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FIVE COMMON MISTAKES PROPERTY INVESTORS MAKE
AND HOW TO AVOID THEM

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With the growing number of investors opting to build their wealth through property, at Bennett & Philp, we have truly seen it all.

While there is a long list of what investors should do when purchasing a property, there is an even longer list of what you should not do.

You only ever read of success stories in the paper, but the fact of the matter is that it isn't difficult to make easily avoidable mistakes that could go on to have serious legal and financial setbacks.

Making these errors that you might not even know about at the time, could potentially impede the success of any property investment, so it's imperative as a property investor that you do your research and engage qualified consultants who are working in your best interests.

Here are some insights into the top mistakes property investors make, and how best to reduce the risk of these happening to you.

BUYING WITH FRIENDS AND FAMILY

Purchasing an investment property with those who are closest to you is often the biggest mistake you can make – at the time, it may seem like the right thing to do but it's important not to assume that everything will go as planned.

Property and Finance expert Noel Whittaker wrote that when considering an investment partner, you should look closely at the differences in temperaments, ages and investment goals.

Changes in circumstances, for example new relationships, a death or sudden unemployment are also key considerations when weighing up a business partner.

"Your best business partner is always the bank; all they ask is that you pay them interest," – Noel Whitaker

Choosing to invest with friends and family can result in a fire sale outcome whereby the vendors are left with no choice but to sell their assets at heavily discounted prices, usually because of financial distress.

THE SOLUTION

Don't invest with family and friends if at all possible.

At Bennett & Philp, we have seen these investments go sour numerous times and it is not worth the hassle. To save you the money, time and stress, we would strongly recommend against it.

NOT UNDERTAKING A FULL DUE DILIGENCE

Failing to undertake due diligence correctly can have dramatic outcomes for property investors.

At Bennett & Philp, we have a number of clients coming to us for urgent help and requesting to cut corners and reduce costs in the due diligence phase by only focusing their attention on the ‘relevant’ searches. From a lawyer’s perspective, all searches are relevant – without inspecting the property, how do you know if that pergola has been properly constructed or if that commercial building extension is over an underground easement? What may appear relevant now could drastically change in the future.

Particularly for commercial developments, many infrastructure charges to the land are not discoverable through the standard searches. Often these charges are only identified after a standard, or sometimes a full town planning search, which are significantly more expensive to obtain. A thorough investigation of all aspects of the property will enable an investor to identify possible risks. But be aware, not all risks are discoverable. The aim is to reduce your exposure to risks.

THE SOLUTION

Your lawyer is just one consultant in the due diligence process.

It is vital that property investors work with a number of professionals from varying industries – for example building engineers, hydrologists and surveyors – to mitigate any foreseeable risk for the investor.

Considering this risk and your potential loss if a full due diligence is not undertaken should form part of your decision in this process.

NOT ENGAGING THE RIGHT CONSULTANTS AT THE RIGHT TIME

Following on from the previous point, more times than not at Bennett & Philp we will see property investors signing binding heads of agreement or contracts with unreasonable terms or unachievable time periods.

For instance, the purchase of a $14 million shopping centre development cannot be achieved within a seven-day due diligence period and sometimes not even within the more standard 14 days. Engaging a consultant or lawyer earlier in the process would allow for more suitable time periods or terms to be established.

Further, working with consultants early on will help to identify any issues with the draft documents, time periods and structuring. When it comes to purchasing a property in a self-managed super fund for example, borrowed funds may only be used to acquire a 'single acquirable asset'; multiple lots may, depending on the circumstances, require separate contracts and separate trusts.

Signing contracts that have not been reviewed by a qualified legal advisor can result in property investors agreeing to some onerous risk provisions. The risks associated with purchasing a commercial property in an SMSF should also be separately considered by a practitioner with experience in superannuation requirements, as a general conveyancer may not have sufficient experience in those areas.

THE SOLUTION

Property investors need to extensively research not just the property, but their advisors and consultants.

