

Acis SMSF Deed

Summary of changes

Acis.

The governing rules of our SMSF trust deed have been updated to make improvements to the Rules. In summary:

Current relevant law presents some uncertainty as to whether or not a Member's Legal Personal Representative (**LPR**) can execute, add to, amend or revoke a Binding Death Benefit Nomination or Non-lapsing Binding Nomination on behalf of a member. Some decided cases support the ability of an LPR to do so. However, the Acis view is that, like a will, an LPR should not, except in some limited circumstances, be in a position to interfere with a member's Binding Death Nomination or to make a new one on the basis that a Binding Death Nomination is analogous to a will as a testamentary instrument. Acis has taken the view that the LPR should only be able to deal with or make a nomination for a Member where:

- The LPR wishes to extend a subsisting and valid Binding Death Nomination (or one that has lapsed within the previous 30 days) and if the enduring power of attorney specifically authorises the LPR to do so or the enduring power of attorney does not specifically preclude or prohibit the LPR from doing so;
- The LPR makes a Binding Death Nomination on behalf of the Member only if the enduring power of attorney specifically authorises the LPR to do so and if a subsisting and valid Binding Death Nomination has not already been made by or on behalf of the Member.

New rules have been inserted to improve the protections for the Trustee where there may be a conflict between the Trustee's duties as trustee and any other personal interest the Trustee may have in the outcome of any transaction. This is particularly relevant as, in the context of an SMSF, there will be inherent conflict due to the members and the trustees/trustee directors being the same persons.

The rules around the transfer to the Fund of Member-contributed NSW Property or Member-contributed WA Property have been clarified to align with the requirements of duties legislation in NSW and WA and to ensure that where a Member transfers property to the Fund as a contribution, the Fund should be able to access duty concessions if the requirements of the legislation are met.

If you would like further information or have any questions, please contact us on [1800 773 477](tel:1800773477) or email acis@acis.net.au.

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