



Case highlights need for public risk insurance

A recent court case has highlighted the importance of making sure do-it-yourself superannuation funds have adequate public risk insurance.

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A recent court case has highlighted the importance of making sure do-it-yourself superannuation funds have adequate public risk insurance when they embark on complex investment strategies, such as investing in property.

Self-managed funds should also consider having a corporate trustee structure rather than the more common individual members' trustee arrangement.

The relevance of both issues, says super lawyer Daniel Butler of DBA Lawyers, has been emphasised by a judgement handed down in the District Court of NSW, where the owner of an investment property was found to be liable for the death of a handyman employed to repair a

leaking roof.

The handyman was electrocuted after coming into contact with a live wire from a previously used solar hot-water heater that was thought to be disconnected.

While the property owner was not a DIY fund, there is a clear warning for DIY funds in the judgement, says Butler. If the fund owns an investment property, which could be a business or residential rental property, it could be sued if someone is seriously injured or dies because of a fault in the property.

If they don't have adequate personal risk insurance, DIY funds should be aware that a judgement against the fund will put other fund assets at risk. If the fund doesn't have sufficient assets and is run by individual member trustees, they will be personally liable for any outstanding amounts.

"Members could lose their house in such circumstances," Butler warns. He estimates that 70 per cent of funds have individual member trustees, many of whom probably have not given much thought to the risk of being sued.

In the court decision, the judge found the property owner breached his duty of care to the handyman because he should have been aware of the risk that existed when he employed a plumber some years earlier to decommission the water connections of a redundant solar hot-water system.

The solar hot-water system, which had an electrical booster, was replaced with a gas one.

Both the owner and the plumber left the solar system with an active electrical connection that later caused the death of the handyman. The

court found that both the owner and the plumber were negligent and liable for damages claimed by the partner of the deceased handyman.

The case shows, says Butler, that anyone who owns an investment property should have an insurance policy in the fund to cover the public liability in addition to any other risks. They should be aware that under super law their fund can be sued for negligence by anyone who has the right to do so.

DIY fund property owners should also make sure they are aware of any hazards that may exist on their property and have them fixed.

For a residential property, any public liability insurance cover is the responsibility of the landlord.

Even where a fund considers it has adequate insurance, having a corporate trustee is an extra safeguard.

John Wasiliev writes on Personal Finance specialising in Superannuation & SMSFs, Managed Funds, Trusts. *Email John at john.wasiliev@afr.com*



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