



CLIENT FACT FIND

FOR THE PREPARATION OF A SMSF WILL

The purpose of this fact find is to collate the necessary information to commence the preparation of a Self-Managed Super Fund (SMSF) Will. Your accountant or Financial Planner should provide you with a copy of a PDS which will further explain the purpose of SMSF specific estate planning.

Safety, Security and Certainty for your Family with a SMSF Will

In the next fifteen years more than \$300 Billion will be paid out of Australian self-managed superannuation funds ("SMSF") upon the death of one or more members of the Fund. For many of the families of the deceased SMSF members, legal challenge, fights and exorbitant legal costs will ensue.

Why? First off the Courts and the Commissioner of Taxation have stated emphatically that superannuation benefits cannot be dealt with under a person's Will. A deceased's superannuation benefits must be in accordance with the Fund's trust deed and any document used by the Trustee to prepare and plan for a member's death. This is good news for the well planned SMSF member and Trustee as it provides the opportunity to ensure superannuation is not subject to any challenge by aggrieved family members and their spouses via the deceased's estate.

Unfortunately the majority of SMSF members use a binding death benefit nomination ("BDBN") to plan and distribute their superannuation benefits but BDBNs have found to be open to challenge and for many not in accordance with the law.

So how do we make superannuation estate planning safe, secure and certain?

The solution is the SMSF Will - a set of binding directions in a similar form to a will(but under the Fund's trust deed and for superannuation benefits only) which legally directs the Trustee on what to do with a deceased member's superannuation benefits. It is secure because it has the force of section 55 of the Superannuation Industry Supervision Act, the Federal laws governing SMSFs. Section 55 provides that any person, including the surviving Trustees, family member or adviser who breaches a properly executed SMSF Will after the death of a member is subject to a claim for damages or losses by any person who is a beneficiary to the SMSF Will. If there is a wilful breach of the SMSF Will by anyone for their financial benefit then a criminal action under section 202, with a conviction leading to potentially five year imprisonment is a possible penalty. Very powerful and definitely makes sure that when a SMSF Will is completed the SMSF estate of a member is "safe, certain and secure" as well as being impenetrable.

Unlike a BDBN which provides only nominal directions such as "All of my superannuation benefits are to go to my spouse" – not thinking of what happens to the distribution of their superannuation benefits if their spouse is mentally incapacitated or dead; or the typical "All my superannuation benefits are to go to my estate" which, once out of the Federal laws opens it to challenge, the SMSF Will provides a bespoke solution for a member of a SMSF who seeks to look after their family, their bloodline only or anything in between with safety, security and certainty.

In short a SMSF Will enables:

- the appointment of a Replacement Trustee to act on behalf of the deceased member's SMSF estate. This person may include the deceased's Executor or such other person the deceased has entrusted to distribute their superannuation estate according to their wishes. This person is the only person who can distribute the deceased member's superannuation benefits so any other Fund trustee or person cannot hold up or disagree with any payment for fear of a legal suit or possible criminal action;
- the making of specific bequests of assets of the Fund to dependants such as a farm to be transferred to the child of the deceased member working on the farm, a property to be passed to a child of the deceased member, shares or gold to find their way into a SMSF Death Benefits Trust for the benefit of a child and their family. A well thought out

superannuation plan will provide for specific bequests which may include “\$100,000 cash or shares to go to my eldest son” or “My only daughter is to receive 30% of my superannuation benefits”. The more thought and the greater specificity the stronger the SMSF Will;

- the creation of income streams for a spouse with a life income only - great for blended families;
- the Trustee to create a SMSF Death Benefits Trust that comes from the SMSF not the will and gets around any legal challenge to the SMSF estate;
- the appointment of a professional to look after, manage and distribute the SMSF estate;
- immediate SMSF Will death benefit transfers with no waiting time or probate required.

Completing the Instruction Form for your SMSF Will

The form below is a fillable form and will enable us to complete a draft SMSF Will for you. If you have any questions please contact us. The key areas to focus on are do you want your Executor to come in and take control, with professional advisers the management and distribution of your superannuation estate. The person who takes control is your Replacement Trustee.

The next is to determine any specific bequests that you may want to provide to your spouse, children, grandchildren or any person who is provided financial support by you currently including your children’s family (this should be evidenced by a family allowance). Your Replacement Trustee along with the person receiving the specific bequest can be paid the bequest directly, use is it to create an income stream if allowed under the superannuation laws, transfer it to a Death Benefits Trust for their family or bloodline should you so wish or pay it into superannuation. The SMSF Will provides the ultimate flexibility.

