



LEADING MEMBER

DATA DISCOVER FORM

This discovery form may be used for the collection of data when providing Leading Member advice

IMPORTANT INFORMATION ABOUT THIS DOCUMENT

This document or the text contained within it does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act, association requirements and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this text are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements. It is your sole responsibility to determine the suitability of the advice you are providing to your client.

This is not an advice document.

This text has been designed to provide guidance in relation to the initiation of Leading Member advice to a client and the collection of data from clients.

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INTRODUCTION

The purpose of this Leading Member data capture is to provide a platform for an adviser or accountant to engage with a client and more importantly elicit from the client who will be the Leading Member of the Fund.

Step One: Engage the Client about Family

A Leading Member fund is, as the name suggests, built for someone in the Family to lead the Fund. Now a person may be invited to join the fund, but it is at the invite and behest of the Leading Member. They can also be removed from the Fund by the Leading Member. A Leading Member fund is generally not suitable for a single member fund, or a fund that may become a single member fund in the short term. It is built to protect a family's superannuation wealth.

Even if you know the client, it is recommended that you find out as much detail about the family, the family members, the relationships that the children may be in, their financial prowess and whether they fit the "right profile" of a fund member. With a maximum of 4 members allowed, spots in the fund should be coveted, so there may need to be a culling in some families or better still, the creation of two or more Leading Member SMSFs.

Step Two: Determine whether a Leading Member SMSF is for them

Appendix 1 provides a Client Strategy Sheet which details what and when to use a Leading Member SMSF plus the benefits and risks. You should take your client through this as part of your initial meeting. It is very important that they understand how a Leading Member fund works.

The Client Strategy Sheet is a simple system to get the client into the right state of mind to discuss Leading Member SMSFs. It should be used by all advisers to provide consistency during the interview and data capture process.

Step Three: Interview the Client

Question 1.

On a Scale of 1 – 10 with 10 being the most important, how important is it to ensure that your superannuation and other assets are secured for your lineage or bloodline?

Circle Result: 1 2 3 4 5 6 7 8 9 10 (most important)

Client Comments regarding lineage and bloodline security:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

Question 2.

The Leading Member is an important position – who is going to the First Leading Member?

1. First Leading Member:

Name: _____ Current Age: _____

At the Leading Member’s discretion, they may also appoint second and even third Leading Members. Complete the following, if applicable.

2. If something happens to the first Leading member who takes over as Second Leading Member?

Name: _____ Current Age: _____

3. And if the Second Leading Member is not around or incapacitated who is the Third Leading Member?

Name: _____ Current Age: _____

Question 3:

It is important to understand the goals and objectives of the Leading Member of the Fund. The following questions can be asked to help encourage the Leading Member to give thought to who may become not only members of the fund, but also subsequent or even joint Leading Members.

They will also help in determining whether they may pay any superannuation death benefits directly OR whether benefits go to a special superannuation trust which may be held for lineage or bloodline.

Note 1: In an SMSF with a Corporate Trustee structure, all members must be a Director of a Corporate Trustee. This is NOT the case for a Leading Member fund. Instead, the Leading Member may hold any member's enduring power of attorney and thus that member is not required to be a Trustee.

Note 2: The Leading Member's spouse is deemed to be automatically related to the Leading Member for the purpose of the Rules of this Fund but will not be upon a break down in any spousal relationship. The spouse of the Leading Member is not however deemed an automatic member of the fund unless signed member consent provided.

1. Leading Member Discussion

Leading Member Name:

Current Age:

- i) What superannuation benefits do you have in the Fund and what amount?

- ii) If both you and your spouse unexpectedly died yesterday what would happen with your super?

- iii) If you are both not here who takes control of the Fund? They may not be allowed under your current trust deed as Trustees need to appoint a new Trustee and if the existing Trustee is not around, what happens?

Adviser Hint: *This is a good time to discuss that a SMSF where there is no Trustee may have the Public Trustee appointed which could take up to a year and cost 10% of the value of the SMSF plus legal fees of up to \$100,000.*

- iv) What happens if you become bankrupt as you will no longer be able to be a member of the Fund?

Who takes over as Leading Member?

Where will your superannuation benefits go?

Note: We can make a special request to the Commissioner of Taxation at the time so whilst all financially sound, it is not an issue.

2. Spouse of the Leading Member

If there is a spouse of the Leading Member, you need to discuss joint Leading Member or acting as a second Leading Member – say in the case of the mental incapacity or disability of the Leading Member. Joint Leading Members aren't recommended but can be achieved.

Who is the spouse of the Leading Member?

Spouse Name:

Current Age:

- i) Is the spouse a member of the fund?

- ii) Will they continue as director or Trustee of the Fund or would they like to leave that to the Leading Member?

- iii) Will the spouse take on second Leading Member role in the event of the death or incapacity of the Leading Member or will it move to an adult child member of the Fund?

- iv) If the spouse member died yesterday, where do the superannuation benefits go in general terms and should it be a lump sum or a pension/income stream? What happens if the spouse is the last one of the couple that remains alive?

