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# RISK INSURANCE: The Stakes are High

***Mark Everingham***

*Managing Director, Personal Risk Professionals*

*Director, Bombora Advice*



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# Themes of previous Congress sessions

- Advice Process & Methodology
- Related Advice Needs and Facilitation
- Best Interest Insurance Advice
- Effective Claims Management
- If in doubt refer it out



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# Two most overlook areas of Risk Advice

- Insurance cover within superannuation
  - Is all cover the same
  - Are the tax implications the same
  - Are the claims processes the same
- Business Succession Insurance Cover
  - Ownership of buy/sell cover – right money, right entity
  - Tax implications of debt reduction cover
  - Tax implications for remaining proprietors
- Get the experts involved



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# Keep the claim in mind

- Claims do not always go smoothly (due to circumstance of claim or insurer)
- Minimising the areas of issue



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# Insurance Cover in Superannuation

## Our Life Risk Advice Methodology



- Is all cover in super the same? Group v Industry v Retail
- Where do we go for information?



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# SUPERANNUATION RISK (V) RETAIL RISK

***Col Fullagar***

*Principal, Integrity Resolutions Pty Ltd*



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# (i) Superannuation Risk Product Range

- Term – YES
- TPD – YES
- Income Protection Insurance – YES
- Trauma insurance – No
- Business Expenses Insurance - No



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## (ii) Access to Cover

- Default cover – “at work” requirement; open to interpretation
- Additional superannuation cover – standard underwriting
- Retail risk – standard underwriting



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# (iii) Pre-existing Conditions Exclusion

- Exist within superannuation risk and retail risk
- Impact of Section 47(2) of Insurance Contracts Act (1984)
- Impact of Section 21 – Duty of Disclosure; Superannuation risk (v) Retail risk
- PEC (v) Duty of Disclosure



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# (iv) Guaranteed renewable, Non-cancellable

- Superannuation risk – Yes and No
- Retail risk – Yes and Yes



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# (v) Guarantee of Upgrade

- Superannuation risk – No
- Retail risk - Yes



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# (vi) Premium

- Premium quantum
- Premium type



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# (vii) Facilities and Features

- Flexibility
- Ability to transfer
- Indexation
- Contractual rights
  - Own v Any Occupation
  - Agreed value v Indemnity
  - Ancillary benefits
  - Offsets
  - Cover end date



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# (viii) Assistance and Representation



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# ASIC Claims Report – October 2016

- Decline rates by distribution channel
- Mental and nervous disorder claims
- Identification and protection



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**THANK YOU .....**



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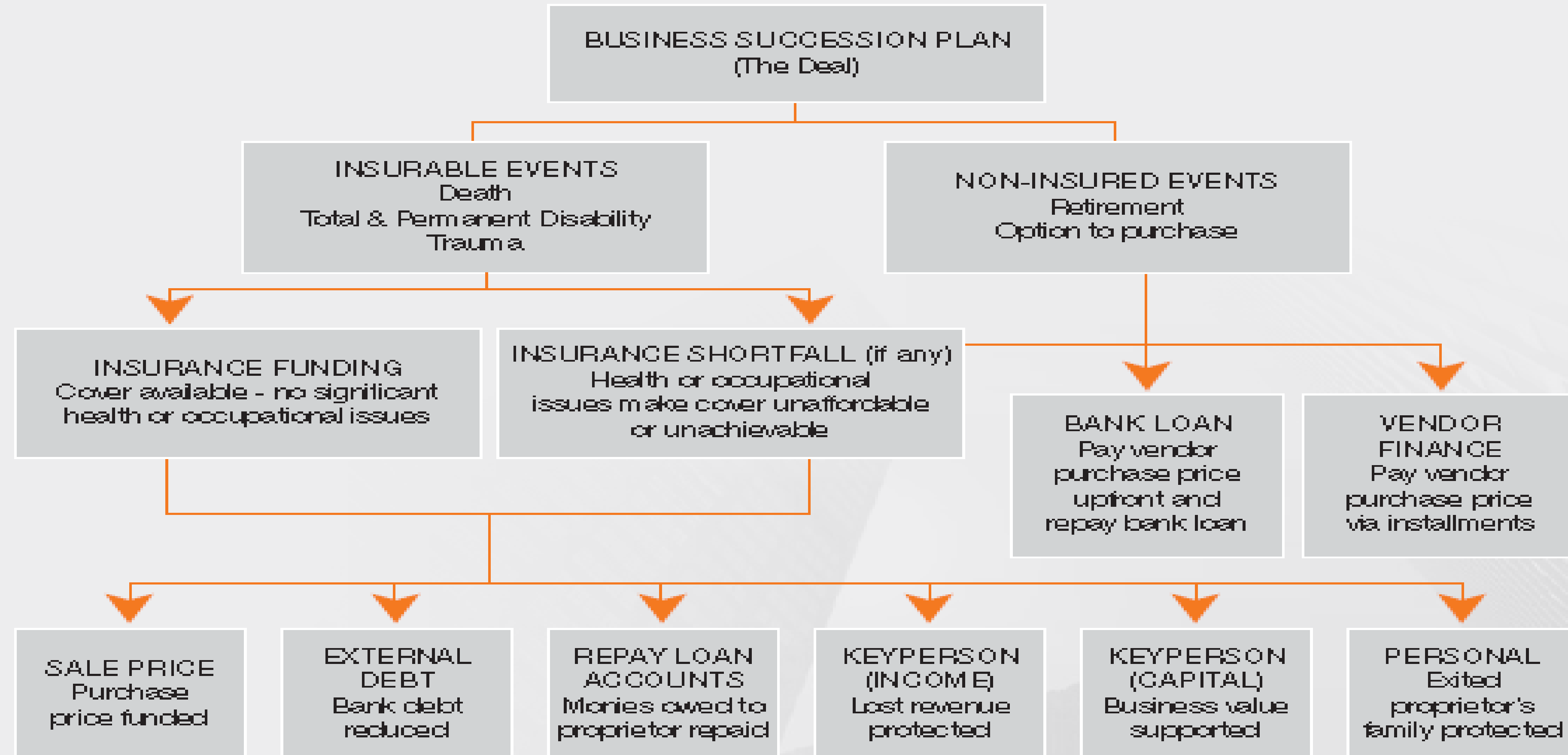
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# Business Succession Advice Process

