PARTNER WEBINAR

Are your client's assets secure?

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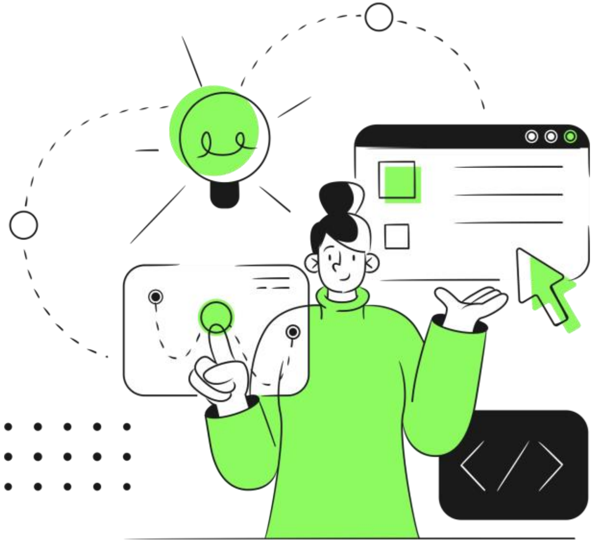
Today’s Webinar

Eventum Optimum x LightYear Docs

- About Eventum Optimum (EO)
- Asset Protection Tools
- What is a PPSR Security Interest
- Case Study
- ATO Guidelines
- Q&A
- Call to Action



Who is Eventum Optimum (EO) & How We Do It?

Eventum Optimum is the Latin phrase for "**The Best Result**". And this is exactly where our core purpose as an advisory firm is focussed on delivering the best result for our clients.

Our focus is on the delivery of comprehensive services primarily in the areas of asset and risk protection, business turnaround and restructuring, corporate advisory, PPSR and Mortgage registration, and the provision of debt and equity funding solutions.

EO is independent with the aim of helping Lightyear members provide:

- Better advice and service to their clients; and
- Allowing LightYear members to grow their business and increase their revenues by utilising Lightyear and partner resources at wholesale prices.

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Are you client's assets secure?

- Securing your clients business and personal assets;
- Dealing with ATO debt and DPN's;
- Using EO tools to help your client AND you, grow your business;

➢ Asset Protection structures. FPT's, mortgages and PPSR's, hire agreements, loan and security documents.

➢ What's happened? What action is the ATO taking and their next moves.

➢ Sham – loan and gift back.

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Why would you secure your clients assets

- If someone who has possession of your assets defaults on a loan, or becomes insolvent, you may lose any claim or interest you had in those assets;
- The bank or other creditor will have first rights;
- Your client will have no rights to get it back;
- You are unlikely to get compensated for or paid;
- You lose the ability to negotiate as a secured creditor; and
- If you do receive any payments, as an unsecured party, these may be clawed back as a preference payment.

You cannot register a mortgage without a charging clause

Eventum Optimum have these charging clauses and can either add to loan agreement (Loan and Security Agreement) or to, for example, your Practice Ignition agreement to give you this right.

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What is a PPSR Security Interest?

An interest in **personal property** (other than land) that secures payment of a debt or obligation.

It Includes:

- Fixed and floating charges.
- Retention of title (stocks and goods).
- Mortgages of assets/chattels/shares/liens.
- Hire purchase agreements.
- Certain leases.

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What is Personal Property?

- Plant, equipment, motor vehicles;
- Debtors, stock, inventory, raw materials;
- Personal loans to business entities to fund working capital
- Crops, livestock;
- Intellectual property, trademarks;
- Licences (eg fishing, business etc).

The PPSA Act has been in place since 2014 but is still one of the most misunderstood and under utilised pieces of legislation.

It is relatively cheap to use, easy to monitor and has a HUGE impact on protecting your clients assets and rights.

Registration is key

- You need to register, and do so within the timeframes stipulated;
- You need to provide information about the Secured Party (the lender or asset holder);
- You need to provide information about the Grantor (the borrower or hirer);
- The collateral that is being used and is part of the Security Interest; and
- The asset needs to be 'readily identifiable'.

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What are the two types of PPSR Security Interest?

ALLPAAP Security Interest:

- (All present and after acquired property) – often granted by a financier under a general security deed.
- It describes a class of collateral that can be across ALL assets of the company and can be circulating.
- It is similar to the old ‘floating charge’.
- These are generally used by banks, landlords and other parties providing loans not secured by specific assets.

PMSI Security Interest:

- Purchase Mortgage Security Interest.
- Usually facilitates the acquisition of personal property.
- A PMSI is over one or more specific assets, that can uniquely be identified.
- A PMSI is automatically perfected over consumer goods (for personal use), but must meet the timeframe requirements for business use.

What are the timeframes to be aware of?

- Very important!
- If the lender fails to properly perfect its Security Interest in the collateral, the lender is relegated to the status of unsecured creditor and may be unable to recoup asset or monies lent.
- Under the Corporations Act, a Security Interest must be registered within 20 business days after the security agreement has been executed or commenced.
- If it isn’t registered within 20 business days, it remains unsecured for 6 months and 1 day, at which time, it becomes a perfected Security Interest.

What is PMSI Super Priority?

If the goods or asset supplied will **NOT** be part of the grantor’s inventory.

