

Update: 17 September 2009 Dangers for members of self managed super funds



Fleming Muntz
Solicitors



Summary

Those who hold their super in a self-managed fund need to take particular care in making arrangements for the distribution of benefits on their death.

What's changed?

The case of *Katz v Grossman* [2005] NSWSC 934 highlighted issues that can arise when paying out a death benefit from a self managed superannuation fund ('SMSF'), and the importance of having the right persons acting as trustees of the fund.

The facts of *Katz v Grossman*

Mr & Mrs Katz were members and controllers of their SMSF. They had two children, Linda and Daniel. After Mrs Katz died, Mr Katz appointed Linda as co-trustee of the fund. Later, when Mr Katz died, Linda appointed *her husband* as co-trustee of the fund. Prior to his death, Mr Katz had nominated his two children, Linda and Daniel, to receive his entitlements in the fund in equal shares on his death. However, this nomination was not a binding nomination, and consequentially Linda and her husband (as trustees of the fund) could decide who received Mr Katz's superannuation entitlements. Linda and her husband resolved to pay all of Mr Katz's superannuation (approximately \$1 million!) to Linda to the exclusion of her brother Daniel.

Daniel took the matter to the Supreme Court. Unfortunately for him, the Court could not change what had occurred, and Daniel received no part of his father's superannuation.

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What are the lessons to be learnt from this decision?

This outcome could easily have been avoided if Mr Katz had put a legally enforceable arrangement in place in relation to his super prior to his death, in the form of a "Binding Death Benefit Nomination".

How can Fleming Muntz help?

When dealing with estate planning, it is important to not only consider a person's wishes, but to also consider the most legally effective way to ensure those wishes are carried out on death. Fleming Muntz can assist clients to take the appropriate steps to ensure that a situation like *Katz v Grossman* is avoided, and that their wishes are carried out.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

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