

SMSF INTERDEPENDENCY RELATIONSHIPS - A CASE STUDY

This article uses a case study to define the circumstances which potentially lead to an interdependency relationship between 2 individuals who would not otherwise be considered dependants under superannuation legislation.

Confirmation of the existence of an interdependency relationship during the lifetime of 2 individuals can assist in determining superannuation death benefit entitlements following the death of one of those individuals.

Nell

Nell, who is 85 years of age, has been widowed for a long time and has no children.

After suffering a recent health scare, Nell decided it was time to give in to the suggestions of her niece, Carol, and move in with Carol and her family.

As Carol's mother passed away at a young age, Nell and Carol have had a very close relationship - such as mother & daughter - for many years.

Because of their close relationship, Nell intends to leave her estate to Carol, when she passes away. As part of her estate planning, Nell is considering:

- resetting her pension to provide an automatic reversion to Carol; and
- completing a Binding Death Benefit Nomination, directing all of the non-pension component of her SMSF to Carol, in the form of an additional pension.

Nell has appointed Carol as the 2nd director of the trustee of her SMSF, to smooth the administrative process when Nell passes away.

Although Carol, as the sole remaining director, will be in a position to decide who will receive benefits from Nell's superannuation, Nell wants to make sure that there is no doubt as to Carol's entitlement.

Nell understands that she could complete a Binding Death Benefit Nomination directing her superannuation death benefit to her estate, and from there to Carol in accordance with her Will, but that is not her preferred option, for 2 main reasons:

- Carol will receive other assets from Nell's estate; and
- pensions will provide a more tax effective source of income for Carol than money invested outside of super.

Therefore, Nell is concerned to ensure that the relationship between she and Carol will meet the requirements of an interdependency relationship.

Nell is aware that the SIS Regulations provide a list of matters to be taken into account in determining whether 2 persons have (or had, following the death of one of them) an interdependency relationship.

“The SIS Regulations provide a list of matters to be taken into account in determining ... an interdependency relationship.”

Nell therefore created a table (see next page) to be included as part of the fund records for formal consideration by the trustee of the SMSF, at the appropriate time.

In view of the steps taken by Nell to document the relationship, it is likely the trustee of Nell's SMSF

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could safely determine that an interdependency relationship existed.

That would allow Carol to receive pensions from an automatic reversion of Nell's pensions, and from new pensions established from any money in Nell's accumulation account.

Conclusion

Early planning to provide evidence confirming that an interdependency relationship exists will help meet the requirements of proof following the death of one of the individuals in the relationship.

More information

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

Factors determining if interdependency exists:	How these were met:
the duration of the relationship	Expected to continue for Nell's lifetime
whether or not a sexual relationship exists	N/A
the ownership, use and acquisition of property	Nell's furniture moved in after sale of home Nell contributes to cost of running the home
the degree of mutual commitment to a shared life	Nell provided money to meet part of cost of an extension to accommodate her, Carol the remainder Each contribute to usual household chores
the care and support of children	N/A, although Nell often babysits and provides other care and support for Carol's children
the reputation and public aspects of the relationship	Well known as having a close relationship over many years
the degree of emotional support	Very strong over many years
the extent to which the relationship is one of mere convenience	Whilst convenient for Nell, Carol and her family, it goes much further than mere convenience
any evidence suggesting that the parties intend the relationship to be permanent	Sale of Nell's home and building of extension at Carol's home
the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.	Nell to request solicitor to draw statutory declaration for Nell to complete or for Carol to complete at appropriate time.

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