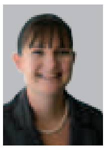
not all trust deeds are created equal



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"Little pig, little pig let me in"; "Not by the hair on my chinny- chin- chin"; "Then I'll huff and I'll puff and I'll blow your house down".

Familiar words from the tale of The Three Little Pigs. The first little piggy built his house from straw, the second from sticks and the third, smartest little piggy built his house from bricks. Being the third child, I always loved this tale, but I digress… The third little piggy had built his house with solid materials and, more importantly, on solid foundations, so when the Big Bad Wolf came to blow his house down, it didn't budge.

This story was my first insight to building: understanding that the first place to start was always with the foundations. Similarly, in learning about Self-Managed Super Funds (SMSF), the first place to start is understanding the foundations - your trust deed.

The fund's trust deed, together with the super laws, form the governing rules of each individual fund. If the trust deed does not allow a certain strategy, even if the law does, the trustee cannot perform that strategy inside the fund.

Not all trust deeds are created equal and, in fact, there are so many different deeds used, that advice can never be provided to a client without understanding their individual trust deed first. The rules defined in the individual deed must be adhered to regardless of legislation, hence the importance of getting the right deed and understanding it.

The best trust deeds are the ones that have been written specifically for SMSFs. With the introduction of "Better Super" legislation in 2006, they have been completely rewritten since this date. They are also written in plain, easy to understand English. According to the ATO, "All trustees are bound by the trust deed and are equally responsible if its rules are not followed, so it's important that all trustees understand the contents of the deed" (source: ATO, March 2009. Setting up a self-managed super fund what you need to know). If your super fund's deed is written in legal mumbo jumbo, the chances of you understanding it and following the rules are greatly reduced, and your chances of breaching a rule and making the fund non-complying are therefore greatly increased.

Some of the rules of the best trust deeds in Australia include (but are not limited to):

- **The appointment and removal of trustees** - this is important for estate planning, disability planning and where a member moves overseas;
- **The admission and removal of members;**
- **Broad investment rules** - including the inclusion of being able to borrow to invest through an instalment warrant arrangement;
- **Trustee meetings** - how, where and when a meeting can take place. Voting rights, decision-making powers are all vital elements of a great trust deed;
- **Abilities for various types of benefit payments** - lump sums, types of pensions available, payments of assets rather than cash;
- **Choice of payments of benefits in the event of a disablement** of a member;
- **Choice of payments of benefits upon the death** of a member; and
- **The ability to have reserves** built within the fund - the ability to have extra death benefit payments and smooth investment returns.

Again, because the trust deed determines what can be done, if you are in breach of your trust deed you are in breach of the law. This could result in your fund being non-compliant and hence the fund's tax rate changing from 15 percent to 45 percent!

Don't wait until your house has been blown at by the Big Bad Wolf (or in this case the ATO, if you deliberately breach the rules). Pick up your trust deed and read it! If you don't understand it or what the rules mean, contact your adviser (or the Third Little Piggy) and ask them to work through the trust deed with you. If necessary, ask for an upgrade to a plain English version (if your trust deed is pre-May 2006 - this is vitally important) and don't wait for the knock on your door with the words, "Trustee, Trustee, let me in…". B