

Self managed superannuation funds - securing the assets of the fund

The *Superannuation Industry (Supervision) Act 1993 (SISA)* contains covenants that are included in the governing rules of all regulated superannuation funds. They aim to protect member assets for retirement purposes. One of these covenants requires trustees of a superannuation fund to keep money and other assets of the superannuation fund separate from their personal assets and the assets held by employers who contribute to the fund <refer SISA Section 52(2)(d)> .

Securing the assets of the fund

Trustees must ensure that the fund's ownership of its investments is assured. As the regulator of SMSFs, we require the fund's assets to be held in a legally recognised ownership arrangement. We prefer the assets to be in the names of all of the individual trustees as trustees for the fund or, in the case of a corporate trustee, in the name of the company as trustee for the fund.

Example 1:

The Smith Family Superannuation Fund has two individual trustees, Bill and Mary Smith. Where legally possible, the fund's assets must be held in the name of 'Bill and Mary Smith as trustee for the Smith Family Superannuation Fund'.

Example 2:

The Johnson Superannuation fund has a corporate trustee, being ABC Pty Ltd. Where possible, the fund's assets should be held in the name of 'ABC Pty Ltd as trustee for the Johnson Superannuation Fund'.

It is recognised that in certain states, restrictions may prevent SMSFs from holding assets using the fund's name at all. In this circumstance, a **caveat, legal instrument or declaration of trust** must be properly executed for the asset, to clearly show the fund's ownership of the property. Failure to take appropriate action to protect the fund's assets is a breach of trustee duties and responsibilities. If a restriction from holding the assets using the name of the fund exists, these restrictions should be clearly documented in trustee meeting minutes.

Separation of assets

Trustees are required to keep the books and accounts of the fund separate from those of other entities. As the fund's accounts include the value of property owned by the fund, it is necessary that the property is correctly titled to demonstrate legal ownership by the fund.

Without securing and separating the ownership of the assets trustees are at risk of losing their assets to other parties, including via bankruptcy proceedings and/or fraud and theft.

Assets not currently held in the name of the fund

SMSFs that breach the separation of assets rule are expected to rectify the breach as soon as possible. Where an auditor reports to the trustee that a fund's assets are not recorded to demonstrate legal ownership by the fund, the Tax Office expects the trustees to take prompt action to rectify the breach.

It is recognised that certain types of breaches take longer to rectify than others. Where approved auditors report these breaches to the Tax Office for years prior to the financial year ended 30 June 2005, we will not take immediate investigative action. However, where the breach is reported again for the financial year ending 30 June 2005 or a subsequent year, the trustees will be subject to scrutiny.

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