3. Adult or other Children Members

There are only four members allowed in a SMSF including a Leading Member SMSF. Two funds may be established if there is a desire to place more members into the Fund.

It is important in the waning or final decades of life that a mature, responsible adult child is appointed as Leading Member to carry out any prior written directions of a member in terms of lifestyle if incapacitated, or the payment of death benefits according to a written direction. Ideally this child will be the Executor of the Leading Members and their spouse's will.

- i) Which child member or potential adult child member could become the Leading Member of the Fund?

- ii) What are their strengths and weaknesses?
 - a. Do they have the time?

 - b. Do they have the financial smarts?

 - c. In terms of investments for your benefits, do you want them to have a pre-ordained investment strategy set and watched over by a SMSF investment strategist or leave the investing to them?

- d. Do you see any problems arising? (note: you can change Leading Member nomination at any time). For example, if they are in a blended marriage some decisions need to be made for the current Leading Member's lineage.

- iii) Are there any other adult children or even grandchildren that you would like to bring into the fund?

- iv) In terms of on-going expenses will the senior member of the Fund pay the Fund's expenses to help the next generation or will it be shared proportionately

- v) For franking credits used by the Fund which have been generated in the Pension side of the Fund, should the Trustee pay for these and if so will it be \$ for \$ or a proportion?

ANNEXURE A - Leading Member SMSF Strategy Sheet

A Leading Member Fund is a new style of self-managed super fund created, devised and built by Grant Abbott, Director of LightYear Docs and industry leading presenter and author of innovative documents and strategies.

1. What is a Leading Member SMSF?

The Courts are littered with cases where members in a Fund are locked in a fight for control. Divorce, death and dementia are times when a Fund, generally a family SMSF need certainty, stability and security.

The Leading Member SMSF has, at its core, a member who controls the Fund. They have the power to appoint and remove a Trustee plus the power to appoint and remove a member of the Fund. Like the English Windsor Royal Family, the ultimate bloodline protection structure, the Leading Member SMSF is designed to build and protect the superannuation wealth of the Leading Member's lineage or bloodline.

This extends from limiting membership to lineage, paying death benefits if a member requires only to bloodline, removing members if their benefits are attacked by way of a legal action (including divorce), having veto power in the event of any Trustee decision making and much more. On the death, mental incapacity or retirement of a Leading Member, the successor Leading Member stipes in to control the SMSF.

The Leading Member SMSF is only available at LightYear Docs.

2. Is a Leading Member SMSF for my clients?

We have conducted a vast majority of research into SMSFs, Trustees and members and have found that more than 80% seek to pass their superannuation benefits to their lineage or bloodline as very to extremely important to them. Only a Leading Member SMSF can achieve this goal.

3. How do I convert an existing SMSF to a Leading Member SMSF?

The LightYear Docs platform makes the task of converting a SMSF to a Leading Member SMSF simple. The most important thing to do is determine, after discussing with your client, who is to be the current Leading Member, the successor Leading Member and the second successor in the event that the first successor is not able to take their place as the Leading Member.

Once this information is collected from the SMSF Trustees the next step is to go to LightYear Docs and complete the Leading Member SMSF Deed of Variation. If the current SMSF has a corporate Trustee, then we recommend a change in the company constitution to a Leading Member SMSF corporate Trustee.

4. What are the Benefits of a Leading Member SMSF?

i) Control of membership

At their heart the most successful SMSFs hold the next generation as members of the Fund. When the senior members of the SMSF become mentally incapacitated the next generation has the power to step up as Leading Member and control the fund as well as looking after the

senior Members of the Fund. However traditional SMSFs don't allow or enable this passing of control.

Likewise many senior members of a family resist younger family members coming into the Fund for fear of losing control. This is not the case with the Leading Member SMSF.

ii) Control of estate planning

The passing of death benefits from a superannuation fund often goes to the deceased member's estate which raises a problem of legal challenges under various State succession laws. The best method of passing death benefits without legal challenge is directly from a SMSF by way of lump sum or pension, depending on legal availability. With a Leading Member SMSF the benefit is the set of tools and resources enabling members to limit access to their superannuation benefits on their death to their lineage only.

iii) Control of Member Incapacity

Ideally if a member becomes incapacitated, either physically or mentally, the Trustee of the Fund, with the Leading Member's oversight, will put in place a plan to look after the member using their superannuation benefits and in some cases the resources of the Fund. To provide absolute certainty a member may want to complete a set of Binding Incapacity Benefit Directions which provides a set of binding directions on the Trustee as to how an incapacitated member's benefits are best to be deployed.

5. What are the Risks of a Leading Member SMSF?

i) The Leading Member controls

Ultimately the Leading Member controls the Fund and all members are subject to appointment and removal by the Leading Member. Of course the superannuation and trustee laws require that the Leading Member must act on behalf of all members. However, where the member may be subject to a legal dispute or a family law action, which may jeopardise the Fund, the Leading Member has the power to determine the current value of the Member's benefits and pay these out on termination.

ii) Knowing the Leading Member

Before joining a Leading Member SMSF a prospective member should discuss with the Leading Member their rights and entitlements and be comfortable with how the Leading Member is to run the fund.