

THE EXCEPTIONAL TOPDOCS SMSF DEED FEATURES

Outlined below are the key features of the Topdocs SMSF Deed and Governing Rules 16.02 (Deed). An explanation of what is and isn't included in the Deed is also provided.

TOPDOCS SMSF DEED KEY FEATURES	RULE #	EXPLANATION
TRUSTEES		
Eligibility	2	Allows for Individual and Corporate Trustees, and any form of trusteeship that satisfies the law including conversion to become a Small APRA Fund. Allows for a Legal Personal Representative (LPR) to be appointed as Trustee in place of a Member/Trustee or as Director of the Corporate Trustee in place of a Director/Member.
Incapacity of Trustee	2	Allows for a Legal Personal Representative (LPR) to be appointed in place of an incapacitated Trustee (e.g. LPR with an Enduring Power of Attorney [EPOA] or court or tribunal appointed LPR if no EPOA). Provides for the (previously) incapacitated Trustee to assume their role and the cessation of the appointment of the replacement, if the person has overcome the incapacity.
Investment Powers – SMSF borrowing	4.3	The Topdocs SMSF deed has all the required clauses for SMSF borrowing. The Topdocs SMSF deed is accepted by all of the major SMSF Lenders. Footnote cross-references to relevant clauses.
Investment Powers – property and stamp duty	4.6	Property can be held for particular Members. This clause assists with stamp duty exemptions in various states in relation to property purchases and transfers.
GENERAL PROVISIONS		
Voting	10.2	Individual Trustees – one vote each normally but if a formal vote is required then voting according to Member balances. Corporate Trustees As determined by the constitution of the Corporate Trustee.
Family Law	10.3	The Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits or Benefit Entitlement of any Member or Beneficiary required in accordance with the Relevant Family Law.
RESERVES		
Reserves	15.5	The Topdocs SMSF deed allows for the establishment of any Reserve Account permitted by law.

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MEMBERSHIP		
Membership	11	Allows for admission of anyone permitted by law to be Members including minors and Members with nil balances.
Cessation of membership	13	Appropriate rules to ensure that membership is ceased when appropriate but not necessarily ceased, for example, simply by having a nil balance or ceasing to be a Trustee.
CONTRIBUTIONS, TRANSFERS AND ROLLOVERS		
Contributions	18	Permits all contributions permitted by Relevant Law including contribution splits with spouse, spouse contributions, government contributions, in-specie contributions, child contributions. Requires Trustees to reject excess contributions subject to the Relevant Law and to hold any such amounts received on a separate trust to be refunded. Investments from in-specie contributions can be allocated to particular members (4.6)
Transfers and Rollovers Out	19	This rule governs the terms of transfers and rollovers out
Transfers and Rollovers In	21	This rule governs the terms of transfers and rollovers in
In-Specie Transfers	31	This rule allows for in-specie transfer to Members of the Fund, or to other Funds
INSURANCE		
External insurance	23	This rule governs the requirements relating to insurance
Self insurance	23.6	This rule prohibits Self Insurance by the Fund in accordance with the prohibition under the Relevant Law, effective from 1 July 2016.
BENEFIT PAYMENTS		
Dealing with benefits	29	Allows for payment of all benefits permitted by law by lump sum, income stream or a combination of both.
Retirement, reaching payment age	32	Allows for payment of benefits permitted by law by lump sum, income stream or a combination of both.
Temporary incapacity	33.2	Allows for a non-commutable income stream to be paid from a policy of insurance. Allows for a non-commutable income stream to be paid from certain member benefits subject to the Relevant Law. SIS Reg 5.08(3) allows 'minimum benefits' to be cashed to pay temporary incapacity benefits, but only to the extent that the cashed

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		<p>amount is not attributable to member-financed benefits (defined in SIS Reg 5.01(1)), or to mandated employer-financed benefits (also defined in SIS Reg 5.01(1)).</p> <p>In other words, temporary incapacity benefits need to be paid from insurance proceeds, or 'voluntary' (i.e. not SG) employer contributions. In practice, this means that temporary incapacity benefits are almost exclusively funded by insurance.</p>
Permanent incapacity	33.1, 2.8(b)	Allows for payment of benefits permitted by law by lump sum, income stream or a combination of both.
Terminal medical condition	35	Allows for payment of all benefits permitted by law by lump sum, income stream or a combination of both.
Other benefit payment events	36	This rule covers financial hardship, compassionate and other conditions of release for benefits
BENEFIT PAYMENTS – INCAPACITY & ESTATE PLANNING		
Death benefit options	34	<p>The Topdocs SMSF Deed allows for:</p> <ol style="list-style-type: none"> 1. Non-Lapsing Binding Death Benefit Nominations 2. Optional Binding Death Benefit Rule 3. Non-binding death benefit nomination <p>Even though SMSF BDBNs are not required to follow the same rules that govern other super funds, there is still an argument that Courts may regard them as Testamentary Instruments. The Topdocs SMSF Deed rules and standard BDBN documents take that into consideration.</p>
Non-lapsing	34.6	BDBNs are non-lapsing
Grandfathered BDBNs		In provisions following the recitals in a Deed of Variation. Naturally not required or provided for new SMSF Establishments.
Member Benefit Guardian	37	<p>Members have the option to appoint a Guardian including a Member Benefit Guardian that prevents the Trustees from exercising certain powers, rights, decisions, discretions, appointments and other authorisations without the prior consent in writing of the Guardian.</p> <p>If appointed, a Member Benefit Guardian's consent would be required by the Trustee prior to:</p> <ol style="list-style-type: none"> 1. making payments in respect of the Member's benefits if the Member is incapacitated and no LPR of the Member has been appointed as a Trustee/Director in their place; or 2. making death benefit payments where no Reversionary Pension Nomination, valid BDBN or Death Benefit Rule is in