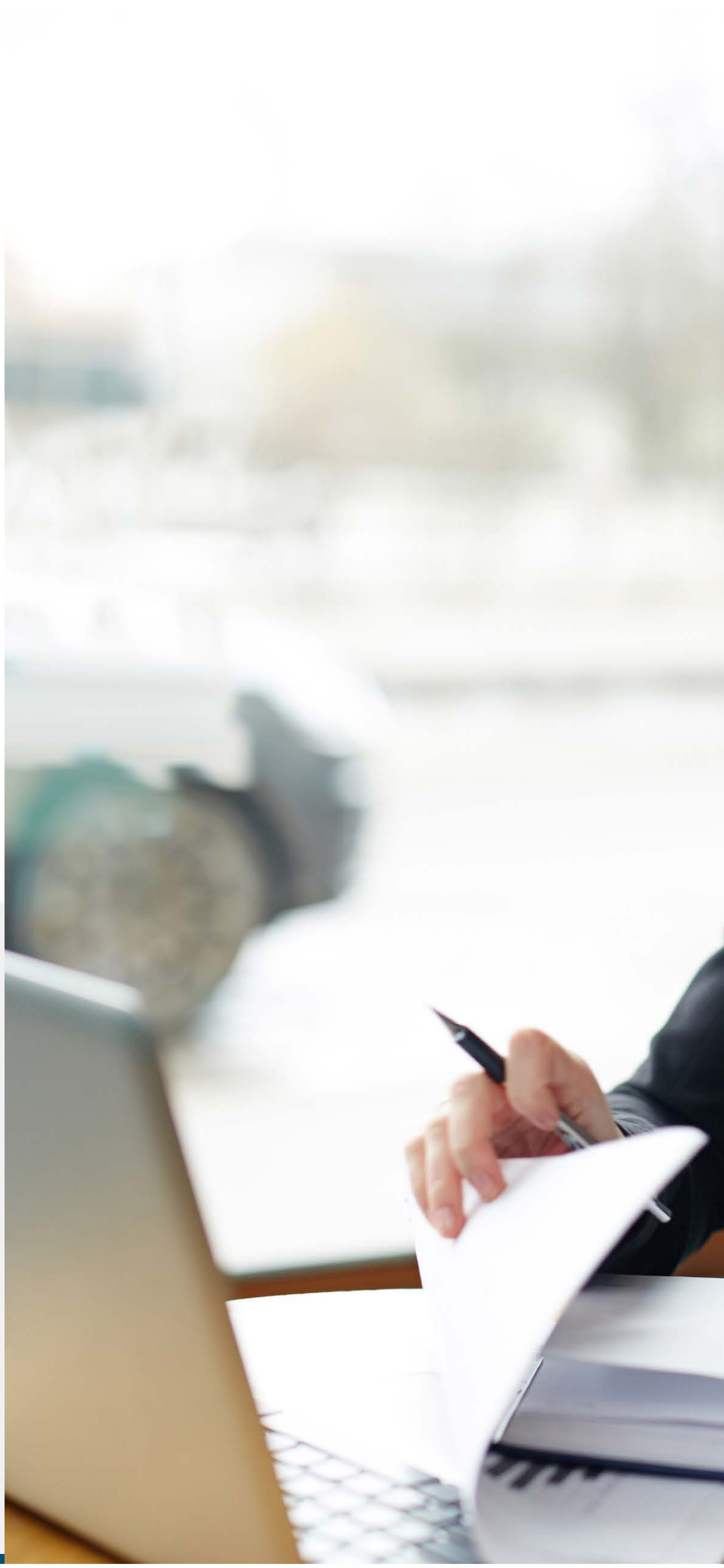
Engaging consultants and legal advisors earlier in the purchasing process will ensure that any issues can be identified and ironed out before agreeing to unrealistic terms.

FAILING TO RESEARCH THE FINANCIAL PRODUCTS THAT YOU INTEND TO USE

What people may not realise is that the cheap rate from one lender might be offset by the fine print. That fine print could cause you distress in the future with on-going bank charges and break fees.

While they aren't topics necessarily discussed upfront, they are just as important when choosing to purchase an investment property.

"As lawyers, we often come across property investors who have signed loan documents without properly reviewing them, and in some cases that person can be held to those loans for up to 30 years."



THE SOLUTION

Recognise that property investment is a long-term investment and as such, investors should use a financial product that suits long term needs and goals as recommended by an experienced broker and following careful review and comparison.

USING ONE-STOP-SHOP PROPERTY SPRUIKERS AND THEIR ASSOCIATES

On several occasions, a cold call marketing introduction or free consultation 'prize', has resulted in a property investor switching out of an APRA prudentially regulated fund into a property purchased in an SMSF.

These marketing tactics may also lead to arrangements that are fraught with the possibility of conflict, such as meetings with a property spruiker and their related property agents, accountants, lawyers, bankers and so on.

Advisors have an obligation to consider the best interests of their clients and to prioritise the client's interest over the advisor's interest. This places advisors in a precarious predicament if pushing certain products and referring investors to certain associates for financial gain.

ASIC released two reports in July 2018, warning that the corporate watchdog would carefully examine the conduct of and any advices provided by one-stop-shop property spruikers.

Not all one one-stop-shop property spruikers do the wrong thing. Many are aware of their obligations to their clients. The risk is in the increased possibility of conflict and the reduced choices available or limited advice that may be provided.

THE SOLUTION

You can never ask too many questions when using a one-stop-shop property spruiker and their preferred associates. Property investors should consider whether the advice being provided is on the basis that their financial position has been considered in all the circumstances and if all services provided are in their best interest.

It is also recommended to shop around and do as much research as possible – as a property investor, you are not tied to a spruiker's referred associates and so it is absolutely crucial that you do your homework.

ABOUT BENNETT & PHILP

Established in 1984, Bennett & Philp is a mid-tier law firm based in the heart of Brisbane offering end-to-end legal solutions for both business and individual clients. Our team offers a broad range of services to support both Australian and international clients across every stage of business and life.

AREAS OF PRACTICE

We provide personalised service across six core areas of specialisation:

- Business Advisory Services
- Disputes & Litigation
- Intellectual Property
- Property & Real Estate
- Compensation Law
- Wills & Estates

MEET OUR TEAM

With 15 Directors and over 70 team members across six different service areas, you can rest assured that our experienced team can give you the practical and solutions-oriented legal advice you need for any occasion.

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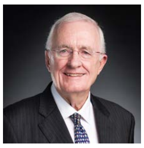

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Contact us today and talk to us about how we can assist you in your situation.