



Monthly Information Newsletter – Tax & Super

June 2021

The ATO's eligibility requirements for SMSF trustees or directors

All members of a self-managed super fund (SMSF) must be individual trustees or directors of the fund's corporate trustee. Anyone 18 years old or over can be a trustee or director of a super fund as long as they're not under a legal disability (such as mental incapacity) or a disqualified person.

But other eligibility factors should not be overlooked. To knowingly act as a trustee, a trustee director or an office holder of a corporate trustee (such as secretary), while being a disqualified person, is an offence.

To be sure you are not a disqualified person you need to be able to answer "no" to all of the following questions.

Have you ever been convicted of a dishonest offence, in any state, territory or a foreign country?

Offences of a dishonest conduct are things such as fraud, theft, illegal activity or dealings. These convictions are for offences that occurred at any time, including convictions that have been "spent" and those that the court has not recorded, due to age or being a first offender.

Have you ever been issued with a civil penalty order?

Civil penalty orders are imposed when an individual contravenes a civil penalty provision (this can be an order to pay a fine or serve jail time).

Are you currently bankrupt or insolvent under administration?

You cannot be a trustee of an SMSF while you are an undischarged bankrupt, and you cannot remain a trustee if you become bankrupt or insolvent after you are appointed.

Have you been previously disqualified by the ATO or APRA?

The Commissioner of Taxation, as the SMSF regulator, can disqualify a trustee, which is permanent and is not just specific to the SMSF you were a trustee of at the time. The Federal Court can make an order to disqualify a trustee of an APRA fund. This is permanent and this disqualification does not allow you to operate an SMSF.

The responsibilities

Whether you're a trustee or director of a corporate trustee, you are responsible for running the fund and making decisions that affect the retirement interests of each fund member, including yourself.

As a trustee or director, you must:

- act honestly in all matters concerning the fund
- act in the best interests of all fund members when you make decisions
- manage the fund separately from your own superannuation affairs
- know, understand and meet your responsibilities and obligations
- ensure that the SMSF complies with the laws that apply to it.

All trustees and directors are equally responsible for managing the fund and making decisions. You are responsible for decisions made by other trustees, even if you're not actively involved in making the decision.

You can appoint other people to help you or provide services to your fund (for example, an accountant, administrator, tax agent or financial planner). However, the ultimate responsibility and accountability for the SMSF's actions lie with you, as trustee or director.

As an individual trustee or director of a corporate trustee, you may be personally liable to pay an administrative penalty if certain laws relating to SMSFs are not followed.

Other members of the fund can take action against you if you don't follow the terms of the trust deed. Any fund member who suffers loss or damage because of a breach of any trustee duties may sue any person involved in the breach.

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