InvestorOne

Top 5 mistakes made by advisors

1 – Advising clients to acquire investment properties in their own name

The benefit of acquiring your investment property in a trust has far outweighed the benefits of acquiring in your own name for years. The tax advantages, asset protection and ability to pass from one generation to the next is best achieved by using a trust. Whether it be a discretionary trust, unit trust, land tax unit trust or superannuation fund the benefits are significant.

The two trusts with the most benefits today are the Land Tax Unit Trust and the Self Managed Superannuation Fund. If you have acquired an investment property in the last 10 years and haven't been explained the benefits of these structures then it might be time to get a new advisor.

Note: Land Tax Unit Trust applicable in N.S.W. since 2006 and Self Managed Superannuation Funds have been able to borrow since 2007.

2 – Establishing cheap online Self Managed Superannuation Fund deeds

The market in establishing self managed superannuation funds has been largely unregulated. A major change occurred in self managed superannuation in 2007 called 'simplified super'. The government simplified the superannuation laws dramatically. Despite this the majority of SMSF Deeds are more than 60 to 70 pages long and contain outdated irrelevant laws that can only cause confusion and problems.

The following issues should be considered when selecting an SMSF Deed:

- A well constructed SMSF Deed does not need to be more than 20 pages in length,
- The SMSF Deed should not allow for the commencement of old pensions (i.e. market link or allocated pensions),
- The SMSF Deed should meet the Pension Payment Standards and Benefit Protection Standards. Note: Deeds established pre 2007 don't meet the standards and need to be upgraded.
- Your advisor should have read the SMSF Deed they are recommending and know the important provisions [A large number of advisors have not read the SMSF Deed they recommend to their clients].

3 – Advising clients to acquire the family home jointly in both names

The family home is one of the most important assets acquired by Australians. In many houses around Australia one spouse or partner carries on a business or practices as a professional at some stage.

By acquiring the home equally in joint names 50% of the unencumbered value is available to creditors of one of the spouses or partners. To protect the family home it should either be acquired in the low risk spouses name solely or 99% in the name of the low risk spouse and 1% in the name of the high risk spouse.

WARNING: Acquiring the family home in a trust and granting a life interest will result in the loss of the principal residence exemption and land tax exemption. Both the Australian Taxation Office and Office of State Revenue have confirmed this.

4 – Wrong Self Managed Superfund strategies

Many advisors fail to provide their clients with the best strategies for both forming and running a self managed superannuation fund. A large number still allow for lump sum death benefits despite the lack of flexibility and potential unfavourable tax consequences. Many also promote the allocation of large sums to reserves despite the breach of the Benefit Protection Standards.

The main strategies to avoid include:

- Having a Binding Death Benefit nomination that provides for a lump sum,
- Allocating amounts from the funds income to a reserve account,
- Borrowing to acquire a property without insurance that remains in the fund to pay out the debt should something happen,
- Having a SMSF Deed that doesn't allow for anti-detriment payments to be made from the funds income,
- Promoting that children should join the fund and having voting rights based on member balances,
- Having poorly prepared investment strategies.

5 – Incorrect investment structures

Whether it be property, shares or some other form of investment many advisors select structures that don't provide the greatest tax efficiency and flexibility for future needs. Each investment class is different and needs unique advice, however some advisors take a one size fits all approach.

The main areas that investors need to avoid include:

- Acquiring any appreciating asset in a company,
- Acquiring property in a one size fits all trademarked bells and whistles trust,
- Acquiring investment property in joint names (N.S.W.),
- Acquiring a property in a joint venture with your self managed superannuation fund,
- Acquiring your first rental property in your own name or a discretionary trust (N.S.W., W.A. or VIC),
- Acquiring any residential investment property in your own name, a discretionary trust or a company,
- Acquiring shares or managed funds in your own name or a unit trust,
- Acquiring the family home in a trust and granting a life interest.

There are other areas where advice to investors has been very poor including estate planning and using the Australian Taxation Office and Office of State Revenues for private rulings.

Always seek advice from someone who knows the various investment structures and isn't afraid to seek a ruling giving certainty. The cost of fighting the authorities is enormous and the majority of people don't have the funds or the perseverance to do it.