GBA Newsletter

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BENEFIT FROM OUR EXPERIENCE

GRAPHITE BUSINESS ADVISERS

Authorities cracking down on real estate trust account theft

A Sydney real estate agent has been jailed for stealing hundreds of thousands of dollars from her client's trust accounts, as fair trading authorities crack down on what they say is a growing problem.

Louise Catherine Sultana admitted to siphoning $330,000 from the accounts of a Century 21 agency between 2010 and 2012.

The pregnant 25-year-old was handed an 18-month jail term with a seven-month non-parole period.

She is the latest of a number of agents around the country to be prosecuted for stealing tens of millions of dollars from the trust accounts of unwitting clients.

Court documents show some agents caught dipping into trust accounts had drug addictions or gambling problems. In August last year, former LJ Hooker agent Patrick Scott was jailed for 16 months after siphoning around $800,000 from trust accounts to feed his gambling habit.

Authorities also say many agents take the money to prop up their own business accounts, with every intention of repaying it, but in the end never do. Illawarra couple Roger and Gordana Ocvirk were jailed late last year after stealing $1.4 million from trust accounts.

In Queensland last year, the Office of Fair Trading investigated 145 agents for breaches of trust account laws. Of those, 95 faced enforcement action

In June, a Brisbane agent was jailed for five years after he was convicted of misappropriating over $400,000 from trust accounts.

In Victoria it is a similar story. Consumer Affairs Victoria says three agents have been jailed in the past six months and a fourth sentenced to a community corrections order.


LOCAL NEWS

Trust account 'looted'

Minister's law firm gets K10m

What can you do to prevent such cases happening at your agency?

- Always ensure staffs are given limited access to both bank accounts and trust accounting software.
- Conduct periodic checks of bank account details, to ensure payments made are legitimate.
- Do not give full bank authorities to staff. Always have full control of payments from trust accounts.

WE CAN HELP YOU

For a small fee, we will conduct a random audit on your trust accounts to minimise your risk. (Note for our QLD clients, surprise audits are already included in the annual fee).

Food for thought

Should you transfer your business premises into your SMSF?

To start with, if your business is travelling along steadily, it will unlock a steady source of rental income for the SMSF and capital growth. It may also provide a level of stability for you as a business owner by not having a third-party landlord. There are additional advantages that, depending on a business owner's circumstances, may make transferring commercial property into an SMSF a tempting option.

One of the primary reasons for making such a change is tax. As the asset, which is the business premises, will be held by a superannuation fund, tax on income and capital gains will generally be less than the business would have been liable for. For an SMSF, earnings (which includes rental income) are taxed at 15%. For the business, rent or lease expenses are deductible for the business taxpayer, who pays tax at a rate of 30% (if a corporate).

A second reason, depending on which state the business premise is in, can be stamp duty exemptions or concessions. Many states have legislated to provide stamp duty concessions when a commercial property is transferred into a super fund. However these concessions can vary depending on the state, so advice from your financial adviser may be needed.

A third potential attraction, which may depend on circumstances, is that assets can be rendered less accessible to creditors once they are held by superannuation funds. There are various allowances made within the bankruptcy laws, for example, that can open these transactions up to being unwound in some circumstances. — so the fact that assets are held in an SMSF may not be an iron-clad strategy on the off-chance that creditors could come knocking.

Another potential benefit that should be mentioned at this point is that once the premises are owned by the SMSF, and over the course of time the members of the fund commence to take a pension, the subsequent sale of the (hopefully increased in value) property will not be subject to CGT if the property supports the pension liability.

And even if the property is sold before any pension is commenced, as long as it has been held for at least 12 months the tax on any capital gain is still taxed on a concessional basis in the SMSF at 10%.

CONSULT US FOR MORE INFO

It must be pointed out that there can be, depending on circumstances, instances where having one's business premises owned by your SMSF is NOT a good idea.

How much do you need to setup a SMSF?

Many are taking the plunge and establishing a SMSF these days – especially the younger demographic – but it is not a decision that should be taken lightly. Do you know what the optimum conditions are to set up an SMSF, how it compares to APRA-regulated funds and what the average account balance of an SMSF should be to remain viable?

Costs for SMSFs

There is a wide range of professional service providers to the SMSF market – accountants, financial advisers, lawyers and administrators. Whether SMSF trustees use these service providers and the costs they pay depends on the preferences and capabilities of the trustees. Some choose to carry out as much of the administration and accounting they can themselves and only use advisers for the services they cannot carry out, such as audits and tax lodgements. Others rely on service providers for all functions.

