

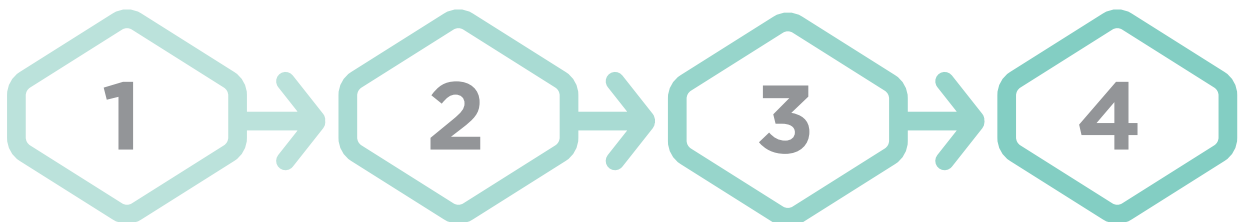
Changing SMSF trustee structure – What needs to happen



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When it comes to changing the trustee structure of an SMSF, there are many different scenarios. The trustee may change altogether from individual trustees to a corporate trustee or vice versa, individual trustees or directors could be added, removed or replaced. To avoid compliance issues, it is important to ensure to follow the appropriate steps.

The process generally involves the following:



1 Review the trust deed of the fund and the constitution of the company (where a corporate trustee)

2 Organise relevant legal documentation

3 Inform the Australian Tax Office (ATO) of the change and the Australian Securities and Investments Commission (ASIC) (where a change is made to a corporate trustee)

4 Update the legal title of fund investments

STEP 1 TRUST DEED & CONSTITUTION REVIEW

The trust deed of the fund will outline how the fund can make changes to the existing trustee structure. Different trust deeds will have different requirements. For example, some deeds may simply require fund members to hold a meeting to authorise the change, whilst other deeds may require the change to be documented in the form of a separate document, commonly referred to as a “deed of change of trustee”. The legal documents must be prepared in line with the requirements of the deed of the fund in order to be valid.

Where there is a change to the directorship of a corporate trustee, the company’s constitution should be reviewed for the process of removal and appointment. The constitution will also confirm whether the company can be treated as an SMSF sole purpose trustee company and avail itself of the lower annual ASIC fees.

STEP 2 LEGAL DOCUMENTATION

The deed will determine the type of documents required to document the change. With any appointment or resignation of a trustee, the documentation should also include a trustee consent form and the ATO trustee declaration form.

Where the new trustee is a company, a new special purpose proprietary limited (Pty Ltd) company will first need to be established and registered with ASIC. All members of the SMSF generally need to be directors of the company. Special purpose companies that will only act as trustee of a SMSF pay reduced annual registration fees. It is generally not recommended that an existing company be used as trustee, that is, it is best to use a “clean skin” company.

All the documentation covering the appointment or resignation of a trustee must be correctly executed to be valid. Even though not all deeds require this, the trustees may also wish to update their trust deed after the appointment of the new company trustee as this will generally simplify the process of updating the legal title of all fund investments.

STEP 3 INFORM ATO AND ASIC

Once the trustee structure has been updated, the ATO needs to be informed within 28 days of the effective date of the change. The tax agent of the fund will generally look after this process.

Where there has been a change to a corporate trustee, for example a change to directors, ASIC must also be informed on the relevant form and within 28 days of the change itself, otherwise penalties will apply.

STEP 4 UPDATE THE LEGAL TITLE OF ALL FUND INVESTMENTS

SuperConcepts can provide guidance on this step.

All fund investments need to be recorded in the name of the trustee(s) of the fund. Therefore, when the trustee changes, then the name recorded on the investment accounts also needs to be changed.

For example:

John Smith & Jane Smith as trustees for (ATF) Smith Family Super Fund would need to change to Smith Super Pty Ltd ATF Smith Family Super Fund.

Before changing the name of fund investments, take the opportunity to review the existing portfolio and determine if all investments are still suitable.

What needs to happen in a practical sense depends on the investments and accounts held by the SMSF. The following is a guide on what to expect.

Bank accounts

The first step is to contact the bank and determine what needs to happen for the title of the bank account to be amended to reflect the change to trusteeship of the SMSF. Normally the bank will require original or certified copies of the change of trustee documentation. Some banks will be able to simply update the account name with the change of trustee. However, it is common for banks to require a new account to be established. This would mean the fund will be issued with a new bank account number, which will require any deposits, direct credits, withdrawals and direct debits, to be moved to the new account.

Term deposits

Usually it's not possible to change the name of a term deposit without breaking it and placing a new deposit. It is acceptable for the existing term deposit to mature under the name of the trustee that existed when it was first placed and then upon maturity, make any future deposits, including any re-investment of interest, in the name of the new trustee(s).

Where the maturity date of any existing term deposits is after the end of the financial year, an additional declaration may be requested from the fund auditor to verify the beneficial owner of the deposit. Some banks may require the fund to maintain a bank account in the same name as the existing trustee for the payment of the interest and principal on maturity.

Listed securities

How to go about transferring securities in the correct name usually depends on how they are held. Where there is a broker (CHESS Sponsor) attached to your shareholdings, generally all holdings will be transferred to a new CHESS account.

Most traditional 'full service' stockbrokers will action the transfers on behalf of the trustee(s). They may charge additional fees for this service. Most online brokers charge a fee per transfer and you will need to complete a standard transfer form (also referred to as 'off-market' transfer form) for each share.

Managed funds

Managed funds held under a wrap account are owned by a custodian, so the process is generally easier with trustees having to ask the wrap account provider to update the name.

Where managed funds are owned directly (not via a wrap account), each managed fund provider will need to be contacted and they will provide specific instructions on how to transfer the units. The process can be different per managed fund and some managed funds may require stamp duty to be assessed and paid on the transfers.

In most cases trustees will need to complete a standard transfer form in addition to providing a certified or original copy of the change of trustee documentation.

Property

Trustees generally engage a solicitor to prepare the documents for lodgment with the relevant state revenue office. The process varies per state and generally involves:

1. Providing the change of trustee documents for stamping with the relevant state revenue office.
2. Completion of a transfer form and lodgment with the title office.

As there is no beneficial change in ownership, there is normally no duty or only concessional duty applicable to the transfer.

Next steps

SuperConcepts can make the process easy for you and assist with changing the trustee structure of the fund. Contact us to discuss how we can assist.

Get in touch



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