



SMSF SMART



The Trust Deed

Edition #3

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In our previous two editions of SMSF Smart, we provided an introduction to SMSFs and worked through the obligations of being an SMSF Trustee. In this edition of SMSF Smart, we look at the Trust Deed.

As always, we encourage you to ask us any questions if you need further information or clarification.

The Trust Deed is a legal document that contains the governing rules of the SMSF. It should be drawn up by a legal professional since it is a legal document.

The Trust Deed is an important document. Not all Trust Deeds are created equal and when it comes to Trust Deeds, it is a case of getting what you pay for.

The Trust Deed sets out the rights and obligations of the trustee and members of the fund. It is the first reference point for all decisions on the operation and management of the SMSF. It is like the constitution of a company and will determine how the SMSF can manage the investments and contributions for the benefit of the members on retirement or death.

When looking to do anything with your SMSF, it is not just a case of checking whether it is allowable under the relevant superannuation and taxation laws. You need to ensure that your Trust Deed allows it – if it is not contained in the rules of the Fund then you can't do it. The Deed should set out the membership of the Fund (i.e. the Trustees and their responsibilities), the aims of the Fund and the management and payment of benefits. A Trust Deed can be tailored to meet the specific needs and objectives of members, but it cannot override other legal requirements and the super and tax rules and regulations. If there is a conflict between the Trust Deed and the tax and superannuation laws, the law takes precedence. However there is nothing to prevent a Trust Deed from containing provisions that are more restrictive than the super rules.

To ensure the Trust Deed remains compliant with legislation, it should be reviewed regularly and Trustees are required to keep a copy of all versions of the Deed and any instrument that has changed if the Trust Deed is amended or replaced.

As a Trustee, your role is to ensure the Trust Deed is created when the SMSF is first established and to understand, sign and date the Deed, ensuring it is properly executed according to State or Territory laws.

Getting the right advice and expert guidance is crucial with SMSFs. While there is greater control with an SMSF, there is also more responsibility. The ATO encourages individuals to engage professionals to help set up and run an SMSF and this is where GFM Wealth Advisory can help.

Disclaimer

This document is not an offer or invitation to any person to buy or sell any interest in or deposit funds with any institution. The information here is of a generic nature, and does not take into account your investment objectives or financial needs. No person should act upon this information without firstly seeking competent, professional advice specifically relating to their own particular situation.

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