

CHEAP AND EASY TRUST DEEDS MAY PROOVE COSTLY

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Lawyers have raised concerns that trustees of self-managed superannuation funds (SMSFs) could be putting themselves at risk by using low-cost trust deeds available over the internet. DBA Lawyers' Dan Butler said that some trustees were paying for "off-the-shelf" trust deeds, which specify the rules of the fund, through online providers that were potentially invalid.

"The reasons that some deeds may not be valid is that some providers are not legally qualified to provide them.

Also the deeds may not reflect the complexity of a client's situation and the provider does not have professional indemnity insurance if something goes wrong with the deed," he said.

The rapid increase in the number of SMSFs in recent years to more than 445,000 funds, has created huge growth in demand for low-cost and efficient services that enable funds to be easily established and trust deeds obtained.

Various online providers also offer to update deeds for as little as \$100, whereas the cost of obtaining similar documents through a lawyer can be much more, even 75 per cent higher, because of the manual process involved and interaction with a legal expert.

Townsend's Business and Corporate Lawyers provides trust deeds through its practice and also through Super Central, an SMSF trust deed website. The law firm's special counsel superannuation Michael Hallinan believes that the vast majority of online providers used trust deeds that are prepared by lawyers.

He said that the main risks to trustees did, however, stem from using deeds that were poorly drafted or not signed properly.

"The first risk is generally minimal because most providers are legal experts or they rely on legal experts to prepare the base trust deed," said Mr Hallinan. "But the main problem we find is that trustees will witness each other's signature which can make a deed invalid."

But Mr Butler maintains that trustees who use web-based trust deed services need to ensure that the documents they are receiving gain the appropriate sign-off by legal practitioners and that any risks to them are being disclosed.

“Advisers who are not legally qualified with a current legal practising certificate are taking substantial risks. Such advisers could also be placing their SMSF clients at considerable risk and in breach of the law,” he said.

A number of accounting bodies, whose members must comply with a professional code of conduct, prohibit their members from preparing legal documents which should be carried out by lawyers.

Substantial penalties apply, including two years imprisonment in Victoria, where a person who is not a legal practitioner undertakes legal work and gets paid for it.