

## WEALTH PROTECTION STRATEGIES -MAKE THE HOUSE CALL YOUR CHOICE

by Andrew Ireland

Since the collapse of United Medical Protection (“UMP”) last year, the medical profession has been rocked by uncertainty as to the level of protection that the defence funds have the capacity to provide. Further, the defence funds are struggling to evolve into insurers and remain viable.

As a consequence, doctors are placed in a difficult and unfamiliar position. Andrew Ireland of the Argyle Partnership Lawyers, Wealth Protection Team, says: “I would be very surprised if most doctors are not practicing defensive medicine, however, this is really only the first step in any initiative to maximise their protection. Most doctors are victims to the method by which they have operated their practices and have acquired assets. Broadly, most doctors practice on the basis that the majority, if not, all of their income falls to them personally and as a consequence they normally acquire assets, either tax effectively or otherwise, personally. This practice has been encouraged by doctors enjoying full malpractice cover. However, if a doctor carries on business and holds assets as I have outlined, then in the event that he or she is served with a claim for which malpractice cover is not provided or is insufficient, then the doctor could well be facing bankruptcy after a possibly long and costly litigation of the claim (which the doctor may have to fund and manage without the assistance of the defence fund).”

Ireland says: “Most doctors are incredulous of the current environment which is understandable but loaded with risk. The pressure on most doctors’ day to day lives mean it is far easier for them to put this issue into the “too hard basket” and hope for the best, or, worse still, look for a quick fix without appreciating the consequences of their actions or all the alternate options and avenues available. A knee jerk reaction is typically an incorrect response. Doctors need to take control of their situation, understand the issues at play and consider and, if appropriate, approve the implementation of a given strategy to minimise their exposure or be prepared for the consequences.”

If a wealth protection strategy is to be adopted, Ireland is firmly of the view that the individual should be made aware of the full scope of all issues which can impact on the strategy. These may include a patient engagement review, a practice structuring review, an understanding of the bankruptcy laws and relevant tax issues, succession and estate matters amongst others.

The bankruptcy laws are alive to the divestiture of assets by individuals who may become bankrupt and, in effect, provide a statutory right for any trustee in bankruptcy to claw back the divested benefit. Ireland refers to three principal bankruptcy provisions which entitle a trustee in bankruptcy to claw back value or worth, each of which must be considered in every wealth protection strategy, namely:

- undervalued payments and transfers within five years of the commencement of the bankruptcy;
- undervalued payments and transfers within two years of the commencement of the bankruptcy; and
- dispositions made at any time with the main purpose of defeating, hindering or delaying creditors.

Ireland cautions that in addition to the above, there are many other provisions of the bankruptcy laws which may also need to be considered in any individual wealth protection strategy.

The above principles are often overlooked or just ignored in ill conceived or poorly planned strategies. Yet, a healthy regard and respect for the bankruptcy laws should form an essential foundation block to any wealth protection strategy and a failure to properly structure affairs, having regard to the bankruptcy laws can strike at the very heart of any strategy and critically

damage an otherwise prudent initiative.

Indeed, the Australian Courts have quoted with support a UK decision concerning a man who chose to divest himself of assets before he entered into a high risk business venture which determined: “The principle ....is....that a man is not entitled to go into hazardous business, and immediately before doing so, settle all his property voluntarily, the object being this: ‘If I succeed in business, I make a fortune for myself. If I fail, I leave my creditors unpaid. They will bear the loss.’ That is the very thing which....[the law is]....meant to prevent.”

Ireland says initiating a wealth protection strategy is never cheap and typically has significant costs such as work practice change, income tax and stamp duty costs. No one should consider changing any of their affairs unless they are certain it is based on good and sound advice which complies with all relevant laws including the bankruptcy laws. To do anything less is pursuing an exercise in futility. And let’s face it, it is an area upon which an individual would not want, and frankly, could not afford a second opinion which recommends or suggests a different strategy.

It should be a matter of choice for the medical practitioner whether he or she allows a trustee in bankruptcy to make a “call” against the doctor’s house. It is a choice which can be made with a proper understanding of the law!