Poor advice is poor advice, no matter who gave it

David Huggins
Comment

The last time this column appeared I discussed agribusiness schemes that had failed.

These were schemes where clients bought units in a trust involved in an agricultural business. There were many kinds of schemes but some of the most notorious were forestry schemes. Since I wrote that article I've become aware of three things.

First, many investors were advised to enter into these schemes by an accountant rather than a financial planner.

From a legal perspective, this doesn't change anything. When accountants gave advice about these schemes they did so within the same legal framework that applied to financial planners.

This means that investors who got poor advice from an accountant have the same rights as investors who received poor advice from a financial planner.

A person who provides financial advice must hold an Australian Financial Services Licence or be authorised by the holder of a licence. Incredibly, some accountants were authorised by the promoter of the scheme about which they were providing advice.

Financial planners and accountants who accepted commissions for advice about these schemes had a conflict of interest that was made worse by the high levels of commissions paid by the promoters of these schemes.

In the case of some accountants this conflict of interest was made even worse because they were acting as representatives of the promoter. Some investors, did not realise that their accountant was acting on behalf of the promoter.

Second, some investors think that because the scheme that they invested in failed they will not have to repay the loan they took out to buy units in the scheme. Often investors borrowed from a company that was associated with the promoter of the scheme.

When the scheme failed that company was usually placed into liquidation and the loans were then controlled by a liquidator. In some cases investors' debts have been sold by the original lender to a financial institution.

Unless investors can establish a reason why they are not required to do so, everyone who borrowed to invest in these schemes will eventually be required to pay back their loans with interest.

Given the size of these loans, it is inevitable that some investors will be bankrupted as a result.

Third, some investors believe their predicament was caused by the scheme they invested in not being operated properly.

In my view, this is wrong. The failure of the scheme was, in many cases, a readily predictable event.

The real cause of their loss is that they were advised to make an unsuitable investment in circumstances in which the risks associated with investing in these schemes was grossly magnified by the very large loans taken out.

In my view, investors need to be thinking about whether they should have been borrowing to invest in these schemes in the first place and the options that are open to them if the quality of the advice that has been provided to them by their accountant or their financial planner did not meet the required standard.

They also need to be thinking about whether they have grounds to avoid paying out the loans that they took out to invest in these schemes.

David Huggins is a lawyer who specialises in resolving disputes about poor financial advice.