



ADVISER NEWS

More SMSFs caught up in bankruptcy

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by Steve Lumanta

Number of cases of insolvent and bankrupt trustees has increased, putting SMSFs in danger of being targeted by creditors chasing owed assets.

There are 577,000 SMSFs in this country at the moment with over 1.1 million people in an SMSF, so we look at those numbers as they continue to increase every year. Worrells Solvency and Forensic Accountants partner Ivan Glavas told the recent Public Accountants Victorian Congress in Creswick.

"We're now seeing a lot more SMSFs being affected because of bankruptcy.

On a personal insolvency-wise, there are about 11,000 debt agreements per year and about 21,000 personal insolvencies on top of that, so 32,000 people going through personal insolvency per year.

Glavas said that, SMSFs have been around for a while, but it does sometimes take a while before these [issues] come to fruition."

Glavas said with respect to clawback provisions, there were a number of issues to consider, such as the ability to freeze accounts of the bankrupt SMSF trustee.

"We [Worrells] have incredible power to take control of and pause the individual as a superannuation fund trustee to do certain things," he said.

"For example, we can seek to freeze the account and as a consequence of doing that we can then say that we have a right to take some of the proceeds in the account.

"It's a very expensive exercise, I must say, but it does work."

He warned that once a trustee started withdrawing any funds from an SMSF prior to bankruptcy, those proceeds became part of the assets in the hand of a bankrupt estate.

"So a take-home point is to be careful when you have clients that are in some sort of bankruptcy or personal insolvency dilemma, make sure they do not touch their super fund," he noted.

He said bankruptcy was a legal process where a trustee was appointed to administer an insolvent person's affairs in order to provide a fair distribution of that person's assets to their creditors.

Bankruptcy was a legitimate and just way for a debtor to solve their debt problems and it was one way creditors could take action against someone for unpaid debts, he added.

