RICHARDS FINANCIAL SERVICES

SMSF's and Incapacity

Have you considered what you will do if an unexpected event occurs?

Your SMSF is a long-term plan. Much can happen during this time including illness, incapacity or death of a member.

It is best practice to have contingency plans in place to deal with unexpected events. For example, if a fund member dies, leaving you as the sole member are you happy to continue with the SMSF?

Outlined are some issues trustees should consider. Leaving the planning to when, and if an event happens may be too late.

Death – Think about where you want your superannuation to go on your death. Given the introduction of the $1.6 million transfer balance cap, planning has never been more important as larger sums of money may need to leave the superannuation system sooner. You may need to think carefully about who receives your superannuation on death to maximise its benefit for your beneficiaries.

The rules of your SMSF, as set out in your trust deed and related documents, determine how the trustee structure is to be reconstructed on the death of a member as well as how death benefits are to be handled by you and your fund.

Careful consideration needs to be given to understanding the member's wishes to ensure that your fund's trust deed and broader governing rules are drafted appropriately to achieve these requirements.

Legal tools to help direct your superannuation can include making a binding death benefit nomination to nominate who will receive your superannuation on your death or providing for your pension to continue (or revert) to a permitted beneficiary (such as your spouse) following your death.

You may also consider appointing a corporate trustee. If the membership of an SMSF with individual trustees changes, the names on the funds' ownership documents must also change. This can be costly and time-consuming.

A corporate trustee will continue to control an SMSF and its assets after the death or incapacity of a member. This is a significant succession-planning issue for an SMSF as well as for the estate-planning of its members.

Diminished capacity – Consider the consequences if you become unable to act as trustee (e.g., due to mental incapacity). You can appoint an enduring power of attorney to act in your place as trustee, if required. This is someone who can be trusted to handle your financial affairs and can be appointed as trustee of the SMSF.

Member leaves – How would your SMSF be affected if one or more of the fund members decided to exit the fund? For example, an SMSF heavily weighted in real estate may have to sell the asset, or introduce a new fund member to allow the exiting member to transfer out of the fund.

Separating couple – Family law contains a number of options for superannuation to be split between a couple who separate or divorce. Your superannuation is treated separately to your other property, so specialist advice may be needed.

Reviewing your insurance – SMSF trustees should regularly review insurance as part of preparing your investment strategy. This includes considering whether or not insurance cover should be held for each SMSF member. Your insurance cover may be essential if an unexpected event occurs.

In some circumstances, you may already be holding insurance through membership of a large super fund. This policy may exist due to an employment arrangement and may be more cost-effective than an equivalent valued policy that you could hold within an SMSF. However, not all insurance policies are the same, so seeking advice will help you to understand your needs.