

## SMSF GUARDIANS - WHO WILL LOOK AFTER THE KIDS?

The appointment of a SMSF Guardian provides security for underage members of a SMSF. This article uses a case study to bring reality to a SMSF Guardian appointment.

**Although a parent will generally act as the Guardian on behalf of an underage member of a SMSF, who looks after the child's interests if the parents pass away?**

### Tora & Duncan

Tora and Duncan, considered to be 'high net worth' individuals, have very significant balances in their SMSF.

They have a young daughter, Dana, who is currently 5 years of age and is the only child of each of Tora and Duncan.

### Estate Planning

During the process of attending to their estate planning, Tora and Duncan express their concern regarding the amount of wealth in their SMSF and the consequences should they pass away while Dana is still so young.

Tora and Duncan are aware that superannuation law permits the payment of an income stream to Dana in the event of their death, until Dana reaches age 25.

They have no concerns as to the funding of Dana's care and maintenance, but the two main issues which concern them are:

- limiting access to her superannuation after Dana reaches 18 years of age; whilst
- ensuring Dana is able to use funds held in the SMSF for investment and other suitable purposes.

### SMSF Structure

A director will need to be appointed to the corporate trustee of the SMSF, in the event of the death of both Tora and Duncan.

As they jointly hold the shares to the company, the executor of the surviving spouse will be in a position to appoint a director, once they have obtained a grant of probate.

That appointment could be directed via the Wills of Tora and Duncan, but they are not satisfied that action is sufficient.

Given the amount of wealth involved, Tora and Duncan want to be that if they are not around, Dana is sufficiently advised, and the money sufficiently controlled, until she reaches 25 years of age.

That is the latest age at which the benefits can generally be retained in the SMSF, as the trustee will be required to pay

the benefits from Tora and Duncan's superannuation.

### Member Benefit Guardian

The Topdocs SMSF Trust Deed provides for the appointment of a Member Benefit Guardian. However, as that appointment provides a degree of control over the payment of death benefits, it is not really what Tora and Duncan are seeking.

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*The Deed of Appointment of Guardian of a SMSF sets out rules and wishes to provide guidance to Guardians .*

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### SMSF Guardians

Tora and Duncan are seeking a broader form of control, so they decide to appoint three SMSF Guardians, who will be empowered to act to protect Dana's interests in the SMSF,

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and provide guidance to her, if both Tora and Duncan pass. The three SMSF Guardians to be appointed are their:

- Accountant;
- Financial Adviser; and
- Solicitor.

As the Topdocs SMSF Trust Deed provides for the appointment of a SMSF Guardian, Tora and Duncan arrange for their SMSF Trust Deed to be updated.

They then instruct Topdocs Legal to prepare a Deed appointing the SMSF Guardians.

Made in accordance with the provisions of the SMSF Trust Deed, the Deed of Appointment of Guardian sets out rules and wishes which will provide guidance to the Guardians, if they are called on to act in that capacity.

Those rules consider matters such as:

- Dana becoming a Guardian, and involved in decision making, after she turns 18;
- Meeting and voting requirements of Guardians; and
- Powers, known as 'Reserve Powers', which the trustee of the SMSF is restricted from exercising without the approval of the Guardians.

Also included in the Deed of Appointment is a Statement of Wishes setting out some of the more personal issues in respect of Dana's future, such as:

away.

- Purposes for which payments may be made on Dana's behalf;
- Limitations on the amount of payments able to be made to Dana each year;
- A suggestion that additional money may be applied to assist Dana commence in business, so as to encourage her entrepreneurial interests, but after proper due diligence from the Guardians; and
- An overarching discretion to the Guardians, recognising circumstances will change between the time of completing the Deed until the Guardians are required to exercise their discretion.

### Conclusion

Estate Planning provides many challenges, depending on individual circumstances.

The appointment of SMSF Guardians is one means to overcome some of those challenges.

### More information

Should you have any queries, or require more information, please contact the team at Topdocs on 1300 659 242.

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