Once all the specific bequests are met anything left over is to go to the Main Beneficiary or Beneficiaries (to be split equally) and a wide range of options are also provided in terms of income streams, lump sums, payments to trusts or superannuation. If the Main Beneficiary is not alive then you can nominate the next persons in line who are to receive your superannuation benefits, this may be your children, grandchildren or any person you are providing financial support to or simply pass it to your estate.

The Royal Family SMSF Option

The English Royal Family provides a well understood line of succession via the lineage or bloodline of the current Queen of England. It is strong, safe, secure and certain and not subject to a challenge. We have at our hands the ability to turn your SMSF into a vehicle as strong, safe, certain and secure as the Royal Family with our Leading Member SMSF deed upgrade. If you want to ensure your death benefits are limited to your bloodline only please ask us about our Leading Member option which can be completed prior to executing your SMSF Will.

SMSF Fund & Member Details	
What is the full name of your SMSF?	
What is the Full Name of the Member for which an SMSF Will is being prepared?	
What date should the SMSF Will take effect? If unknown, please leave blank.	Immediately post preparation by my accountant or advisor Specific Date:

SMSF Structure	
Is the Trustee of your Fund an individual or a corporate trustee?	Individual Trustee Corporate Trustee
For Individual Trustees <i>(if corporate trustee, leave blank)</i>	
Trustee Full Name	
Trustee Residential Address	
For Corporate Trustees <i>(if individual trustee, leave blank)</i>	
What is the full name of the Company?	
Company ACN	
How many Directors have been appointed?	
Director 1 – Full Name	
Director 1 – Will this Director sign on behalf of the company?	Yes No

Director 2 – Full Name	<i>(if applicable otherwise leave blank)</i>
Director 2 – Will this Director sign on behalf of the company?	<i>(if applicable otherwise leave blank)</i> Yes No
Director 3 – Full Name	<i>(if applicable otherwise leave blank)</i>
Director 3 – Will this Director sign on behalf of the company?	<i>(if applicable otherwise leave blank)</i> Yes No
Director 4 – Full Name	<i>(if applicable otherwise leave blank)</i>
Director 4 – Will this Director sign on behalf of the company?	<i>(if applicable otherwise leave blank)</i> Yes No

Nomination & Direction Details	
1) Do you want to revoke any earlier nominations – wither via Binding Death Benefit Nomination or an SMSF Will?	Yes No
2) Do you want a reversionary pension or pensions to take precedence?	Yes No
3) Do you want to appoint the executor as the replacement trustee or replacement director?	Yes No
4) Do you want to include death benefit payments including pensions and lump sum payments?	Yes (refer to the additional information below) No
5) Do you want a Professional (lawyer, adviser, accountant etc.) to look after the estate upon death?	Yes (refer to the additional information below) No
6) Do you want a catch all - escape clause in case the superannuation benefits are not payable due to possible non-compliance of the Fund at the time of death?	Yes No

Additional Information – Nominations & Directions	
If Q4 above has been answered “Yes” please answer the following additional questions, otherwise leave blank.	
Does the member want a specific bequest out of the members accumulation account? This is to be paid first	Yes – please answer the following questions Name of beneficiary Relationship to you Asset (for example, 12% of my superannuation interest) If the asset is real estate, please enter the property address No
What is the full name of the main beneficiary to receive a death benefit payment and their relationship to you?	Full name Relationship
Is the payment to the main beneficiary to be as a lump sum or Interest stream option?	Lump Sum – Amount of Lump Sum \$ Income Stream Option – Terms and Conditions if applicable:
If the main beneficiary detailed above is not alive, who should be the residual beneficiaries?	

<p>If any of the above-named residual beneficiaries are under the age of 25, what is the maximum draw down percentage until they reach age 25?</p>	<p>%</p>
<p>If Q5 above has been answered "Yes" please answer the following additional questions, otherwise leave blank.</p>	
<p>What is the full name of the professional?</p>	
<p>What is the name of the professional's firm, if applicable?</p>	
<p>What is the current address of the firm, if applicable?</p>	
<p>What is the remuneration payable to the professional for looking after the estate e.g. "an amount equal to 2% of my superannuation benefits..." or "an amount of \$3,000..."</p>	