Australian Executor Trustees

Who can be a trustee of a self managed super fund and what are their duties?

Trustees are responsible for establishing and managing the administrative and compliance complexities of their self managed super fund (SMSF).

The criteria for determining the eligibility of being a trustee includes:

Not be a disqualified person

A disqualified person includes individuals who:

- have been convicted of an offence involving dishonesty under a Commonwealth, State, Territory or foreign law
- have received a civil penalty order under the **Superannuation Industry (Supervision) Act 1993** (SIS Act)
- are undischarged bankrupts
- have been disqualified by the regulator, the Australian Tax Office (ATO).

A company cannot act as a trustee of a superannuation fund if:

- a responsible officer of the company is a disqualified person (a responsible officer includes a director, secretary or executive officer)
- a receiver, official manager, administrator or provisional liquidator has been appointed to the company
- action to wind up the company has commenced.

Residency

The central management and control of the SMSF must remain in Australia. This means that the trustees, or a majority of trustees, must be Australian residents or satisfy the temporary absence rule.

Generally, this requires that the majority of the trustees (including the majority of the directors of a company that acts as the trustee of the fund) must not be permanent non-residents or temporary non-residents for more than two years.

Other requirements

- Generally, each trustee of an SMSF must be a member of the fund and vice versa (there are separate rules for single member funds).
- No member of the fund can be an employee of another member of the fund unless they are related.
- No trustee of the fund can receive any remuneration for their services as trustee.
- Trustees must have a thorough understanding of the SIS Act and Regulations, the trust deed, general rules such as those imposed under tax or trust law and administrative requirements.
- New trustees must sign a declaration acknowledging their roles and responsibilities.

Trustee responsibilities

Trustees must have the skills, time and dedication to meet their regulatory and administrative obligations. Breaching any of the regulatory obligations can result in financial penalties.

Trustee responsibilities include:

- **Save only for retirement**
  SMSFs must meet the sole purpose test under the SIS Act. This means that an SMSF must be maintained for the sole purpose of providing benefits in retirement or to dependants if a member dies before retirement.
- **Keep super assets separate**
  Trustees must keep superannuation assets separate from personal assets and the assets held by employers who contribute to the fund.
- **Have an investment strategy and invest responsibly**
  Trustees of an SMSF are required to prepare and implement an investment strategy for their fund and regularly review their strategy. All investments must be made in accordance with the fund's investment strategy. The investment strategy must also consider the insurance needs of members.
- **Keep proper records**
  Trustees must keep accounting records, annual operating and financial statements for a minimum of five years. Trustees must keep minutes of trustee meetings, annual returns and all copies of reports given to members for a minimum of 10 years.
- **Be aware of the rules when buying assets from a related party**
  Trustees are generally prohibited from acquiring assets for the SMSF from a related party of the fund.
- **Buy and sell assets at true market value**
  The purchase and sale price of assets must reflect a true market value for the asset.
- **Allocate contributions on a timely basis**
  Contributions received by the fund must be allocated to the members' accounts by the 28th day of the month following the end of the month that the contribution was made.
- **Meet lodgement and payment obligations**
  Trustees must lodge an annual return with the ATO and report on all member details to the ATO.
- **Report information about benefits paid to members**
  Trustees must report to the ATO information about benefits paid to members (superannuation pensions and lump sum payments) within the required timeframe.
- **Complete and lodge activity statement for GST**
  Trustees must lodge a business activity statement (BAS) at the end of each reporting period where the annual turnover of an SMSF exceeds $75,000.
- **Do not lend super money to members or relatives**
  Trustees must not lend money or provide direct or indirect financial assistance to a member or a member's relative.
- **Do not allow in-house assets to exceed five per cent of total assets**
  In general, SMSFs are restricted from lending to, investing in, or leasing to a related party of the fund more than five per cent of the funds' total assets.
- **Do not take money out early**
  Trustees must not take money out of their SMSF earlier than is legally permitted.

For more information please contact
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