## What is a Business Succession Plan?



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# Business Succession Advice Process

- Get all the appropriate advisers involved
  - Accountant
  - Specialist Business Succession Lawyer
  - Specialist Life Risk Adviser
- Just writing some insurance and walking away is not best practice!!!



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# BEST PRACTICE BUSINESS SUCCESSION PLANNING

***Ian Gray***

*Ian Gray Solicitor/Complete Succession*



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# What is the difference between business succession planning and buy/sell insurance?

- 1. Buy/sell insurance focuses only on selling your equity in the business*
- 2. A business succession plan allows you to -*
  - Sell your equity;*
  - Extinguish/ release any personal guarantee or security for business debt;*
  - Be repaid any loan account owing by the business*
- 3. It allows you to leave both sides of the balance sheet:*
  - Asset; and*
  - Liability*
- 4. A business succession plan also allows the purchase price to be funded by vendor finance if buy/sell cover isn't available*



# Who is your client in a buy/sell case?

1. *Who benefits from buy/sell cover?*
  - *Vendor should receive purchase price;*
  - *Purchaser should be able to fund purchase of vendor's equity without borrowing funds*
2. *Vendor might not be actual life insured personally*
3. *Purchaser might not be other life insured personally*
4. *Vendor/purchaser might be a family trust*
5. *Vendor needs to receive the purchase price insurance proceeds*
6. *Vendor might have to repay a bank loan out of the purchase price*
7. *Is it enough to get the insurance proceeds to the life insured or their estate?*
8. *Have you breached your duty of care to the family trust or its beneficiaries?*
9. *Duty to get right money to right person*



# Ownership of Buy/Sell Cover

- 1. Self-ownership – only life insured or estate can receive insurance proceeds**
- 2. Cross-ownership – obsolete**
- 3. SMSF ownership – breach of sole purpose test**
- 4. POSF ownership – possible breach of sole purpose test**
- 5. Trust ownership – (see next slide)**





# Trust Ownership

- 1. Trustee is business entity**
- 2. Life insured is sole beneficial owner/beneficiary**
- 3. Obtains all CGT exemptions for death and non-death benefits**
- 4. Life insured/ beneficiary can direct trustee to pay appropriate nominated “recipients” (e.g., family trust vendor, business, bank, creditor)**
- 5. Can aggregate cover for diverse purposes on one policy**
- 6. Life insured can change split of cover over time**
- 7. Creates insurance pool or insurance facility (see next slide)**
- 8. Trustee distributes cash in accordance with agreement**
- 9. Trustee has power of attorney to sign on behalf of vendor (if default)**



PURPOSE	YEAR 1	YEAR 3	YEAR 5	YEAR 7	RECIPIENTS
Sale Price	\$400K	\$700K	\$1.2M	\$1.6M	Vendors
CGT on Sale Price	Nil	Nil	Nil	Nil	Vendors
Transaction Costs	Nil	Nil	Nil	Nil	Business
Bank Debt	\$600K	\$300K	Nil	Nil	Creditor
Loan Account	\$200K	\$200K	Nil	Nil	Life Insured
KP (Income)	\$100K	\$100K	\$100K	\$100K	Business
KP (Capital)	Nil	Nil	Nil	Nil	Cont. Proprietors
Personal Loans	Nil	Nil	Nil	Nil	Life Insured
Living Expenses	\$400K	\$400K	\$400K	Nil	Life Insured
Future Sale Price	Nil	Nil	Nil	Nil	Life Insured
<b>TOTAL</b>	<b>\$1.7M</b>	<b>\$1.7M</b>	<b>\$1.7M</b>	<b>\$1.7M</b>	-



# Commercial Flow of Trust-owned Debt Reduction Cover

- 1. Agreement specifies journal entries for accountant:**
  - **Trustee pays insurance proceeds tax-free to continuing proprietors**
  - **Continuing proprietors lend the insurance proceeds to the business**
  - **Business repays bank or creditor**
- 2. External debt replaced by a matching “substitute loan account”**
- 3. Repayment of substitute loan account is tax-free repayment of loan principal**
- 4. Because repayments aren’t dividends:**
  - **no tax on dividends; and**
  - **No reduction in available shareholder franking credits**



# Summary & Questions

- Have a defined research process when dealing with cover in super
  - PDS of insurance in super
  - Insurance and investment can be mutually exclusive
  - Note not all is in your control (Trustee ownership)
  - Tax is becoming more of a consideration (TPD & ESP)
- Business Insurance can not be done in isolation
  - All professionals need to be involved
- Keep the end in mind – what will happen at claim time
- If in doubt get an expert
  
- QUESTIONS???????



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