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		place. This can protect the Member's benefits.
Reversionary Pensions v BDBNs	34.4	Under the Topdocs SMSF Deed a BDBN will not apply where there is a valid Reversionary Pension Nomination.
Anti-Detriment payments	34.8	The deed provides for Anti-Detriment payments
LPRs and other persons	34.10	This rule relates to payments to dependants, Legal Personal Representatives or other persons.
BENEFIT PAYMENTS – INCOME STREAMS		
General	38	The Topdocs SMSF Deed is uncluttered by pension information for pensions no longer available to be paid. The Trustee has the power to document terms and conditions of any pension not expressly covered by the standard pensions covered by this deed. The rules and terms and conditions of Account Based Pensions, Transition to Retirement Income Streams and Market Linked Pensions are provided for in detail. The Topdocs SMSF Deed provides for grandfathered pensions, pension resets, conversions, commutations and rollovers.
SMSF pensions	39, 40, 41	The Topdocs SMSF Deed allows for payment of Account Based Pensions, Transition to Retirement Income Streams and Market Linked Pensions with fully detailed provisions (including reversions) and has the power to document terms and conditions of any pension not expressly covered by the deed.
Grandfathered pensions	Variation Declarations	Allows for grandfathering of all prior pensions. This is shown in the provisions following the recitals in the Deed of Variation. This is naturally not required for new SMSF Establishments.
Conversions, commutations and internal rollovers	38.7, 38.8, 39.3, 40.3, 41.3	The Topdocs SMSF deed allows the Trustees to convert, commute, or internally rollover Account Based Pensions, Transition to Retirement Income Streams, Market Linked Pensions, and all types of grandfathered pensions according to the Relevant Law.
Pension resets	38.8	The Topdocs SMSF Deed allows for commutations at 38.8, and commencement of new pensions at 39, 40 and 41.
Pension reversions	34.4, 39	Rule 39 provides for Reversionary Beneficiaries for Account Based Pensions and flows into Rules 40 (Transition to Retirement Income Streams) and 41 (Market Linked Pensions). Rule 34.4 provides for conflicts between a Reversionary Pension Nomination and a Binding Death Benefit Nomination.
Pension payments from reserves	15.5(c)(ix)	A reserve account may be used for pension payments subject to the Relevant Law.
Segregation of pension assets	38.6	The Topdocs SMSF Deed allows for segregation of pension assets.

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WHAT WE DON'T INCLUDE & WHY		
SMSF Wills or Living Wills		<p>SMSF Wills and Living Wills are terminology used by a particular deed provider. We don't use these terms as:</p> <ul style="list-style-type: none"> The word Will can imply that these can be part of a client's Will and can cause confusion The deeds do not provide guidance as to the correct drafting of those documents The Topdocs SMSF Deed caters for all possible death benefit issues through non-lapsing BDBNs, provision for the establishment of a Death Benefit Rule that will form part of the Trust Deed and Member Benefit Guardians. Topdocs can also provide template standard & complex BDBNs, with guidance as to their completion and use. The Topdocs deed provides for all matters relating to Temporary & Permanent Incapacity (including Mental Incapacity) and Terminal Medical Conditions
Continued pension payments to LPRs after member's death.		<p>A particular deed allows this. Our view is that this is not acceptable under current legislation and that the clause could mislead Trustees with serious consequences. ATO Ruling TR 2013/5 also confirms this issue.</p>
LPRs or successor trustees automatically on death		<p>Having LPRs 'automatically' become trustees/trustee directors on the death of a member can create serious problems as follows:</p> <ul style="list-style-type: none"> A person can only become an LPR after issue of probate so there is a risk period for client benefits There may be disputes as to who the LPR should be, and these could take some time to resolve The LPR might not always be the appropriate trustee, particularly where the member wishes to keep their SMSF benefits entirely separate from any issues concerning their estate Requires additional drafting for Corporate Trustee constitution Requires prior written consent of the LPR to be in place or payments could be void or subject to challenge Multiple executors can cause voting issues <p>Topdocs instead provides for an optional Member Benefit Guardian.</p>
Employer Sponsors		<p>Many older SMSF deeds had Employer Sponsors as parties to the deed. This has created a number of problems including if the Employer Sponsor was a company it may have been sold or deregistered or, if an individual, that person may have passed away. There would then be issues of not being able to update the deed or even a requirement that the Fund be wound up in some cases.</p>

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Specially written Corporate Trustee Constitution		<p>Some suppliers of SMSF Trustee Companies try to convince you that you require different control mechanisms in your SMSF Trustee Company constitution than those provided for in a well drafted 'standard' constitution.</p> <p>Topdocs' view, as well as that of most legal and accounting practitioners, is that a well planned SMSF establishment and properly considered shareholdings of a well constructed 'standard' constitution will achieve the vast majority of desired outcomes. Specific tailoring of the SMSF Trust Deed and Company constitution should only be undertaken where dictated by specific circumstances.</p> <p>For this reason, Topdocs has drafted its Company constitution to contain all of the provisions required to act as a sole-purpose SMSF Trustee, while still allowing the flexibility to act as a 'standard' Company.</p>
Provide a deed that needs to be varied when a change of trustee occurs		<p>One prominent SMSF deed supplier has deeds that are required to be varied in full if there is a change of Trustee from individuals to corporate or vice versa.</p> <p>The Topdocs SMSF deed is NOT required to be varied if there is a Trustee change.</p>

More information

Should you have any queries or require more information, please contact the team at DMG Financial on 03 5144 4422.