



Duties of trustees (self managed superannuation funds)

Trustees of self managed superannuation funds (SMSFs) are the ones who are ultimately responsible for the running of their fund. It is imperative that each trustee understands the duties, responsibilities and obligations of being a trustee. Rules exist to ensure the protection of the assets in the fund until they are needed at retirement. There are significant penalties imposed on trustees who fail to perform their duties.

Key responsibilities

A trustee of a SMSF must act in accordance with:

- the clauses of the superannuation fund trust deed;
- the provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS); and
- other general rules, for example those imposed under tax law and trust law.

The SIS covenants

The SIS Act contains covenants or rules that impose certain requirements on trustees and are deemed to be included in the trust

deed of every regulated fund. These covenants set out the duties imposed on a trustee under trust law in general. They require trustees to:

- act honestly in all matters;
- exercise the same degree of care, skill and diligence as an ordinary prudent person;
- act in the best interest of the fund members;
- keep the assets of the fund separate from other assets (e.g. the trustee's personal assets);
- retain control over the fund;
- develop and implement an investment strategy;
- allow members access to certain information.

Delegating certain responsibilities to a service provider

Whilst trustees are not prevented from engaging or authorising other persons to do certain acts or things on their behalf (e.g. engaging the services of an investment adviser), they are bound to retain control over the fund. Ultimate responsibility and





accountability for running the fund in a prudent manner lies with the trustees.

Keeping superannuation money and other assets separate

Trustees of SMSFs must keep money and other assets of the superannuation fund separate from their own personal assets. Similarly, the assets of the superannuation fund must also be kept separate from those belonging to a business (e.g. a business run by two partners who decide to set up a SMSF).

Money belonging to the fund must not, under any circumstance, be used for personal or business purposes. This money is for retirement purposes and generally cannot be accessed until retirement. The fund's assets must not be viewed as a form of credit or emergency reserve when faced with a sudden need.

Sole Purpose Test

It is the trustee's responsibility to ensure that a SMSF is operated for the sole purpose of providing retirement benefits for members or member's dependants. Please refer to the fact sheet titled - *Sole Purpose Test* for a more detailed description of this area.

Managing Investments

The Australian Taxation Office (ATO) does not provide financial advice on the suitability of investments made by trustees. In making investment decisions the trustees must act in accordance with the fund's trust deed, investment strategy and the provisions of SIS. Some of the more important issues to consider when investing a SMSF's assets include:

Investment Strategy

Under SIS all SMSFs are required to have an investment strategy. The trustees are responsible for formulating an appropriate investment strategy and it is strongly recommended that the strategy be in writing. All investments must be made in accordance with the investment strategy of the fund.

Investment Restrictions

SIS sets out various rules and restrictions on investments. These include

- Lending to members and their relatives
- Acquisition of assets from 'related parties' of the fund
- Borrowing by superannuation funds





- In-house assets
- Investments must be made and maintained on an 'arms length' basis

Please refer to the fact sheet titled - [Investment Strategy and Investment Restrictions](#) for a more detailed description of this area and a full definition of 'related parties'.

Administrative Obligations

Trustees are also responsible for the fund's 'housekeeping' including:

- the record keeping requirements (such as minutes and financial records);
- preparing and lodging annual with the ATO; and
- getting the accounts Audited annually.

Please refer to the fact sheet titled - Administrative Obligations for a more detailed description of this area.

What else do trustees need to know?

If a trustee fails to act in accordance with the rules and obligations imposed on them they can be sued by effected fund members and may jeopardise the funds eligibility for tax

concessions. In addition, SIS imposes substantial penalties on trustees who have failed to carry out their duties.

The above does not provide an exhaustive coverage of responsibilities of trustees. Many more obligations are imposed on trustees under different laws including numerous administrative requirements. Trustees need to be familiar with them and when in doubt about the legislation, professional advice should be sought.

Need more information?

For further information on this topic:

- visit the ATO superannuation website at www.ato.gov.au/super
- phone the Superannuation Infoline on **13 10 20** for the cost of a local call
- obtain A Fax from Tax on **13 28 60**
- if you do not speak English and need help from the ATO, phone the Translating and Interpreter Service on **13 14 50**
- people with a hearing or speech impairment with access to appropriate TTY or modem equipment can communicate with the ATO by first contacting the





Australian Communication
Exchange Relay Service on
13 25 44.

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