



ASIC

Australian Securities & Investments Commission



S02436214

INFRINGEMENT NOTICE

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 25 May 2015

Unique identification code: A4463902

TO: Mr Aaron Greaves
Director
Omniwealth Services Pty Ltd
Australia Square
Level 22, 264-278 George St
Sydney NSW 2000

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.
2. ASIC has reasonable grounds to believe that you have contravened an infringement notice provision as follows:
 - (a) On or around 5 December 2014, you contravened s12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation with respect to the sponsorship, approval, performance characteristics, uses or benefits of an SMSF.
 - (b) In particular, the Omniwealth website, www.omniwealth.com.au, made representations about the advantages of a SMSF investing in a geared property investment, including a table comparing a geared property investment to an ungeared equity investment:

"Leverage

Gearing into property within your SMSF allows you to quickly increase the value of your asset base. Lets look at an example to show you how this works. If we have a \$200,000 super fund comparing property and share based investing over a 20 year period.

	Shares	Property
Value	\$200,000	\$500,000
Mortgage	\$0	\$300,000
Net Value	\$200,000	\$200,000
Value in 20 years	\$530,660	\$1,326,649
Net Assets	\$530,660	\$1,126,649
Difference \$	\$0	\$595,989
Difference %	0%	212%

As you can see, if we just compare the growth rate of shares and property, the property investment significantly outperformed the share investment. The above table doesn't take into consideration the cash-flow for holding a property which fluctuates due to many variables like the age of the property, interest rate and rental income received. If you would like understand how the cash flow of a property in super works please let me know.

If you would like to know more about the advantages of investing in property within an SMSF or if you have any questions please contact me andrew@omniwealth.com.au.

The assumptions we have made in the example above is \$200,000 super balance, 20 years to invest, 5% capital Growth Rates & Interest only mortgage with 7%pa interest costs."

- (c) The website was false or misleading because:
 - i. The example compares a geared property investment with an ungeared share investment which is not a like-for-like comparison.
 - ii. There is no explanation given as to the reasonable basis for the assumptions used.
 - iii. There is no explanation that the forecasts about future performance may not occur.

Penalty under this notice

- 3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.
This penalty is payable to ASIC on behalf of the Commonwealth.
This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

- 4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
 - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
 - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

- 5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1,700,000.

Time for payment

7. The time for payment is:
 - (a) within 28 days after the day on which the notice is issued to you; or
 - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).


Withdrawal of this notice

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.

16. You may contact ASIC in relation to this notice by contacting:
Elizabeth McNess
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2000
Or by facsimile: 02 9911 2414
or by email: ACLInfringementNotices@asic.gov.au



Signature of delegate issuing the notice

Peter Kell

as a delegate of the Australian Securities and Investments Commission



ASIC

Australian Securities & Investments Commission

To: Omniwealth Services Pty Ltd
Address: Mr Aaron Greaves
Omniwealth Services Pty Ltd
Level 22, 264-278 George Street
Sydney, NSW 2000

Level 5, 100 Market Street,
Sydney NSW 2000
GPO Box 9827, Sydney NSW 2001
DX 653 Sydney

Telephone: +61 2 9911 2000
Facsimile: +61 2 9911 2414
www.asic.gov.au

Infringement Notice A4463902
Unique Identification
Code:
Account Number: 66121845001
Issue Date: 25/05/2015

INVOICE

Infringement Notice Penalty \$10,200.00

This invoice is issued for payment of the penalty under infringement notice **A4463902**

To stop further action being taken in relation to the alleged offence/ civil penalty contravention described in the infringement notice, ensure payment of the penalty is made within 28 days of receipt of the infringement notice

For assistance, contact Elizabeth McNess on (02) 9911 2849

This notice may not include all monies owed to ASIC.
Not Subject to GST, (Treasurer's Determination Exempt Taxes, Fees and Charges).



Payment Slip

Account Number: 66121845001

Recipient: Omniwealth Services Pty Ltd

Due this notice: \$10,200.00

PAYMENT OPTIONS



Billpay Code: 8929
Ref: 669121845001331

Australia Post,
Present this payment slip. Pay by cash, cheque or EFTPOS.

Phone
Call 13 18 16 to pay by MasterCard or Visa

Online
Go to postbillpay.com.au to pay by MasterCard or Visa

Electronic Funds Transfer

ASIC's account details are:
BANK: Reserve Bank of Australia
BSB: 093003
BANK ACCOUNT: 317118
ACCOUNT NAME: ASIC Collectors rec. Acc.
REFERENCE: 6691218450013



Bill Code: 17301
Ref: 6691218450013

Use these details for phone or internet banking. Call your financial institution to pay from your cheque, savings or credit card account. For info; www.bpays.com.au

Mail
Mail this payment slip and cheque (do not staple) to ASIC,
Locked Bag 5000, Gippsland Mail Centre VIC 3841

Aus Post Barcode: *814 129 0006691218450013 31



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 139

ASIC Act infringement notices: Your rights

This information sheet explains your options if you receive an ASIC Act infringement notice. It tells you:

- why and when we issue infringement notices
- how to pay the penalty in an infringement notice
- what happens when you pay the penalty
- what happens if you don't pay the penalty
- what to do if you need more time to pay the penalty, and
- how to apply to have the infringement notice withdrawn.

