LEGAL NEWS

Limiting your financial risks

Ensuring your assets are safe should be part of any investment strategy you undertake this year, **Anna Fenech** reports

IT'S customary for many of us to kick off the new year with an investment or retirement goal or strategy in mind. The goal may be to pass a business on to your adult children, or it may be a sea change or tree change. Or, it could be about creating a passive income so you don't have to work.

Schon Condon, a forensic turnaround practitioner with Condon Associates, says what is often forgotten are commonsense asset-protection measures.

"Everyone wants to help their children, minimise tax or create wealth, but risk management can sometimes be ignored or poorly catered for," he says.

"I see people when they or their accountant call me to ask if there's anything we can do to save someone's house or prevent them going bankrupt."

Below *Wealth* outlines true-to-life examples of investments that can go wrong, while highlighting correct risk management strategies:

❑ **Passing a business on to adult children:** You and your spouse are ready to retire and want to pass your successful business on to your adult children.

As part of the transition process you go into partnership with them.

What can go wrong?

The business fails with debts owing and you lose your house.

Risk management strategy: Condon says the parents should never have gone into partnership with their kids.

"In a partnership all your personal assets are exposed," says Condon. The parents should make a clean break from the business, including legal agreements that confirm this, and no personal guarantees.

Bill Shew, entrepreneurial business director at business accountant Grant Thornton, says parents should also make a legal agreement with the children about how the deal will be financed.

"The kids should qualify for bank financing independently to buy the business from the parents upfront or over time, so the parents get something for their retirement. The business assets and the kids' assets should act as security for the loan and the parents should have first charge over the assets if the business fails," Shew says.

Variations on this separation should occur if parents want to lend an adult child money to start a business, he says.

❑ **A sea change or tree change:** You and your spouse sell your expensive family home in the city to buy an apparently profitable motel business in the country to supplement your retirement income. You lease the premises as you don't have enough to buy the business and the property.

Forgotten: Schon Condon says risk management is often ignored or poorly catered for

Protect yourself

❑ Consider what could go wrong with any new venture

❑ Seek independent advice

❑ Have legal agreements and structures in place

What can go wrong?

Key assumptions on which the business income and profit forecasts were based don't go to plan. The business fails and is worth a fraction of what you paid. You now have no property and lose everything when the business goes under.

Risk management strategy: Research the market, the area and the business, says Condon. "Pay for independent advice from lawyers and accountants who are unrelated to the business broker or individuals trying to sell you the business."

Shew says never put all your eggs in one basket:

"If you sell your city home to buy the business, you should keep your super as a backup, and ensure it is enough to support you," he says.

"Obviously, due diligence also should be done on any business idea to see that claims made stack up."

❑ **Positive cash flow property scheme:** You attend a wealth-creation seminar that includes projections for the profits you can make in off-the-plan property. The developer says he is selling you the property at a discount to the valuation and claims the development is a high-growth area with lots of tenants. Next year, you could buy another one, then another the year after. One day you will have enough passive income so you don't have to work.

What can go wrong?

The developer's valuations are overly optimistic and your properties are worth less than you paid for them, property prices drop or remain static, you have trouble getting tenants, rent is only guaranteed for a year, and/or the local council changes its mind on aspects of the development. Worse still, you end up with several properties and can't service the debt, as you don't have alternative cashflow.

The bank forecloses on you and sells properties at fire-sale prices.

Risk management strategy:

Always get independent advice from someone unconnected to the deal, Condon says. This should include an assessment of valuations, rental and capital growth return projections provided by the scheme. And satisfy yourself you can service mortgages if you don't have tenants.

"Always avoid heavily marketed property schemes because costs are added to the price of your property," he says.

"As part of your research, call other real estate agents in the area, find out the prices of comparable properties and inquire about rental property demand and availability."

Buying several properties from one developer is risky, so spread your bets.

Promises about lying on a beach and earning a passive income are overblown, too.

"You become a property manager who must maintain the property while deciding when to buy and sell," he says.