

super funds

ART FOR THE FUTURE

ACCOUNTANT TO THE ART WORLD, **TOM LOWENSTEIN**, ANSWERS SOME COMMON QUESTIONS ON ART AND YOUR SUPERANNUATION.

Over the years I have come across a number of frequently asked questions concerning art and superannuation funds. Before I attempt to answer them, I would like to explain the regulations that govern investments by superannuation funds and the principles which trustees should adopt to formulate an investment strategy.

The fundamental provision of the superannuation regulations is the “sole purpose test”, which provides that the dominant purpose of a superannuation fund is to provide retirement benefits to its members *on their retirement*. This is to prevent superannuation funds from being used for particular purposes, such as providing benefits to members prior to their retirement, payment of school fees of members’ children or purchasing a holiday home for use by members.

Regulations relating to investments by superannuation funds are not overly restrictive, however certain restrictions do apply, such as funds being lent to members, and restrictions of superannuation funds acquiring assets direct from members.

ing works of art in the super fund, provided it is part of the trustee’s investment strategy. As with any other type of investment, the strategy has to be based on sound business principles and the trustees would be ill-advised to buy artworks at a school fete or at an outdoor art show.

On the other hand, if the trustees were to be advised by a consultant or a dealer and relied on expert advice, their strategy would meet the necessary requirements.

My financial adviser tells me, that I can only invest 5% of my super fund in art. Is this correct?

There is nothing in the regulations that restricts the percentage in any area of investment, as long as the principles adopted by the trustees reflect a balanced and prudent investment strategy.

My accountant told me that if I buy a painting in my super fund I can’t hang on it on a wall and will have to put it into a bank vault. Is this the case?

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It is the responsibility of the trustees to develop and maintain an investment strategy, which in their view meets the sole purpose test.

In formulating an investment strategy, trustees need to consider the following:

- Growth
- Risk
- Liquidity
- Return
- Diversity

It is generally accepted that diversification of investment is the most prudent and safest form of investment and many advisers will suggest a split of investments between shares, real estate and cash.

It is possible to have many diverse forms of investments and still have complied with the regulations. Example:

CLIENT A has been a share trader and investor for the past thirty years. She spends three hours daily at the stock exchange, studies all reports and releases, plots graphs and analyses trends in the share market. Her superannuation fund consists of 90% investment in shares and approximately 10% in cash.

CLIENT B has never owned shares, is uncomfortable with the share market, and has invested nearly all of his super fund assets in real estate.

CLIENT C is director of a regional gallery and has worked all her life as a curator and administrator in galleries and has an in-depth knowledge of art and the art market.

In addition, I have had clients who have invested funds in tax licences, in wine and commodities, but in each case these investments have been based on expert advice.

With the theory aside, I’ll now attempt to answer the following questions:

Can I buy a painting in my super fund?

Yes, there is nothing in the regulations to prevent trustees acquir-

ing investment is to provide benefits to members on retirement and not that members receive current benefits. However, if the benefit is only incidental to the dominant purpose, I cannot see how this could be in breach of the regulations.

If a painting is purchased as part of the investment strategy and the work is by an artist with a proven track record and/or professional advice has been obtained as to the value and growth potential of the work, the fact that it is hung on the wall should not affect the investment (it would also help, if you could argue that you did not like the painting). In fact hanging a painting very often provides better protection for the work than leaving it in storage or wrapping it in bubble pack.

I have been advised that my super fund has to lease the paintings. What is your opinion?

Some advisers believe that assets owned by super funds should generate income and therefore suggest that funds owning artworks should lease them. To my knowledge, there are no regulations which require super funds to derive income from their investments. Many people invest in assets, such as shares, land etc., with the potential of capital growth and the same principle can be applied to investment in art.

My adviser tells me that liquidity is an important element of investing and that art is not easily convertible to cash.

Over the past decade, art has become a recognised commodity, and this is borne out by no less than 20 major art auctions annually in Melbourne and Sydney. These auctions, together with a large number of art dealers and consultants, have ensured that liquidity is no longer a concern in realising investment in art. ■

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