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## FINANCIAL SERVICES PTY LTD

### Timely Tips

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#### Did you know?

APRA has released its Superannuation Statistics for the September 2007 quarter.

Total funds held in Australian superannuation have reached \$1.187 trillion, an increase of \$233 billion over the previous year.

Source: APRA – December 2007



#### Self Managed Super Fund Update



Self managed or DIY super funds have continued to grow at a significant rate. During the 12 months to the end of September 2007, almost 45,000 new SMSFs were established, bringing the total number of SMSFs to 368,000.

The growth during the 12 months to September 2007 was in no doubt attributed to the significant contribution opportunities that were available in the lead up to the end of the 2006/07 financial year.

In this article we are looking at a couple of important things to be considered by people who either have a SMSF, or are considering establishing one.

##### Trustee Responsibility

Every member of a SMSF must be a trustee of the fund, and every trustee must be a member of the fund. Special rules apply where a SMSF has only one member. Where a company is appointed as trustee of a SMSF, each member must be a director of the trustee company, and each director must be a member of the fund.

Being a trustee carries some important responsibilities. Each trustee must have an understanding of the rules that govern the operation of the fund and accept responsibility for the running of the fund. Trustees remain responsible for the operation of the SMSF even though they may have appointed their accountant or another professional to run it for them.

From 1st July 2007, all new trustees of SMSFs are required to complete a Trustee Declaration. The Declaration requires trustees to confirm that they understand their role and responsibilities as a trustee particularly in the application of the sole purpose test, investment rules, operating standards and the administration of the fund.

The Trustee Declaration is available from the ATO and can be downloaded from their website ([www.ato.gov.au](http://www.ato.gov.au)). Trustee declarations must be retained for a period of 10 years, or the length of time the person is a trustee, whichever is the longer.

##### Lodgement of Returns

All SMSFs are required to lodge statutory returns. In order to simplify the annual reporting obligations, for the financial year commencing 1st July 2007, the income tax return, Member Contribution Statement, and regulatory return will be consolidated into one return.

##### Investment Rules

Every SMSF must have an investment strategy in place and all investments made by the fund must be made in accordance with that investment strategy.

In preparing the fund's investment strategy, trustees must take into account a number of important considerations including the risks and likely returns associated with the investments, diversification of the investments, and the liquidity of the investments in order to meet the cash flow requirements of the fund.

Whilst the relevant legislation does not prescribe the types of investments that may be held by a SMSF, trustees are required to ensure that the investments the fund holds are consistent with the investment strategy and are appropriate for the purposes of meeting the overall objectives of the fund.



##### Borrowings by SMSFs

SMSFs are not permitted to borrow money except in a number of very limited circumstances. In September 2007 legislation was introduced to clarify the position where a SMSF invested in financial products known as instalment warrants.

The legislative amendments have been interpreted as potentially having a wider application than just allowing investments in retail type share instalment warrants.

The legislative changes effectively allow trustees of a SMSF to borrow money and then use the funds to acquire other assets (shares, property, managed fund etc) for the super fund. In order to comply with the exemption, the assets must be held in a separate trust (a debt instrument trust), and only the assets of that trust can be used as security for the borrowings.

There has been extensive commentary in the press about the use of this strategy. More recently, we understand that the matter is under review and may be subject to further amendments. With this in mind, we urge trustees of SMSFs looking at using a borrowings strategy within their SMSF to exercise caution and seek professional advice before acting.

Source: Peter Kelly – Associated Advisory Practices

## Life insurance policy ownership



Most of us have life insurance of one form or another. Whether the level of cover is adequate or not is a different matter and will be covered in a future article.

Life insurance can take many different forms but probably the most common is the policy that will pay a benefit on the death of the life insured. The policy may extend to pay a benefit in the event of the life insured becoming totally and permanently disabled.

There are two and sometimes three parties to a life insurance policy. The first is the **policy owner**. This is the person or entity that has taken out the policy on behalf of the life insured and is the one who is generally entitled to receive the policy proceeds in the event of a claim being paid.

Where life insurance cover is provided as part of a superannuation fund membership (whether a SMSF or any other type of super fund), the trustees of the super fund are the owners of the policy. In the event of the death or disablement (where insured) of the member of the fund, the insurance proceeds will pass to the trustees of the super fund (i.e. the policy owner) who will then deal with them in accordance with the governing rules of the super fund.

In most case (but not all), the insurance proceeds will find their way to the member's account and will be dealt with as a part of their overall benefit.



Importantly, where a life insurance policy is owned by someone other than the life insured, the life insurance proceeds do not generally pass to the life insured in the event of a claim being admitted.

It is possible for the ownership of a life insurance policy to be transferred or assigned to another person or entity. Where a valid assignment has occurred, the person to whom the ownership has been assigned becomes the owner of the policy.

In the past it was common place for a bank or other lending institution to require a borrower to effect life insurance to cover the amount of an outstanding debt (e.g. a home mortgage). Generally the policy was owned by the lender whilst the life insured was the borrower. Where an existing life insurance policy was in place, its ownership may have been assigned to the lender to meet their requirements for life insurance cover to be held.

Of course, once the loan has been discharged, the policy ownership should be assigned back to the original owner as the lender no longer has an interest in the policy.

If you hold policies of life insurance, it may be prudent to review their current ownership status to ensure that they are correctly structured to reflect appropriate ownership. If you have life insurance cover that has been assigned to another person at some stage, check to see if it is still appropriate for the ownership to vest with the current owner. For example, if you have recently discharged your home loan, check to see if any life insurance policy previously owned by the lender has been assigned back to you. Even though the assignment may have been completed by the lender, it is important that you have the life insurance company register the transfer of ownership. In the event of a claim, the insurance proceeds could end up in the wrong hands.

Source: Peter Kelly – Associated Advisory Practices.

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## Services & Strategies we offer include:

- Investment & Estate Planning considerations
- Retirement Planning
- Financial Strategies
- Financial Structures
- Self Managed Superannuation Fund strategies & legislation
- Asset Protection
- Personal & Group Insurance
- Savings & wealth creation strategies
- Divorce & Separation strategies
- Business Succession planning
- Superannuation

## Contact your adviser at:

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