

Self-managed superannuation funds

Who should be the trustee?

Key points

- The trustee is the legal owner of the property and assets of the fund and has the operational control of the fund
- Trustees can be individuals or a company - there are benefits and downsides of each option
- For several reasons, we recommend our clients incorporate a sole purpose company to act as a trustee of any fund

Should the trustee of my SMSF be individuals or a company?

There are many issues to consider when determining whether to set up an SMSF with individuals or a corporate trustee. We generally recommend corporate trustees.

	<i>Individual trustees</i>	<i>Corporate trustee</i>
Costs	No corporate trustee establishment costs and no ongoing ASIC fees.	There are costs involved in setting up the corporate trustee and annual ASIC fees. (However, provided the sole purpose of the company is to act as the trustee of a superannuation fund, there is a reduced annual fee with ASIC.)
Separation of assets	There is a risk that assets of the members in their individual capacity and assets of the fund will be mixed.	The legal title to the assets is held by the company, this makes it clear that the interests of the fund are separate to the individual members. This can be particularly useful in states like New South Wales where you cannot disclose a trust on the title to land.
Asset protection	The individuals do not have limited liability.	As companies are subject to limited liability, a corporate trustee will provide greater protection where a party sues the trustee for damages and for tax liabilities.
Succession planning	On the death or retirement of a trustee, all the assets of the fund must be transferred to the new trustees. With significant share investments, this can be a very time-consuming process.	Having a corporate trustee allows a smoother transition on the death of a member. If there is a corporate trustee, there is no need to change title to the assets.
Administration of assets	Each time a member is removed or added, an individual trustee is removed or added, and so the SMSF must change the titles of all of its assets.	Each time a member is removed or added, the individual is appointed or removed as a director. The corporate trustee does not change and so the SMSF does not need to change the titles of its assets.
Penalties	Administrative penalties for breaches will be levied on each trustee. For example, for failing to prepare financial accounts and statements each trustee would be liable for a \$2,220 penalty.	Administrative penalties for breaches will be levied on each director of the corporate trustee. For example, for failing to prepare financial accounts and statements, each director would be liable for a \$2,220 penalty.

Who can be the trustees of my SMSF?

Under the *Superannuation Industry (Supervision) Act 1993* (Cth), there are restrictions on who can be the trustees of SMSFs.

	<i>Sole member fund</i>	<i>Two or four-member fund</i>
Individual trustees	<p>The member must be one of the trustees.</p> <p>The member must not be an 'employee' of the other trustee unless they are related.</p>	<p>Each individual trustee must be a member of the fund.</p> <p>No member of the fund can be an 'employee' of another member of the fund, unless they are related.</p>
Corporate trustee	<p>The member must be:</p> <p>(a) the sole director; or</p> <p>(b) one of two directors and the member must not be an 'employee' of the other director unless they are related.</p>	<p>Each director of the corporate trustee must be a member of the fund.</p> <p>No member of the fund can be an employee of another member of the fund unless they are related.</p>

There are exceptions to these rules that apply in limited situations (such as when members lose capacity, when a member dies, or when members are under 18 years old).

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