



Super
Concepts

SMSF Estate Planning

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yourSMSF

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- Information current as at July 2016

Who can be paid?



Direct Super death benefit payments can only be paid to:

- One or more of the member's SIS dependants
- The deceased's legal personal representative (LPR)
– the LPR is the executor of the will or administrator of the estate
- Any non-dependant where a dependant or LPR cannot be identified.

Any other beneficiaries can only be paid via the estate.

Who are SIS Dependants?



- Spouse
 - legal or defacto
- Child of any age
 - not necessarily children from other parents unless adopted
- Financial dependant
- Interdependant

SMSFs are different



An SMSF is:

- A more powerful wealth distributor than a Will
- A more powerful wealth distributor than any other type of super
 - No Super Complaints Tribunal
 - Trustee Discretion
- Generally a court will not review a trustee's decision unless;
 - the trustee failed to act honestly and in good faith,
 - the trustee failed to act genuinely,
 - the trustee failed to exercise power for its proper purpose,
 - the trustee gave reasons which were not sound.

Control on death



- Member Control
 - Binding Death Benefit Nominations
 - Reversionary Pensions
 - Influence over “agreeable” trustee appointment
 - Selection of appropriate deed
- Trustee Control
 - Subject to deed
 - Trustee discretion

Trustee control

On death the remaining trustee/s control the fund.

Issues:

- Mum and Dad have funds where both become deceased
- Blended families
 - Mum and Dad
 - Kids from either “side” and their spouses
- Business partners

The problem

What happens if the remaining trustee/s either can't agree or do not intend to carry out the wishes of the deceased?

- Superannuation complaints tribunal is not available to SMSFs
- Go to Supreme Court of each state
- Look to governing rules of SMSF and/or SISA
- Significant stress, delays and expense for an uncertain result.

What can go wrong?

- Katz v Grossman
- Ioppolo and Hesford v Conti
- Donovan v Donovan
- Munro v Munro
- Wooster v Morris

Possible tools

- Reversionary Pensions
 - Proper documentation
 - Deed provisions
- Binding Death Benefit Nominations
 - Deed
 - Proper documentation
 - Avoid conflict with reversionary pensions
 - Lapsing v non lapsing
 - Standard v non standard
 - Broadcasting
- Deed Wording

Our analysis

- If reversionary pensions or binding death benefit nominations are valid or if the remaining trustees are also the executors of the Will, then the result is automatic
- If there is a dispute and the trustee discretion is invoked then who should decide the result?
 - Trustees v the LPR (Executor)
 - Trustees are 'accidental appointments'
 - The Executor of the Will is a 'considered' appointment.

Our solution



- If there is a dispute and a death benefit vote is required
 - It cannot occur until after the LPR is appointed
 - The LPR MUST vote
 - If the result is not unanimous the benefit MUST be paid into the estate
 - Then controlled by the Executor.

What would the effect be?

- Katz v Grossman
- Ioppolo and Hesford v Conti
- Donovan v Donovan
- Munro v Munro
- Wooster v Morris

Questions