

(12) INNOVATION PATENT
(19) AUSTRALIAN PATENT OFFICE

(11) Application No. **AU 2003100074 A4**

(54) Title
Asset Protection Method

(51)⁷ International Patent Classification(s)
G06F 157/00 G06F 017/60

(21) Application No: **2003100074** (22) Date of Filing: **2003.02.07**

(45) Publication Date: **2003.06.26**

(45) Publication Journal Date: **2003.06.26**

(45) Granted Journal Date: **2003.06.26**

(71) Applicant(s)
Steven Grant

(72) Inventor(s)
Grant, Steven John

(74) Agent / Attorney
Griffith Hack, 167 Eagle Street, Brisbane, QLD, 4001

ABSTRACT

An asset protection method involves protecting an asset owned by an owner. The owner makes a gift to a trust having a trustee. The trustee makes a loan from the trust to the owner and secures the loan by taking a charge over the asset.

AUSTRALIA
Patents Act 1990

COMPLETE SPECIFICATION
INNOVATION PATENT

Applicant:

Steven John Grant

Invention Title:

ASSET PROTECTION METHOD

The following statement is a full description of this invention, including the best method of performing it known to me/us:

FIELD OF THE INVENTION

The present invention relates to a method of protecting an asset. An asset may be placed at risk if the owner of the asset is at financial risk from, for
5 example, inadequate insurance.

BACKGROUND TO THE INVENTION

Some owners of assets place the assets at risk as a consequence of their occupations or business activities. Examples include company directors and professionals with
10 potential exposure to claims for professional negligence. Various approaches have been taken to protecting an asset, including purchasing the asset in the name of, or transferring ownership of the asset to, an entity which renders the asset immune from attack. For example, assets
15 are often owned by trusts or spouses which/who do not have exposure to potential claims. However, such approaches do not always provide a satisfactory solution.

Ownership of an asset by a spouse who has no potential exposure to a claim affords good asset
20 protection but can lead to difficulties in the event of a divorce or the death of the asset owning spouse.

Ownership of an asset by a trust which has no potential exposure to a claim also affords good asset protection. However, the stamp duty costs of transferring
25 ownership of an asset to a trust can be prohibitive and, if the asset is a principal place of residence, valuable capital gains tax concessions can be lost through ownership by a trust.

SUMMARY OF THE INVENTION

30 An alternative asset protection method would be desirable. Accordingly, the present invention provides an asset protection method for protecting an asset owned by an owner, the method comprising the steps of:

(a) the owner making a gift of a first sum of
35 money to a trust having a trustee,

(b) the trustee making a loan of a second sum of money from the trust to the owner, and

(c) the trustee securing the loan by taking a charge for a third sum of money over the asset.

There is no stamp duty or tax imposed on the gift in step (a) but the gift becomes a monetary asset of the trust which can be lent to the owner in step (b). Stamp duty would be payable on the loan in step (b) when secured as in step (c) at the rate applicable in the relevant state or territory. For example, in Queensland the rate would be 0.4%. Once the charge is taken to secure the loan in step (c) the asset is charged to the trustee who may exercise its security over the asset to repay the loan owing to the trust in priority to any claim of an unsecured creditor who may have been successful in a negligence claim against the owner.

It is to be noted that there is no change of ownership with the present invention and hence none of the costs typically incurred in transferring ownership of an asset are incurred.

The asset may be any type of asset but is preferably real property in which case the charge is a mortgage. It is to be noted that, if the asset is a principal place of residence, the capital gains tax concession associated therewith is not disturbed.

The trust is preferably a discretionary trust which has no default beneficiaries which prevents a scenario in which a claimant can pursue trust assets in view of contingent rights in the default beneficiaries.

Preferably, the method of the present invention further comprises the step of establishing the trust. This enables the trust to be tailored to the purpose for which it is established.

The first, second and third sums of money may be different. Preferably however the first, second and third sums of money are the same as the owner's equity in the asset. This approach avoids the owner being considered insolvent and hence potentially in breach of the bankruptcy act.

The ensuing Comparative and Inventive Examples are hypothetical scenarios which demonstrate benefits of the present invention

5 COMPARATIVE EXAMPLE

An obstetrician purchased an investment property in Queensland in 1990 for \$250,000 with the purchase being funded by a \$250,000 interest only loan from his bank. The obstetrician recently had the investment property
10 valued at \$500,000 and with the \$250,000 interest only loan still in place he is concerned that his \$250,000 equity in the property is at potential risk from a claim for negligence by a patient or the offspring of a patient. He therefore decides to transfer ownership of the
15 investment property to a trust which is immune from attack but is horrified when his accountant advises that, before accounting, legal and banking expenses, the cost of effecting the transfer will be \$76,600 calculated as:

20 Stamp Duty - approximately 3.75% of \$500,000 = \$15,975

Capital Gains Tax - Capital Gain = \$500,000 - \$250,000 =
\$250,000

CGT discount = 50% of \$250,000 =
25 \$125,000

CGT = 48.5% of \$125,000 = \$60,625

Stamp Duty + Capital Gains Tax = \$15,975 + \$60,625 =
\$76,600

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INVENTIVE EXAMPLE

After reviewing his accountant's calculations, the obstetrician (referred to in the Comparative Example) decides against transferring ownership of his investment
35 property to a trust and instead requests his accountant to calculate the cost of implementing the present invention.

His accountant advises that, before accounting, legal and banking expenses, the cost is limited to 0.4% stamp duty on the \$250,000 secured loan the trust makes to the owner, ie. \$1,000.

5 Throughout this specification and the claims, the words "comprise", "comprises" and "comprising" are used in a non-exclusive sense, except where the context requires otherwise.

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CLAIMS

1. An asset protection method for protecting
an asset owned by an owner, the method comprising the
5 steps of:

(a) the owner making a gift of a first sum of
money to a trust having a trustee,

(b) the trustee making a loan of a second sum
of money from the trust to the owner, and

10 (c) the trustee securing the loan by taking a
charge for a third sum of money over the asset.

2. A method as claimed in claim 1 wherein the
asset is real property and the charge is a mortgage.

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3. A method as claimed in claim 1 or claim 2
wherein the trust is a discretionary trust which has no
default beneficiaries.

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4. A method as claimed in any one of the
preceding claims wherein the process further comprises the
step of establishing the trust.

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5. A method as claimed in any one of the
preceding claims wherein the first, second and third sums
of money are the same as the owner's equity in the asset.

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Dated this 7th day of February 2003

Steven John GRANT

By his Patent Attorneys

GRIFFITH HACK