PLANNING FOR THE WELFARE OF YOUR SELF-MANAGED SUPER FUND BENEFICIARIES

Estate planning for a structure that includes a self-managed superannuation fund (SMSF) includes extra challenges for you and your solicitor. The main concepts are briefly described below to allow you to familiarise yourself with the issues before reviewing your wills and/or your powers of attorney.

YOUR WILL

It is important to understand that a Will only covers assets that you own. The Fund is not owned by you even though you are a member/trustee. The assets are actually owned by the Trustees.

BENEFICIARY NOMINATIONS

Members should make their preferences for death benefits known to the Trustees via a beneficiary nomination form. This will be held and used by the Trustees in the event of your death as a guide to how benefits should be paid. This is not binding on the Trustees in any way.

BINDING DEATH BENEFIT NOMINATIONS

A Binding Death Benefit Nomination (BDBN) can be completed if your fund rules allow them for members. If the BDBN is accepted by the Trustees of the fund, it becomes binding on the Trustees and must be followed to the letter. It can be particularly useful if you anticipate your will may be contested or you have children from a previous relationship and want to structure your benefits in a particular way.

However they can be restrictive and allow less flexibility at the time of paying benefits and juggling the different tax consequences of different estate payment options.

PENSIONER NOMINATED REVERSIONARY

This is where you nominate a reversionary spouse to receive your pension in the event of your death. Should the spouse prefer a lump sum, it can still be paid within six months of death without adverse results.

DEATH BENEFITS

The SMSF is required to cash death benefits as soon as possible after the member's death. The benefits can be paid to the member's Legal Personal Representative (LPR) or one of more of the member's dependents.

LEGAL PERSONAL REPRESENTATIVE

This includes your executor and your Enduring Power of Attorney (EPOA).

DEPENDENT

A dependant is defined to include the spouse of the member, any child of the member and any person with whom the member had an interdependency relationship.

INTERDEPENDENCY RELATIONSHIP

This is defined to mean two persons related or not, that have:

- a close personal relationship; and
- they live together; and
- one or each of them provides the other with financial support; and
- one or each of them provides the other with domestic support and personal care; OR
- a close personal relationship and don't satisfy the additional requirements due to the fact that either or both of them suffer from a physical, intellectual or psychiatric disability.

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FINANCIAL **FACT SHEET**

SELF-MANAGED SUPER AND **ESTATE PLANNING**

PAYMENT OF BENEFITS

A death benefit can be paid as a lump sum to the legal personal representative and or the dependents. Alternatively the death benefit can be paid as a pension or annuity to the following dependents:

- a spouse.
- a child under 18.
- a child under 25 if financially dependant.
- a child who is permanently disabled.

TRUSTEE DISCRETIONARY REVERSIONARY

This is where the Trustees decide to revert the pension and the pension payments continue to be paid to the dependant.

TRUSTEE CHANGES

On your death you immediately cease to be a trustee. Then within six months a Trustee must be appointed. Generally your legal personal representative or executor will be formally appointed as Trustee in your place. This Trustee is removed when death benefits commence to be paid. The structure of the SMSF must then be reviewed to ensure compliance with the definition of a SMSF.

Because all members must be trustees and all trustees' members if one member of a two member fund dies, the remaining member needs to restructure to ensure the SMSF definition is met. However if one member dies and leaves only one member in the fund, then the remaining member will need to admit another member/trustee, appoint a corporate trustee of which the remaining member can be sole director or appoint a trusted person to act as a co-trustee of the fund.

ENDURING POWERS OF ATTORNEY

It is possible for a LPR to act as a Trustee instead of the member if that LPR has an Enduring Power of Attorney (EPOA). This is particularly important to ensure that if you become incapacitated, someone can operate the SMSF in your place.

It is also useful if members are travelling for extended periods of time and won't be available administer the fund. An EPOA will automatically cease if a member gets married unless it's to the existing EPOA or if a member gets divorced unless their former spouse was not their EPOA.

LIFE INSURANCE

A SMSF can hold life insurance for members of the Fund and claim a tax deduction for the premiums. In the year of death it may also be possible to claim an amount for a future service element for death or disability benefits, which can be significant amounts.

ANTI-DETRIMENT PAYMENTS

This is a payment that can sometimes be made to a dependant and then claimed as a deduction by the SMSF. The amount is based on contributions tax that has been previously paid.

TAX CONSEQUENCES

A member's superannuation benefit is made up of two components; one taxable and the other tax-free. Any amount being paid is required to be drawn as a proportion of both.

The tax-free proportion, if paid to dependents, will have a nil tax consequence. However the benefits must be drawn proportionately and the taxable amount will be subject to tax at 16.5%, if not paid to a dependant. This would be the case if paid to independent adult children.

In the case of a pension being paid to a dependant, the dependant will be entitled to a tax rebate of 15% on the taxable component if they are under the age of 60.

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