



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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2 April 2020

Mr Gil King
Chief Executive Officer
Real Estate Institute of Victoria
By email: reiv@reiv.com.au

Dear Mr King,

Unlicensed financial advice by real estate agents to tenants

ASIC is aware that some real estate agents are advising tenants who are unable to pay their rent, or who may find themselves in such a situation in future, to consider applying for early release of their superannuation. Recent media reports and social media commentary outlining this conduct by some real estate agents is of significant concern to ASIC and, we would hope, you.

As you are no doubt aware, as part of the Federal Government's COVID-19 economic response package, the Australian Tax Office (ATO) has announced it will implement a measure to allow individuals affected by COVID-19 to access their superannuation early, up to \$10,000 in 2019-2020 and a further \$10,000 in 2020-2021.

ASIC's concerns

We are concerned that the conduct by real estate agents referred to above may:

- constitute unlicensed financial advice in contravention of section 911A of the *Corporations Act*; or
- not be in the best interests of individuals in contravention of section 961B of the *Corporations Act*.

Financial advice must only be provided by qualified and licensed financial advisers, or financial counsellors, not by real estate agents who neither hold the requisite licence, nor are an authorised representative of an Australian Financial Services Licensee.

The Corporations Act imposes significant penalties for a contravention of section 911A. For individuals this can be a maximum of 5 years imprisonment, and/or a fine of up to \$126,000 (600 penalty units), and for corporations a fine of up to \$1,260 million dollars (6000 penalty units).

Tenants facing financial difficulty need sound financial guidance and potentially debt counselling. Specifically pointing them to and recommending them to consider the specific possibility of accessing superannuation is, again, likely to amount to a breach of the Act.

ASIC seeks your assistance in communicating with your members

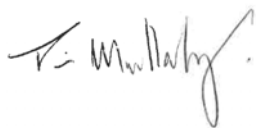
We request that you please circulate this correspondence to your members as a matter of priority. We will be raising these concerns with the relevant state regulatory bodies and will be writing directly to firms where it is alleged or brought to our attention that they have breached the law (as discussed below).

ASIC intends to monitor this situation closely, and if contraventions of the licensing requirements of the Corporations Act are found, ASIC will not hesitate to act swiftly to protect vulnerable consumers.

If real estate agents are of the view that they need to give guidance to a tenant regarding their financial affairs, they should consider referring tenants to information available on the ASIC [Moneysmart](http://www.moneysmart.gov.au) website (www.moneysmart.gov.au).

If you have any questions in relation to this correspondence, please contact Brendan Facey, Senior Executive Leader – Misconduct & Breach Reporting at brendan.facey@asic.gov.au or on 0478 542 089.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Mullaly', with a stylized flourish at the end.

Tim Mullaly
Executive Director – Financial Service Enforcement
Australian Securities & Investments Commission