

DID YOU KNOW?

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Transferring life policies into super

A regular question raised by advisers through our adviser hotline is the possibility of transferring their clients' existing ordinary life insurance policies into their self-managed super funds (SMSFs). Unfortunately, this is not permitted. However, there is a solution.



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The trustee (or investment manager) of a regulated superannuation fund must not intentionally acquire an asset from a related party of the fund, except for certain in-house assets as specified in section 66 (1) of the Superannuation Industry (Supervision) Act 1993 (SIS Act). The exceptions to the acquisition of in-house assets includes a life insurance policy issued by a life insurance company (other than a policy acquired from a member of the fund or from a relative of the member) [section 66 (2A) (iii)]. Subsection (2B) of the Act allows a trustee of a super fund to acquire a life insurance policy from a related party of the fund if there is a relationship breakdown.

The word *acquire* is not defined. However, the word is generally taken to have a wider meaning than the acquisition of assets or property via a purchase. A *related party* of a fund means a member or a standard employer-sponsor of the fund, and their Part 8 (of the SIS Act) associates (see below). A person who contravenes subsection (1) above is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 1 year. The prohibition applies to the intentional acquisition of an asset, and therefore an inadvertent acquisition will generally not contravene section 66 unless an avoidance scheme is involved.

The above-mentioned legislation prohibits the transfer of a member's ordinary (non-super) life insurance policy into a SMSF via memorandum of transfer (MOT). This issue is further addressed in the Australian Prudential Regulation Authority's Superannuation Circular No. II.D.3 *Acquisition of Assets from Related Parties*, issued in November 2000:

'The prohibition is not restricted to acquisitions of assets, which occur only as a result of a purchase. Rather, the term "acquire" has a wider meaning and is generally taken to envisage any means by which the trustee becomes the legal or equitable owner of the asset. The intentional transfer or assignment of assets from a related party to the trustee of a fund, such as a life insurance policy acquired from a member of the fund or a relative of a member, is also subject to the prohibition.'

The situation regarding the transfer of an existing policy from a related party of the SMSF (other than a fund member or relative of a fund member), such as a company-owned policy on an insured member, is not as clear. Depending on specific circumstances, this may be permitted. However, clients and advisers should seek their own legal advice on this issue or perhaps apply for a private ruling from the ATO.

CommInsure's procedures

Section 66 of the SIS Act is a complex provision, and it is the responsibility of the SMSF trustee to ensure that the section is not breached. If CommInsure receives a MOT requesting a change of policy ownership from a related party to a SMSF, we will write to the clients warning that this action may breach section 66. If the clients still wishes to proceed, they will be asked to sign a letter confirming their understanding of this possible breach, after which CommInsure will action their request. If it is an MOT telephone enquiry from a client or an adviser, our Contact Centre will inform them of a potential breach – without providing any financial advice.

Replacement policy as an alternative

As an alternative, a client may choose to replace an existing policy with a new policy owned by the SMSF trustee under CommInsure's SMSF Plan. A potential problem with this approach is that the client will usually be subject to full underwriting. Fortunately, CommInsure will generally cancel and reissue (i.e. replace) an existing CommInsure policy issued after 1 July 1997* without underwriting if there is no increase in risk, to be owned by the SMSF trustee under the SMSF plan.

Ultimately it is the adviser's and trustee's decision as to the option (MOT or replacement) they would like to exercise and it is their responsibility that it meets legal requirements and their obligations.

* Except for certain legacy policies issued in 1998-99.

Summary

When there is a compelling reason to change the ownership of a life insurance policy from personal to SMSF ownership, clients and their advisers need to be careful not to breach the SIS Act in relation to the transfer of assets into the SMSF. In that situation, it would be prudent to apply and be accepted for a replacement policy rather than use a Memorandum of Transfer.

Important information

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