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SMSF STRATEGIES SPECIALIST SMSF ADVISER TRAINING

Module 14 – Estate Planning



MODULE 14 OVERVIEW

- ❖ What to Charge
- ❖ SMSF Will
- ❖ Donovan's Case
- ❖ Katz vs Grossman
- ❖ Malek's Case
- ❖ Pension Payments



PREVIEW OF MODULE 14

QUIZ QUESTIONS (MULTIPLE CHOICE ANSWERS)

- ❖ What rule of the SMSF Strategies trust deed provides for a SMSF Will?
- ❖ What case provides that section 59(1A) of the SIS Act 1993 - binding death benefit rules do not apply to SMSFs?
- ❖ In Maleks case who was a dependent of Antoine Malek?
- ❖ Which section allows an Executor to be a Trustee of a Fund on the death of a Member?
- ❖ On the death of a member a pension can be paid to a child of the deceased member. Which of the following is false?

WHAT TO CHARGE?

- What does it cost to prepare a Will?
- What about a fancy Testamentary Trust?
- SMSF Estate Planning should be remunerated on the same basis.
- In the range of \$2500 - \$3500



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SMSF WILL

SMSF Strategies Trust Deed



- **Rule 11** Deals with Creating a Member SMSF Real Estate Plan and SMSF Will



s17A(3)

An executor is allowed to be a trustee on the death of a member.

- Advantages?
 - Can bypass probate
 - Examples?
 - Auto-Reversionary Pension
 - BDBN

Warning: Check the deed

RULING SMSFD2008/3EC

- SISA s10 – The court goes directly to...
- The payment of the death benefits of a super fund is determined in accordance with the governing rules of the fund and not in accordance with the deceased's will.
- Do your clients know that it is ultimately at the discretion of the trustee except for the governing rules.
- Where is the advice opportunity?
- Mixed marriages
- Death of a member .. May be too late

DONOVAN & DONOVAN

Ronald Donovan was the sole member of an SMSF with a corporate trustee

The Deed allowed for both NBDBN and BDBN

His nomination was to his LPR

The nomination did not state it was binding

He also had written a letter saying it would be a 50:50 split with his daughter and his young second wife

Outcome? The daughter was disentitled



SIS ACT 1993 S59(1A) – BINDING DEATH BENEFIT RULES – KATZ VS GROSSMAN

- Mr Katz dies in Sept 2003
- Original Nomination (50:50) was non-binding at trustees discretion - \$1m
- Daughter appoints her husband as trustee in Dec 2003 & banks \$1m
- Daniel a little cranky

Outcome?

- Linda still received 50% on non super assets
- Estate had to pay costs - \$90k
- What would Mr Katz think?

- The Superannuation Complaints Tribunal (SCT) has no basis for reviewing an SMSF trustee discretion decision. Raising a dispute through the court system can be costly and may be ineffective in terms of resolving a key issue to the satisfaction of the aggrieved party.
- **Solution:** A binding death benefit nomination (BDBN) correctly executed

MALEK'S CASE - DEPENDENCY

- Who was a dependent of Antoine Malek?
- A mother received significant financial support from her deceased son inc mge, maintenance and other items
- Following her son's death it was unlikely she could remain in her home
- Tax Commissioner says no but AAT says yes



- Care with the definition owing to implications with ITAA 1997 and SIS
- Not always simple to demonstrate
- Dependency and interdependency



Administrative
Appeals Tribunal

PENSION PAYMENTS

- When a member dies the other member is able to receive the deceased pension automatically.
- That's Auto-Reversionary
- Do all Trust Deeds allow for this? Unlikely prior to 2007

Planning Opportunity

- Child member of a fund under 18
- They can also receive a pension but ONLY to Age 18
- Don't confuse this with lump sum to financial dependents Age 25 & no tax



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QUIZ TIME

- Go online
- Take the Module 14 Assessment
- Ask us if you have any queries
- You will have TWO opportunities to take the quiz

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