



SMSF Enduring Powers of Attorney

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The ATO has issued SMSF 2009/D1 to provide guidance on how a person who holds an enduring power of attorney granted by a member of an SMSF may be appointed as a trustee (or a director of the corporate trustee) in place of the member without ceasing to be a complying superannuation fund.

The Determination does not consider the situation of a member who is unable to perform their duties as trustee due to being under a legal disability and who has had a trustee appointed to manage their affairs.

What follows is an overview of enduring powers of attorney in relation to self managed superannuation funds.

Enduring power of attorney and superannuation

A power of attorney is a legal document allowing a person to appoint another person to make financial decisions on their behalf during their lifetime.

Unlike a general power of attorney, an enduring power of attorney continues in the event the attorney has lost their capacity to make decisions.

Powers of attorney, including enduring powers of attorney, are governed by State and Territory legislation. You may refer to the relevant State or Territory Act to ensure that an enduring power of attorney is valid for your client.

A person who holds an enduring power of attorney granted by a member is the 'legal personal

representative' (LPR) of that member.

To be effective for the purpose of appointing a LPR as the trustee of SMSF, the power conferred by the enduring power of attorney must be in relation to the financial, business and property affairs or specifically to the attorney's superannuation affairs.

Appointing an LPR to an SMSF

If a client needs to appoint an LPR as the trustee of an SMSF, the client must step down from their position as trustee of the SMSF (or director of the corporate trustee) and the LPR must be appointed to the position.

Appointing an LPR as a trustee (or director of the corporate trustee) and your resignation from that position must be in accordance with the SMSF's trust deed, superannuation legislation and, in the case of a corporate trustee, company legislation.

An LPR is appointed in their own right and not as the agent of the Trustee. Once appointed as a trustee or a director of a corporate trustee, the LPR assumes the duties, responsibilities and obligations of trustee (or director of the corporate trustee) in their personal capacity and not as an agent.

Consequently the LPR, in their role as SMSF trustee (or director of the corporate trustee), can be penalised for not complying with super and other relevant legislation.



As the LPR is trustee in their own right and not an agent for the member, the appointment does not contravene any State powers of attorney Acts that prohibit a person from delegating their duties as trustee under a power of attorney.

There are number of examples within the draft. These examples set out the types of situations in which a member of an SMSF may want to arrange for an LPR to be appointed as trustee, or director of the corporate trustee, in your place.

Summary

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