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Money Management

Common pitfalls when insuring your SMSF collectibles

30 April, 2012**John Kelly**

John Kelly outlines new rules regarding insurance and how they affect SMSFs when it comes to insuring collectibles and personal use assets.

If you have collectibles within your SMSF, then you need to be aware of the new rules that govern them. Failure to observe these rules could land you in hot water - not just with financial penalties but also with implications for the fund's complying status.

One of the new rules relates to insurance and the importance of having the right cover in place.

Firstly, what are the rules when it comes to insurance? The regulations require that all collectables and personal use assets (other than a membership of a sporting or social club) are insured in the name of the fund within seven days of acquisition.

The rules apply immediately to all new investments in these assets made on or after 1 July 2011.

If your SMSF held an investment in a collectable or personal-use asset prior to 1 July 2011, it has until 1 July 2016 to comply with the rules.

Just to recap, collectables and personal use assets include, artwork (within the meaning of the Income Tax Assessment Act 1997 (ITAA97)), jewellery, antiques, artefacts, coins, medallions or bank notes, postage stamps or first day covers, rare folios, manuscripts or books, memorabilia, wine or spirits, motor vehicles, recreational boats, memberships of sporting or social clubs.

What are the key issues?

The policy must be in the name of your SMSF. The asset is not your asset. It is the SMSF asset, and if something happens to it, the SMSF must receive the insurance proceeds, not you.

For example, you are not allowed to cover these items under your Home and Contents policy.

You are allowed to store, but not display, the artwork, other collectables and personal-use assets in the business premises of a related party of the fund.

However, you can't cover the assets under your Business Contents policy. The SMSF must be the recipient of any compensation payout, not your business.

You are allowed to lease artwork to an art gallery (provided the art gallery is not owned by a related party of the fund and the lease is on arm's length terms).

The artwork is still required to be insured in the name of your SMSF, regardless of whether the art gallery has its own insurance policy.

You can store your newly acquired artwork in a professional art gallery (which may already have insurance in place), but you are still required to have your own insurance policy for the artwork.

You do not have to have a separate policy for each asset. You can have a 'group' policy to cover all the assets, provided that they are clearly identifiable as fund assets - that is, separately insured from other assets of the trustees.

What if you can't get insurance, or at least cover for a reasonable cost?

The Australian Taxation Office has less sympathy for you than you might hope. In essence, trustees need to give consideration to their ability to comply with all the regulations prior to making the investment.

In other words, you need to think about the availability of insurance before making the investment - if you can't get insurance, then don't get the asset.

There is a transitional arrangement in place for assets that were owned prior to the 1 July 2012. You have until 1 July 2016 to comply with the new regulations.

However, don't leave it to the last moment to comply. Here is why:

It may take time to put these arrangements in place. Depending on the item, it can take several months to get something arranged. If you leave it to the last moment there is a real possibility that either you will not get cover in place in time (which is a breach) or you end up paying too much premium.

It may take some time to sell the personal use assets if you no longer wish to hold such assets after 1 July 2016.

Having appropriate insurance in place to protect your valuable assets is common sense and something a responsible trustee should do anyway.

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