

WHY USE THE EXCEPTIONAL TOPDOCS SMSF TRUST DEED

The Topdocs SMSF Trust Deed has a long standing pedigree and is now regarded as one of Australia's most strategically planned and structured deeds, designed specifically for the SMSF environment.

Topdocs, in conjunction with our panel of specialist SMSF lawyers, have taken great care in drafting the Topdocs SMSF Trust Deed to ensure it provides, and continues to provide, maximum flexibility in terms of allowable contributions, the types of benefit payments permitted and estate planning strategies.

This has been achieved by drafting the Topdocs deed closely to the SIS Act and Regulations. When new legislation is passed, more often than not your Topdocs Trust Deed will easily incorporate these changes without the need for an update. Not only does this ensure your clients have maximum flexibility in the management of their SMSF, but it also ensures their Trust Deed will remain up to date for longer.

Whilst the Topdocs Trust Deed is drafted primarily to follow the SIS Act and Regulations, it does also contain particular express provisions where necessary. Some examples are provisions relating to Complying SMSF Loans and Pension Resets, as shown below.

Topdocs and its lawyers regularly review the provisions of the trust deed, considering legislative changes and other possible areas of improvement and, if necessary, amend the deed to maintain the Topdocs SMSF Trust Deed as the leader in its field.

All Topdocs deed variations are provided with a letter of legal sign off. This protects your clients by ensuring their documentation is prepared in accordance with the rules of the Fund. Why is this important? Improper preparation of Deed variations can potentially create Trust resettlement or other issues and **possibly** expose your clients to capital gains tax problems.

Estate Planning Specialised Drafting

Planning the effective distribution of a member's benefits, following their death, is a very important consideration of a properly drafted trust deed. The Topdocs Trust Deed is drafted to enable members to provide their estate planning instructions, as well as protection for their intended beneficiaries. Some of the exceptional features of the Topdocs Trust Deed include:

- The power to appoint individual or corporate trustees as well as an approved trustee, if required.
- Permitting trustees to make Death Benefit Rules, at the request of a member.
- Empowering the members to make binding (BDBN) and non-binding death benefit nominations, which are non-lapsing, and allows a BDBN to have multiple layers, tailored to a member's specific needs.

- Enabling members to appoint Death Benefit Guardians to ensure an extra degree of certainty over the correct allocation of death benefits.
- The grandfathering of previous instructions (e.g. BDBNs, Pension Reversions, Death Benefit Guardian appointments etc.) when updating deeds.
- The power for trustees to pay all forms of death benefits permitted by law, including lump sums and pensions, and to include anti-detriment payments.
- Fall-back provisions regarding voting rights in the event of certain trustees joining with others to influence decisions.

Income Streams

One of the very select deeds to expressly allow the resetting of Account Based Pensions, the Topdocs Trust Deed is up to date with provisions covering the automatic reversion of pensions (with grandfathering of those instructions when updating the deed), as well as guidance in any potential conflict between an automatic reversion of a pension and a Binding Death Benefit Nomination.

The Topdocs Trust Deed excludes information concerning the creation of pensions no longer able to be established, whilst comprehensively providing for the establishment of

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Transition to Retirement Income Streams, Account Based Pensions and, where permitted, Market Linked Pensions.

Areas covered by the Topdocs Trust Deed include:

- The power for trustees to commute pensions in all the circumstances permitted by law and to roll-over a pension internally into an accumulation account or to purchase a new pension.
- Facilitates the payment of all compliant pensions including Transition to Retirement Income Streams and Account Based Pensions, as well as allowing the continued payment of already established pensions that are no longer available (such as Defined Benefit Pensions).
- Expressly provides for conversion of Allocated Pensions to Account Based Pensions.
- The trustee has the power to document the terms and conditions of any pension not expressly covered in the deed.

Investment Powers

The Topdocs Trust Deed contains broad investment powers, whilst limiting the range to those investments permitted under superannuation law. The Deed provides power to the trustees to borrow AND allows for securing of fund assets under the 'limited recourse borrowing arrangement' or SMSF loan provisions. The Topdocs Trust Deed is readily accepted by major lenders, making borrowing a simpler process.

Specifying certain assets as being held for particular members is another feature explicitly provided

for in the Topdocs Trust Deed. This permits the trustee to allocate assets to particular members, which can provide stamp duty benefits in some states. It is also used in the situation where there is a large difference in the age of the members (e.g. a parent and a child) with different investment profiles and time horizons.

Incapacity

The Topdocs Trust Deed provides the trustees with the option of external insurance or self-funded insurance (so long as it is permitted by law).

Empowering trustees to pay all the kinds of benefits permitted by law, including benefits in the event of temporary and permanent disablement, or terminal illness, either in the form of (where applicable) lump sums, pensions and income streams, is a feature of the Topdocs Trust Deed. The deed provides guidance to trustees for the calculation of benefits in the event of temporary incapacity of a member.

Additionally, an important consideration involves the appointment of multiple individuals, in the capacity of legal personal representative (LPR) of a disabled member, as a trustee or trustees of the SMSF. The Topdocs Trust Deed allows for the common situation whereby, for example, two people have been appointed under an Enduring Power of Attorney as the LPR of an individual. Both could become trustees but with one vote (i.e. without jeopardizing the voting capacity of other members).

Membership and contributions

Ensuring a trust deed contains appropriate provisions for both the membership of the fund and the contributions it may accept are very important considerations. The Topdocs Trust Deed, among other powers:

- Contains the power for the trustees to admit anyone permitted by law, including minors, to membership, and to maintain accounts for members with nil balances;
- Provides for the trusteeship of the fund when members are underage or otherwise unable to act as trustee, to ensure the fund continues to meet the definition of a SMSF; and
- Empowers the trustees to accept all contributions permitted by law, including contributions in-specie, contributions splitting, spouse contributions, government co-contributions, child contributions, transfers and rollovers.
- The Topdocs Trust Deed also permits the fund to become a QROPS, to accept transfers from UK pensions.

Keeping your deeds up to date

The Topdocs SMSF deed update system provides a powerful online solution for keeping your Topdocs Trust Deeds up-to-date. Best of all it's easy to use and free to access.

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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