



Do you know what it takes to be an SMSF trustee?

Before you set up a self-managed superannuation fund (SMSF) you need to ensure you are eligible to be a member and trustee, and understand your responsibilities.

Who can be a member?

Essentially anyone can be a member of an SMSF provided they are not an employee of another member unless they are related to them, and are not a 'disqualified person' (see below).

An SMSF can have between one and four members, although most funds have two members. Common examples are a couple (eg a husband and wife or same sex couple) or two people who are in business together.

Who can be an SMSF trustee?

Each member of an SMSF also needs to be either an 'individual trustee' of the fund or a director of a trustee company, which is known as a 'corporate trustee'.

You can be an **individual trustee** so long as you are not a 'disqualified person' and are not:

- a minor (ie a child under 18 years of age), where you will need a parent (who may also be a member of the fund), a guardian or a Legal Personal Representative to act as trustee on your behalf, or
- a person with a mental incapacity, where you will need another person who holds an 'enduring power of attorney' to act as trustee for you.

Most companies can be used as a **corporate trustee** provided that:

- a director, executive, company secretary or other 'responsible officer' is not a 'disqualified person'
- a receiver, official manager or provisional liquidator has not been appointed, and
- action has not commenced to wind up the company.

You could use an existing company, however, it's worth thinking about having a separate corporate trustee for your SMSF. This helps keep your SMSF's assets separate from your other assets, as required by law.

Determining which trustee structure is right for your SMSF

While most SMSFs have individual trustees, a corporate trustee could be more suitable depending on your own situation and the needs of the other members of your SMSF.

There are advantages and disadvantages in relation to each structure and various issues to consider before determining which structure is right for you. This is because the trustee structure you choose will influence how the SMSF is run and it will impact the costs involved in setting up and administering the fund.

Issues to consider when deciding which trustee structure to use include:

- the establishment costs involved
- whether you understand the legal requirements involved in establishing and running a company
- whether you expect there to be a change of members/trustees in the SMSF and the costs that may be incurred when members join or leave the fund
- whether you are comfortable with your level of personal liability as an individual trustee or wish to have reduced liability for any losses incurred as a result of breaches of trustee obligations and
- whether you are a single member fund and the degree of control required.

What are the trustee responsibilities?

As an SMSF trustee, you and your fellow trustees are responsible for meeting a range of legal and other obligations, including:

- Holding assets for the sole purpose of providing benefits for your members upon their retirement or your members' beneficiaries if they die.
- Always acting honestly and in the best interest of the SMSF beneficiaries/members, and in accordance with the trust deed and relevant super laws.
- Exercising skill and diligence in managing your fund.
- Developing, implementing and reviewing an investment strategy for your fund.
- Keeping your super assets separate from your personal or business assets.
- Preparing and keeping proper records, including financial statements, tax returns, audits, actuarial certificates (where applicable) and minutes of trustee meetings and decisions.
- Not lending money or providing financial assistance to members using fund assets.
- Not borrowing money except in limited circumstances, such as to purchase investments using specific arrangements that provide some protection for the fund and its members.
- Not releasing money to a member unless they have met certain conditions.

Where you can get advice or guidance

If you're not sure whether an SMSF is right for you, or would like some help setting up or running your fund, there are professionals who can provide advice or guidance. These include:

- **lawyers** who can provide you with an appropriate trust deed and governing rules for your fund, and advise you on other legal matters
- **financial or investment advisers** who can help you prepare, implement and review your fund's investment strategy
- **accountants and/or registered tax agents** who can look after your fund's record keeping and reporting requirements, and provide taxation advice
- a **fund administrator** who can help you look after the day-to-day running of your fund, and
- an **auditor**, who must be appointed to sign off on your fund each year to the Australian Tax Office.

To find out more about what you need to do to run your own SMSF, contact Rick Maggi on 9382 8885.

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