There are also costs that cannot be avoided such as statutory fees and the necessary

The various costs of setting up SMSF can be divided into:

1) Establishment costs

If an individual wants to operate an SMSF, the fund needs to be formally established. The costs associated with this include:

- The legal and related costs of establishing and registering the superannuation trust:
  - Trust deed
  - Tax office application forms
  - Cash management account application
  - Provision of binding death nomination forms
  - Sample investment strategy
  - Notice of election to become a regulated fund
  - General trust advice

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We offer a full service of establishing your SMSF, for $550 (individual trustees) and $1350 (company trustees).

For most business owners, it is recommended that a corporate trustee is utilised because it provides for simpler succession of trustees, inclusion of new members and the ownership of assets. Small business owners are urged to establish a separate trustee company separate from their business.

2) Annual compliance costs

There is a range of fees that are necessary to operate an SMSF as they are either government charges or require professional support. Known as annual compliance administration costs, they include costs for:

- Statutory charges
- Financial statements and tax return, and
- The audit.

There is quite a range of annual compliance administration costs for both funds that are accumulate only and for those that pay pensions.

3) Non-standard asset charges

Most service providers levy extra charges if an SMSF holds non-standard assets or borrows to finance an asset purchase.

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For most funds, annual compliance costs for a SMSF is around $1500, while each bare trust is fixed at $550.

4) Investment management fees

SMSFs make use of managed funds for a small proportion of their investments and as a result incur fees for their investment management based on the size of their holding. There is a wide range of investment management fees charged in the market, ranging from simple index funds to actively managed funds for specialty assets:

Fee level	Fee
Low	0.35% per annum
Mid	0.78% per annum
High	1.20% per annum

5) Winding up an SMSF

The process of winding up the fund – be it due to a marital breakdown, migration out of Australia, or the desire to transfer the benefits – includes:

- Preparing the final financial statements for the fund
- Having the fund audited
- Lodging tax returns
- Paying all levies
- Paying or transferring benefits
- Closing accounts
- Notifying the Tax Office of the wind up, and
- Deregistering any corporate trustees.

SMSF costs vs APRA-regulated funds

The pros and cons of each minimum cost-effective balance in relation to APRA-regulated funds are:

SMSFs with less than $100,000	**Not competitive** and are typically more expensive than all APRA-regulated funds, unless they can grow into a competitive size within a reasonable time.
SMSFs with $100,000 to $150,000	**Competitive** with more expensive and large superannuation funds (such as retail personal superannuation funds) but only slightly more competitive than retail funds, provided they carry out the broader investment administrative functions themselves.
SMSFs with $150,000 to $250,000	**Competitive** with both cheaper and more expensive industry and retail funds provided the trustees undertake some of the administration.
SMSFs with $250,000 or more	SMSFs become the **cheapest alternative** compared with all types of superannuation funds, provided trustees undertake some of the administration.

Fair work cracking down on underpayments

The Abbott Government has asked for a major review of workplace awards to assess whether minimum terms and conditions, including penalty rates, are still relevant.

The Government is also encouraging the Fair Work Commission (FWC) to take the cost of labour into account when reviewing the awards which set basic terms and conditions.

It follows a warning by Employment Minister Eric Abetz that Australia risks a "wages explosion" if bosses do not start saying no to workers and unions requesting pay rises.

There are 122 modern awards which cover most jobs and employees across a range of industries, except managers earning more than $130,000 per year and workers bound by agreements.

The Minister also wants the commission to take the softening economy into account when setting modern awards.

The FWC is beginning its scheduled review of modern awards this month, which the Government in its submission acknowledges has "the potential for significant changes".

However, up until the changes are actually made, employers are still obligated to pay according to the relevant pay awards. It is the employers' responsibility to categorise their employees correctly and be aware of the penalty rates. Failure to do so will result in compensation and fines.

HOW DO I KNOW IF I AM PAYING MY STAFF CORRECTLY?

There is no place for guesswork when it comes to workplace obligations. If you are unsure about the awards and the rates that you are paying your staff currently, the experience staffs at Graphite Business Advisers can help you.

Cases of underpayments to employees…

Last year, a NSW call centre have been fined $107,500 and ordered to back-pay staff almost $200,000. Fair Work found 33 staff were underpaid a total of $193,419 in 2009, and the largest individual underpayment was $17,467. The employees were underpaid minimum hourly rates, overtime rates, annual leave loadings and shift, weekend and public holiday allowances.

16 restaurants in Sydney are facing further investigation for potential underpayment of wages after spot-audits were conducted last week. 4 restaurants were handed on the spot fines of $550 for breaches such as failing to provide staff with payslips within one working day of payment.

A contractor hired by a real estate agency was paid on a commission-only basis and received no income during her employment. After she left, she received $1,365 for commission on the sale of one property and superannuation. Fair Work later concluded that the consultant should have been engaged as an employee under the Real Estate Industry Award 2010, and had therefore been underpaid a total of $16,600.