



# Gift and loan back strategy

## ONE COMMON ASSET PROTECTION STRATEGY IS KNOWN AS A 'GIFT AND LOAN BACK'.

### THE APPROACH INVOLVES:

- 1. THE OWNER OF AN ASSET GIFTING AN AMOUNT EQUAL TO THEIR EQUITY IN THAT ASSET TO A FAMILY TRUST (OR LOW RISK SPOUSE).**
- 2. THE FAMILY TRUST THEN LENDS AN AMOUNT OF MONEY TO THE OWNER AND TAKES A REGISTERED SECURITY INTEREST OVER THE ASSET.**

The type of security interest taken will depend upon the nature of the asset – for instance:

- If the asset is land, the security interest will be a mortgage registered with the Titles Office; and
- For most other assets, the security interest will be a registered with the Personal Property Securities Register.

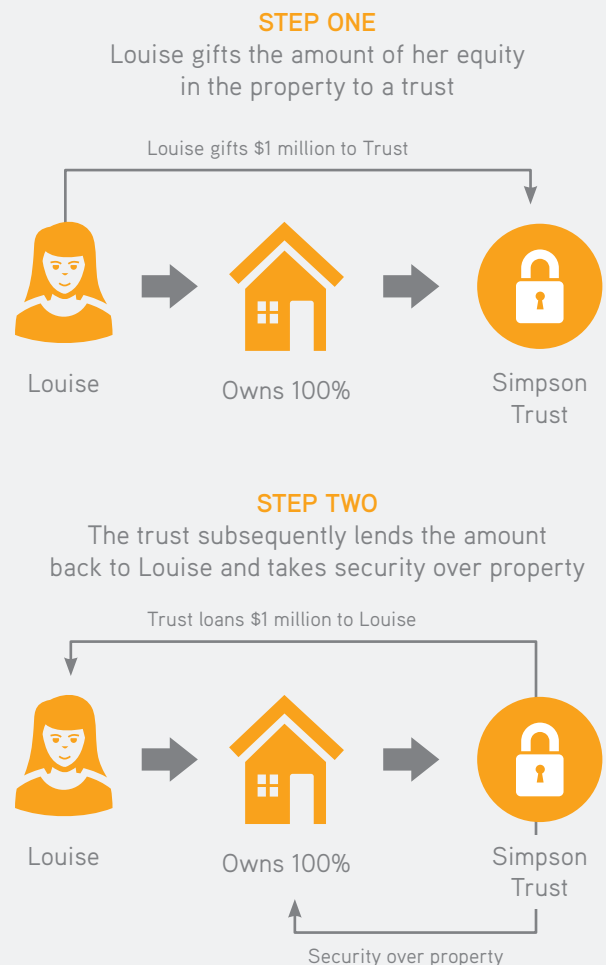
### KEY ASPECTS

While there are a myriad of potential issues that always need to be considered, some of the key aspects to be considered when implementing this arrangement include:

- care should always be taken to ensure that the trust which will make the secured loan does not itself conduct risky activities (for example, run a business).
- while the arrangement can be entered into without registering a mortgage, if this step is not taken, the trust that has made the loan will simply be an unsecured creditor.
- the impact of the arrangement in relation to potentially accessing the small business tax concessions should always be carefully considered, because while a family home will generally be excluded from the \$6 million test, a secured loan will generally be included if the trust is an affiliate or 'connected entity' under the Tax Act (which will typically be the case).
- to the extent that a third party financier already has a mortgage over the property, they will generally require a deed of priority securing their lendings (to whatever level they may be from time to time) as a first priority before the trust's second mortgage.
- If no real property is available for registering security over, personal property can be used via the Personal Property Securities Register.

### THE EXAMPLE BELOW ILLUSTRATES HOW THE STRATEGY CAN OPERATE.

Using property as an example, assume that Louise holds 100% of an investment property and the current value of the asset is \$1,500,000. There is an existing mortgage of \$500,000 owing to her current financier.



The above summary is based on the law as at 1 January 2015.

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