

Investing money with your lawyer

This fact sheet explains the things you should consider before giving money to a lawyer for financial services or investments.

INFORMATION FOR CONSUMERS

A lawyer may offer you financial services or investments. However, your money may not be protected against loss.

What financial services or investments might a lawyer provide?

Your lawyer might offer you financial or investment services including:

- mortgage investment schemes,
- managed investment schemes,
- mortgage financing, or
- licenced financial services.

An incorporated legal practice cannot conduct a managed investment scheme.

From 1 July 2018, lawyers will be prohibited from promoting or operating managed investment schemes.

Are there risks in providing funds to my lawyer?

Money you provide to your lawyer in the ordinary course of *legal practice* may be protected by the Fidelity Fund. The Fidelity Fund is a statutory fund maintained by the Victorian Legal Services Board to provide compensation to clients who have lost money or property (that was held in trust) as a result of the dishonest or fraudulent behaviour of a lawyer, employee of a law practice or a barrister's clerk.

However, money provided to your lawyer for *financial services or investments* may NOT be protected by the Fidelity Fund. As such, you may not be able to recover this money in the case of fraud or theft.

The Board generally cannot pay out compensation from the Fidelity Fund for money that has been entrusted to lawyers for investment purposes unless the money is held in the ordinary course of legal practice. Primarily that purpose must be in connection with the provision of legal

services and the investment made for the purpose of maintaining or enhancing the value of the money pending completion of a legal matter or a stage of a legal matter.

What do I need to know before I invest?

Before you entrust money to a lawyer for the financial or investment services listed above, your lawyer should tell you in writing that your money may not be protected by the Fidelity Fund and that, if it is lost, you may not be able to claim compensation from the Fidelity Fund.

What can I do to protect my money?

There are things you can do to ensure you make a properly informed decision before giving money to a lawyer for financial services or investments. Ask your lawyer:

- Are my funds protected?
- If so, how are my funds protected?
- Is the service you are providing regulated by a government or industry body?

You should also do your own research before handing over your money:

- seek independent financial advice
- contact the relevant regulatory bodies for further information.

Who regulates financial services and investments?

The Australian Securities and Investments Commission (ASIC) regulates all Australian companies and professionals who deal and advise in investments. Financial services businesses are also licensed and monitored by ASIC to ensure they operate efficiently, honestly and fairly.

Case study

Below is a de-identified example of where funds invested with a lawyer were not protected by the Fidelity Fund.

Alan had an accident which meant he could no longer work. His compensation payout was paid into his lawyer's trust account. After using some of his payout to renovate his house, Alan intended to invest the balance.

Alan's lawyer recommended he invest in a construction company that would return 18% interest per annum, paying out in two years. Alan authorised the money to be invested and received a letter from his lawyer acknowledging his investment.

When Alan heard his lawyer had been arrested on fraud charges, he contacted the law practice to discover that a receiver had been appointed. The receiver advised Alan that there was no record of his investment. Alan made a claim against the Fidelity Fund.

After reviewing Alan's claim, the Victorian Legal Services Board disallowed it because the money was paid to the lawyer for investment purposes, not in the course of legal practice.

Alan was advised that he could complain about the lawyer to the Victorian Legal Services Commissioner. While the outcome of a complaint may involve a penalty imposed on the lawyer, it may not necessarily result in a compensation order in Alan's favour.

For more information about financial services and investments, contact:

The Australian Securities and Investment Commission
Tel: 1300 300 630
Web: www.asic.gov.au

For more information about Victorian law firms operating mortgage investment schemes, contact:

Law Institute of Victoria
Tel: 03 9607 9311
Web: www.liv.asn.au

For more information about the regulation of lawyers, contact:

Victorian Legal Services Board + Commissioner
Tel: 1300 796 344
Email: admin@lsbc.vic.gov.au