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# SAFs can provide powerful estate planning solutions

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A small APRA fund (SAF), which is essentially an SMSF with a professional trustee, can provide valuable estate planning solutions for families with particular needs. In this article, we outline two strategies where an SAF may assist families in second (or subsequent) marriages and those caring for intellectually disabled children.

**The SAF blended family strategy**

With one in three marriages ending in divorce (according to the ABS in 2013), it's no surprise that the number of blended families in Australia is rising. Those who remarry are often keen to ensure their new spouse will be well looked after if they die. However, there is also often a strong desire to leave assets to children from previous marriages. This can be particularly important when people remarry later in life and do not have any subsequent children.

Using the SAF blended family strategy, a super death benefit can be paid as a pension to a second (or third) spouse (known as the pension beneficiary) throughout that spouse's life. Then, when that spouse dies, any remaining capital is returned to the original deceased super member's estate and the capital is distributed to their children or other superannuation death benefit dependants (the remainder beneficiaries).

The strategy requires a special purpose superannuation trust deed that supports the death benefit design to be included as part of the super fund.

Members make a written binding determination to the trustee confirming the identity of the pension beneficiary and the remainder beneficiaries. The binding determination also includes the calculation method of the maximum pension benefit to be paid to the pension beneficiary.

**Calculating the pension**

The pension is calculated as a multiple of average weekly ordinary time earnings (AWOTE), which is currently $1,516 (as at November 2016) or $78,832 per annum. The use of AWOTE provides a strong indicator of purchasing power and provides members with a sound basis for determining their spouse's future income needs.

For example, if a member wanted their spouse to receive an annual pension of $100,000 they would currently select an annual pension of 66 times AWOTE ($1,516 x 66 = $100,056 per annum).

The annual pension payment will be adjusted as at 1 July each year to reflect the updated AWOTE figure. The multiple of AWOTE will not change. The only other determination in calculating the annual pension amount is that the minimum pension required by superannuation law must always be paid. If the multiple of AWOTE chosen by the member was less than the minimum annual pension required by law, the higher minimum would be paid.

The pension beneficiary can vary the annual pension payment between the superannuation minimum pension amount and the amount previously determined by the member. However, the pension beneficiary cannot elect an annual pension payment above the amount pre-determined by the member.

The pension beneficiary cannot commute or roll over the pension payment, however they can forfeit their benefit and have it passed to the remainder of the beneficiaries at any time.

**On the death of the pension beneficiary**

Following the pension beneficiary's death, any remaining balance is paid to the remainder beneficiaries. The payments can be made directly to the beneficiaries or may be paid to the original member's estate and distributed via testamentary trusts.

In a SAF, the professional licensed trustee is an unrelated, independent and unbiased party.

While the blended family strategy outlined in this article is available in a SMSF, the concern for many people is that if there is friction between the second spouse (often also a member of the SMSF) and the children from previous marriages, things may not go to plan.

With cheque book in hand, the second spouse could disappear with the money. While the children would have recourse for breach of the trust deed provisions, locating the spouse and commencing legal proceedings could be a lengthy and expensive process.

**Intellectually disabled adult children**

SAFs can also provide members caring for intellectually disabled children with effective solutions for asset protection and financial care after both parents die. Often this involves planning for the care of an intellectually disabled adult child in their 50s or 60s.

Superannuation funds can provide tax-effective death benefit pension payments to intellectually disabled adult children, who, unlike non-disabled children, are not compelled to commute their death benefit pensions at age 25. The impediment of the disabled person (or their legal personal representative) needing to be a trustee is removed when using a SAF because, unlike an SMSF, a SAF has a professional trustee.

Following the death of the parents, the superannuation in the SAF can be paid as a tax-effective income stream to the intellectually disabled adult child.

The strategy works the same as the blended family strategy, however, rather than pre-determining a pension amount for the disabled person, the income is determined in consultation with family and carers and based on the person's individual needs.

The existence of the professional trustee can also ensure that the disabled person continues to receive ongoing needs (medical, lifestyle, housing and financial) once the parents have died. Further payments can also be made from the pension to meet additional medical and lifestyle requirements.

**Conclusion**

A SAF can provide an effective estate planning tool for blended families who wish to provide for a second spouse during their lifetime and also wish to leave assets to children from former relationships. They can also provide peace of mind for families caring for disabled children.

Costs associated with managing a SAF are summarised in the Cuffelinks article, *The other self-managed super funds*.

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