidity in investment strategy
- Breakdown of marriages
  - Components
  - Planning issues
  - Splitting & flagging orders
  - Service of notices

- Breakdown of de facto relationships
- Means tested pension eligibility – pre & post retirement
- Premature retirement – invalidity
- Death

#### Insurance Policies

- Cost comparison – super v non-super
- Apportioning cost of premiums
- Personal cover – death
- Personal cover – TPD
- Personal cover – trauma
- Business equity insurance
- Drafting issues for funded buy-sell agreements

#### Transitional Issues

- Converting existing allocated and flexi pensions
- Converting existing lifetime and life expectancy pensions
- Existing means tested pension concessions

#### Transferring Wealth to Superannuation at or Near Retirement

- Investment options pre retirement
- CGT and State duty considerations

#### Overview – Retirement Benefits

- Taxation of income pre and post 60 years of age
- Externally managed funds v self managed funds
- Lump sums, tax and different components
  - Retirement lump sums
  - Terminal illness lump sums
- Contributions – concessional and non-concessional
- Pensions and annuities
- Reversionary v non-reversionary income streams

3:30-3:45

## Afternoon tea

#### Transition to Retirement Income Streams

- Planning issues

#### Income Streams Commenced at or Post Retirement

- Account based pensions
- Life office annuity funded pensions
- Lifetime pensions/annuities (from 50+ member funds and life offices)
- Maximising the tax free component

#### Advice re Superannuation and Insurance

- AFS licence requirements
- Limitations on exceptions for accountants, lawyers and generic advice

#### Asset Protection – Bankruptcy Clawback Powers Death Benefit Payment Options

- 0% – non-concessional component
- 16.5% – concessional component – taxed source, eg earnings
- 31.5% – concessional component – untaxed source, eg life insurance
- Realisation of assets in pension phase – CGT minimisation

#### Options for Pre-death Payments

- By member
- By enduring power of attorney (suitably authorised)
- By administrator
- Realisation of assets in pension phase – CGT minimisation

#### Payment of Superannuation Death Benefits – Options

#### Life Insurance & Superannuation

#### Generating Excepted Income for Minor Dependants

#### Control Issues – Non-self Managed Funds

- “Advisory” nominations
- Extent of trustee's discretion
- Superannuation Complaints Tribunal
- S59 binding death benefit nominations – advantages and pitfalls
- Renewing binding death benefit nominations if there is a loss of capacity
- Express confirmation powers in financial EPAs

#### Control Issues – Self Managed Funds

- Implications of Katz v Grossman
- Exclusion of Complaints Tribunal
- Binding death benefit nomination options – section 59
- Power of surviving members, eg children
- Extent of power of executor of deceased fund member
- Potential abuse of trustee power
- Amending Deed to fetter trustee's discretion
- Limitations on control of access by dependants – portability

5:00

## Close of Seminar

## Who should attend this seminar:

- Legal Practitioners
- Wills and Probate Lawyers
- Financial Planners/Advisers
- Accountants
- Fund Managers

## Dates for your Diary

### Collaborative Law Training Program

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## ABOUT YOUR SEMINAR LEADER



**Allan Swan** is an Estate Planning and Structuring principal with the firm **MOORESLEGAL**. He holds degrees in law and economics and a diploma in financial services.

Allan's background in taxation and trusts law gives him a practical perspective when proving training to lawyers, accountant and financial advisors.

Allan lectures at FINSIA and has written extensively for professional journals. He is accredited by the SPAA as an SMSF Specialist Advisor and is a fellow of the Taxation Institute of Australia.

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### CONFERENCE DATE AND VENUE

#### Melbourne

16 April 2008, Stamford Plaza Melbourne  
111 Little Collins Street, Melbourne VIC 3000  
Ph: (03) 9659 1000  
www.stamford.com.au/spm/

#### Sydney

30 April 2008, Amora Jamison  
11 Jamison Street, Sydney NSW 2000  
Ph: (02) 9696 2500

#### Brisbane

1 May 2008, Conrad Treasury  
George Street, Brisbane QLD 4000  
Ph: (07) 3306 8888  
www.conradtreasury.com.au

### PROGRAM CHANGES

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**BRISBANE:** 3 April 2008. If we receive written notification between 4 April 2008 and 17 April 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 17 April 2008. You may nominate a replacement, however no refund will be issue

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**Mail:** Conference Co-ordinator, LexisNexis  
Locked Bag 2222,  
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Please complete sections A, B and C

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### A I would like to register for Structuring for 'At Risk' Clients

#### STANDARD PRICES

Melbourne  Sydney  Brisbane (please tick your venue)

One Day Seminar \$950.00 + GST = \$1045.00

#### TEAM DISCOUNTS\*

Register a team of 3 for Structuring for 'At Risk' Clients at the same time, from the same organisation and receive a free pass for the 4th delegate.

\*Early Bird, team discounts and any other discount cannot be taken concurrently

WEB

Seminar code: **PD4408** Melbourne **PD4508** Sydney **PD4808** Brisbane

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### C Delegate details (for additional delegates please photocopy form)

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First name Last name

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Organisation \_\_\_\_\_

Postal address \_\_\_\_\_

Suburb \_\_\_\_\_

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