

PROTECTING YOUR RETIREMENT ASSET

No doubt that by now, if you have read through our case studies you are quite excited about establishing your property instalment warrant structure. Similarly, if you are looking for an alternate investment strategy to shares and managed funds you are just as interested in setting this structure up so that you can invest in property.

Before you rush into setting this structure up it is absolutely vital that you stop to think about the risks that you may be facing and consider ways in which these may be managed or avoided. Let's not forget that superannuation is a complex legal and taxation environment and by allowing a fund to borrow to purchase a property does not mean that things have got a whole lot easier just because the investment is a whole lot more attractive. In fact the complexities have just got a whole lot worse.

If you are a gambler and prepared to risk your retirement savings then don't waste your time to read on any further, this report is only for those who value their future financial security.

DOUBLE / TRIPLE STAMP DUTY – An Immediate Risk

One of the most immediate risks for those looking to implement the property instalment warrant strategy is the prospect of having to pay stamp duty twice!

Messing up at the beginning before the ink has even had time to dry on the sales contract can be a costly exercise.

Trustees signing the contract in the wrong name immediately jeopardize the success of the strategy before the transaction has even settled.

The initial round of stamp duty is levied on the original purchase transaction, having to change names on the sales contracts is generally seen as a second transaction which results in another round of stamp duty being levied.

In addition to the additional stamp duty, it is more than likely that the fund's advisory fees will escalate as more time and documentation will be required to resolve the initial error.

Trustees keen to make a success bid or purchase and not prepared to take or listen to any advice given and generally those that are caught out.

Getting sound advice and ensuring that everything necessary is in place prior to a trustee signing any sales contracts is the best way to avoid this costly and time consuming mistake.

A third round of stamp duty could be incurred in the future if the documentation used to set up the structures and agreements is flawed in some way.

DOUBLE TAXING – Medium to Long Term Risk

A risk that many might not be aware of and which may lay dormant for many years could result in the fund being liable for two lots of capital gains tax and another round of goods and services tax (“GST”).

This potential dormant risk relates to the documentation which initially established the instalment warrant strategy. The devil in this detail could expose the property to this double taxing scenario and there will be little warning of this eventuality.

It will be too late to address the issue when it is identified and therefore it is absolutely vital that the trustees use the most robust legal documentation they can in establishing the necessary structures and various agreements required for this strategy. Trying to skimp on cheap legal packages here could prove quite costly at a time when you may be looking to enjoy the spoils of your investment.

SUPERANNUATION COMPLIANCE – Tango with the ATO

Superannuation is a complex environment with many rules applying to what can and can’t be done. Many of these are not aligned with what we would normally expect and thus can easily trip up the unwary trustee.

When a trustee makes a mistake they are answerable to the ATO which has in its power to issue quite damaging penalties. The rules and regulations relating to the instalment warrant strategy are quite complex and can easily be breached by trustees unfamiliar with these requirements.

With the ATO having the power to issue fine to the value of half the market value of the fund, such a penalty would have severe consequences to anyone’s retirement plans. Even, if the ATO chooses not to implement this penalty, if it instead chose to disqualify the trustees from acting as trustees, the fund may be forced to sell the property at time which could result in the property underperforming and thereby block any future access to this strategy.

At a time when the government is looking to raise revenue through its various departments, it would be wise to invest in expert advice and allow a professional to take these risks on rather than an unwary trustee. Particularly as compliance issues could raise anywhere from the detail in the documentation, through to who you may have living in your investment property.

You will see from this brief discussion that some of the major risks pertaining to the property instalment warrant strategy could severely impact the financial security of your retirement. If you have reviewed our case studies you will have seen the boost that superannuation offers an investment in property and therefore your retirement asset pool. In appreciating this you may also note that those figures assumed quite a reasonable investment in quality advice. Such an investment did little to erode the long term financial outcome however it did help avoid the costly risks discussed above. There truly is no substitute for good quality and timely advice.

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