

MATTERS OF THE PERSONAL KIND...

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When it is your job to weigh anchor and set sail, be it for foreign shores, distant fishing grounds, or local attractions, a cautious mindset is your greatest asset. A cautious mindset should also be your constant companion in dealing with your 'affairs', yet even the most cautious amongst us can find that such items on our to-do list remain permanently 'to-do', when life and work get busy.

The start of a New Year (albeit not the start of the fishing year), is a good time to review both your personal and business affairs, and to make sure that suitable asset protection structures are in place for your business operations and for your personal affairs. If you haven't ever quite got around to putting arrangements in place in the first instance, the sooner that you can do so the better.

For those who don't own the business you work in, your concerns are generally confined to your personal assets. Regardless of the size of your personal asset pool or your age, one of the most important documents you can have is your will. Dying intestate or without a will, is a very messy and very expensive burden to leave your loved ones with after your departure.

When someone dies intestate, the way his or her assets are distributed is governed by the Administration Act 1969. That distribution may not reflect what you want to happen, but it is difficult for family members to do anything about it in the absence of a properly signed will.

Whilst the days of a free will are gone amongst most lawyers, the costs of preparing a will are small compared with the costs of administering the estate of someone who has died intestate.

When someone dies intestate and overseas, the paperwork associated with getting that person home is even more complicated, incredibly time consuming, and involved. And of course it only adds to the trauma for those left behind.

For those who do have business interests, there are risks on many quarters that appropriate business structures can assist in mitigating. Often, perhaps more often than not, owners of small to medium-sized businesses inter-mingle their business and personal affairs.

Many readers will, at some time or another, have borrowed against their family homes to purchase or upgrade vessels, paid business expenses out of personal funds when times are tough, operated the business out of the spare room or workshop, and included spouses or other family members in the business as directors or employees without formalising those arrangements.

All of these are common practices and are a natural consequence of the personal commitment anyone makes when they start a business. But imagine the complexity


that is left behind if something catastrophic happens to the business owner/operator, like a debilitating illness or injury, or worse.

Other considerations for business operators include the possibility of relationship property claims and settlements, succession planning and, structures that minimise taxation obligations and maximise the capacity to provide security to lenders. For those who operate within the fishing sector, additional risks must be considered, given the draconian penalties for offences committed under the Fisheries Act 1996 (and associated Regulations), including substantial fines, and forfeiture of quota, vessels and other assets to the Crown.

There are no one-size-fits-all solutions, because every business is different, as are everyone's family and other personal arrangements. A number of structuring options exist, and in some cases, can be mixed and matched to fit individual circumstances. Small operators can operate in their own name, sometimes as a sole trader, through a partnership or through a limited liability company or limited partnership.

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Family trusts are a frequently utilised structure in New Zealand for small business holdings, and although it is unusual to conduct a business through a family trust, such a trust can be a useful entity for protecting assets. Well-tailored insurances, including life, income-protection, and public liability insurance are also important.

The short point is that there are many factors to consider, and forming a good working relationship with legal and financial advisers who understand you and your business is key. Even if you are happy that your affairs are "in order", it's important to conduct periodic reviews of your affairs with your financial and legal advisers to ensure the arrangements that you have in place accurately reflect the way your business operates, and continue to protect yourself, your business, and any assets that may be involved. 

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