The PMSI will have super priority if:

- Within 15 days from when the Grantor gets possession/attachment the goods/property
- The PMSI Security Interest is registered.

What is ‘super priority’?

- It defeats all other registered Security Interest in the collateral.
- Normally, Security Interests are based on first lodgements, a super-priority defeats this, regardless of time of registration.

What is a Mortgage?

- An agreement, or contract in writing, that provides security to a lender by giving them particular rights.
- It grants certain rights, for example the right to possess a property if the borrower fails to pay.
- You cannot register a mortgage without the consent of the registered proprietor (owner). The court can override this.
- A caveat is another tool, like an injunction, that prevents the registration or dealings on a property until the subject of that caveat has been addressed.
- It is important to note that a caveat usually cannot force the sale of a property, but it will prevent any further loans being taken over that property.

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When do we use Mortgages?

As part of the Family Protector to secure the equity in favour of the FPT entity;

When loans/other assets are provided to the property owner and to secure the interests of the lender;

As general security for any borrowings.

Security in General

When you set up a company, it doesn't exist and monies are 'lent' – set up a Loan and Security Agreement and secure those monies and all future monies lent by a circular Loan and Security Agreement and PPSR registration;

Whenever your clients put money into their entity (and document). Otherwise they will remain unsecured and rank at the bottom priority to receive repayment.

ANY loans made to an entity – has your client borrowed money from a friend or family (or you). Do they want to protect the party helping them out?

Asset Structures

As part of a strong asset protection strategy for both business and personal assets, securing assets is vital to ensure they work!

Business – Recommendations

A Trading Company

- With as few directors as possible and generally the risk taker or non-asset holder being the director;
- Where possible, all assets should be held outside this ‘risk’ entity, including plant and equipment and non tangible assets such as IP, business names, client lists etc

An Asset Holding Company

- The non-risk director or personal asset holder to be the director of this company.
- This person should avoid signing any personal guarantees of the trading company.
- All asset to be held in this companies name and separated from the trading company risk.
- A hire agreement or rent agreement to be put in place (and a PPSR Security Interest registered) for use of these assets by the Trading company.

An Employment Holding Company

- To hold all employee risk

Case Study

How securing assets protects your clients

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Facts

- Franchise company (national franchise chain).
- Had two locations under one franchisor.
- First location closed down and had legacy debt transferred to new business (Westpac loan).
- Second location traded profitably but was hampered by legacy debt from first business.
- Additionally, client had unsuccessful property development which added to debt.
- **Overall, Westpac had $1.5M debt** over company and personal guarantees over director.

Summary

ATO debt (lodged) $300,000

Rent Arrears $80,000

Directors Loans $400,000

Franchise Fees $60,000

Accounts Payable $60,000 (some with personal guarantees)

- Monies lent to business by mother-in-law $300,000
- No personal assets in directors name (we already protected and with wife)
- Client had 50 employees, an underlying profitable business, Covid and legacy issues jeopardising business survival.
- ATO, landlord and Westpac bank threatening/commencing collection/legal action.

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What to do?

- We immediately secured mother in laws monies and circulated and refreshed loans.
- We immediately valued the business and all the plant and equipment.
- We set up new company structure – trading, asset holding and employment holding.
- We contacted the landlord and negotiated a new lease in the new company and a payment plan for the o/s lease monies.
- We contacted the Franchisor and negotiated an assignment of lease to the new company.
- We spoke to employees and transferred their employment and entitlements to the new employment holding company.
- We then sold business to new company and liquidated old company.
- The mother in law's repaid monies were used to purchase new business and plant and equipment and provide start up working capital in the new business.

The result?

- A profitable business continued to trade.
- All employees retained their employment.
- The Franchisor retained the franchise operation and was paid in full.
- The landlord got a new and better lease and got paid in full.

What happened to the ATO and Westpac?

- The ATO were unsecured creditors and ranked behind the Westpac Bank as a secured creditor.
- The Westpac Bank, now facing a situation where the business was transferred at market price and assets distributed to a secured party, negotiated a settlement with the director. They received 10c in the dollar as full and final.

The lesson

- By securing monies lent to a company, we were able to pay these monies to the secured party first and before ALL other creditors.
- This allowed the new business to buy the old business.
- Due to the security, everything was done in accordance with the law.
- We were able to negotiate settlements with all parties, who realised, that if they did not settle, they would receive no funds at all.
- We achieved a result with the least level of impact on all parties and this business continues to trade profitably.

Call to Action

- If in doubt, call us. Don't let your clients be exposed to losing their business and their personal assets – there are ways to prevent this and protect them!
- Nothing is too late! The sooner we get involved, the better advice we can provide and the more you can do to ensure your client continues to trade, keep their assets and keep their staff employed – not to mention you will generate revenue from helping them and retain a fee-paying client!
- **Book a FREE 15-minute meeting with Rod!**

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EO Value Add

EO eBook

- eBook on EO and its services.
- EO Triage process

EO Client Risk Areas Checklist

- A checklist to review risk areas for a client from financials to HR to Structure
- Very popular for file reviews

EO Insolvency Checklist

- A checklist to review the ASIC indicators of potential solvency risks.

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Q&A

Do you have any questions?

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1. Join our upcoming courses through **LightYear Training Group**.
2. **Google reviews** – like or testimonial.
3. If you’re not a member, make sure you create a **free account,** so you get all the resources in the success hub.