Why we issue infringement notices

ASIC administers the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). These provisions are in substantially the same terms as the Australian Consumer Law but apply to the supply of financial services including credit.

We may issue an infringement notice if we believe certain consumer protection provisions of the ASIC Act have been contravened. These include provisions dealing with:

- unconscionable conduct
- false or misleading representations
- 'bait' advertising
- harassment or coercion in connection with the supply of credit or financial services
- pyramid selling
- sending unsolicited credit or debit cards
- failure to respond to a substantiation notice, and
- giving false or misleading information in response to a substantiation notice.

We must issue the infringement notice within 12 months of the date of the alleged contravention. We may choose, but are not obliged, to issue an infringement notice as an alternative to taking civil penalty action.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

What you will receive

If you are issued with an infringement notice, you will also receive a covering letter, an invoice for the penalty and this information sheet. The infringement notice will contain a unique identification code, found near the top of the first page of the notice.

How to pay the penalty

You have 28 days from the day after we issue you the infringement notice to pay the penalty. To make payment, follow the instructions in the invoice received with the infringement notice.

What happens when you pay the penalty

If you pay the penalty in full and on time, we may not commence a prosecution or take civil proceedings against you for the alleged breach. Paying the penalty is not an admission of guilt on your part, nor is it a finding of guilt against you.

However, your payment of the infringement notice will not prevent a consumer from taking civil action against you for the alleged breach. Also, we may still apply to the court on behalf of a plaintiff for a compensation order under the ASIC Act for loss or damage arising from the alleged breach.

We will issue a statement about your compliance with the notice as described below; and publish a copy of the notice.

What happens if you don't pay the penalty

You are not obliged by law to pay the penalty in the infringement notice, and failure to pay the penalty does not create a debt that we can enforce. You may choose not to pay the penalty. However, if you do not pay and we commence a prosecution or a civil penalty proceeding for the alleged breach, the court may impose a higher penalty than that specified in the infringement notice.

What to do if you need more time to pay the penalty

If you need more time to pay the penalty, you may request an extension of time in which to pay. Your request should be received in writing within 28 days of receiving the notice. We may only extend the period of time for payment a further 28 days. If we decide to extend the period of time to pay the penalty, you must pay it within the extended time period.

Your request should:

- specify the infringement notice's identification code, and
- set out your reasons for requesting the extension of time.

Withdrawal of an infringement notice

We may withdraw an infringement notice of our own accord. You may also apply to have an infringement notice withdrawn. We will consider applications for withdrawal of an infringement notice on their merits.

If the infringement notice has already been paid and we withdraw it, either of our own accord or on application, we will refund the amount of the penalty to you.

Applications for the withdrawal of an infringement notice must be made in writing within 28 days of receiving the notice. Your application must:

- specify the infringement notice's identification code, and
- set out your reasons for requesting the withdrawal.

You can mail, fax or email your application to us at:

Australian Securities and Investments Commission
GPO Box 9827
In your capital city
Fax: 03 9280 3444
Email: ACLInfringementnotices@asic.gov.au

Our decision on your application

We have the discretion to grant or refuse an application for withdrawal of an infringement notice.

Our decision is not reviewable by the Administrative Appeals Tribunal.

Publication of notices by ASIC

If an infringement notice is complied with we will issue a public statement (whether written or oral) about your compliance with the infringement notice. The statement will be limited to an accurate summary of the infringement notice including:

- your name
- the amount of the penalty payable
- the conduct specified in the notice for which the infringement notice was issued
- a statement that you have complied with the infringement notice
- a statement that compliance with the notice is not an admission of guilt or liability, and
- a statement that you are not regarded as having breached the provision specified in the notice.

ASIC will also publish a copy of the notice complied with and the date of compliance.

Publication of commencement of proceedings

If we begin proceedings against you following withdrawal of, or failure to comply with, an infringement notice we will publish the fact of commencement of the proceedings and details of the outcome of the proceedings in a media release.

Where can I get more information?

- Go to www.comlaw.gov.au for the general legislative provisions dealing with the infringement notice regime, which are set out in Subdivision GC of Division 2 of Part 2 of the ASIC Act.

- Go to www.comlaw.gov.au for more information about the statutory obligations imposed on credit and financial services industry participants in the ASIC Act.
- For more information about your rights when you are unhappy with a decision made by ASIC, see Information Sheet 9 [ASIC decisions—your rights](#) (INFO 9) available at www.asic.gov.au/infosheets.
- ASIC: 1300 300 630.
- Online enquiry: www.asic.gov.au/question.

Important notice

Please note that this information sheet is intended to give basic information about cooperating with ASIC. It does not cover all the relevant law in relation to cooperating with ASIC and it is not a substitute for professional advice. No section of this information sheet is intended to be all exhaustive or inclusive, and your particular circumstances must be taken into account when determining how the law applies to you.