Plan for loss of capacity

Dementia will mean changing trustees

DIY SUPER

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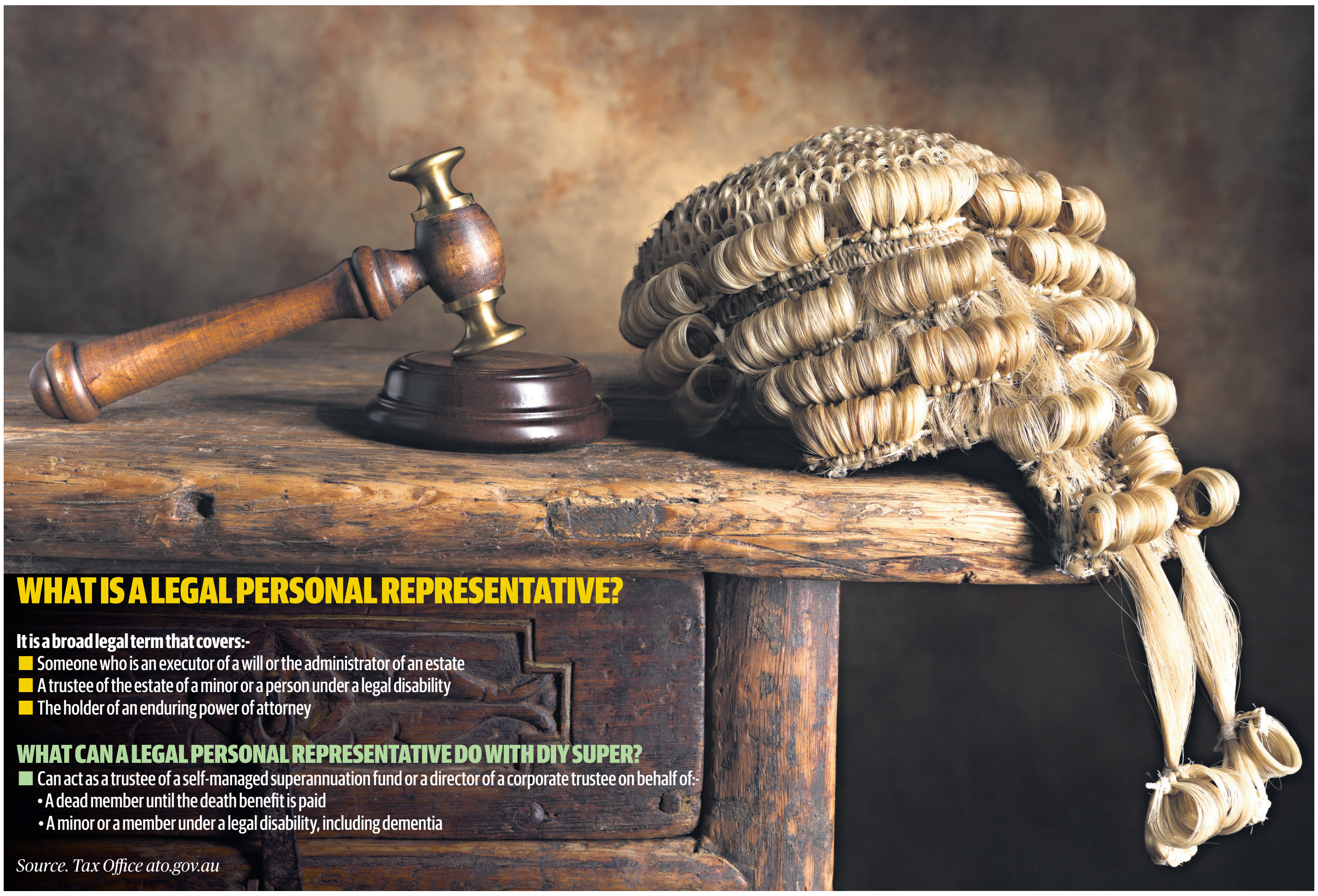

Self-managed superannuation fund members should consider carefully what you will do if you can no longer run your fund.

Should you no longer have the mental capacity to manage your affairs, understanding the options available to you will give you the peace of mind that you can protect your retirement savings and still have some security in your twilight years.

This is not some abstract issue given there are more than 350,000 Australians living with dementia. With about 42 per cent of SMSF members aged 55 and older, the threat of dementia is a looming issue.

One option is to retain the SMSF. While the loss of mental capacity means an SMSF member can no longer make decisions for their SMSF, they can appoint someone to take on their trustee responsibilities.

The superannuation law allows a legal personal representative (LPR) who holds an enduring power of attorney (EPA) to be appointed as a trustee or a director of the corporate trustee in place of the member.

An EPA does not simply allow someone to act on behalf of the member, the member must resign as trustee or director of the corporate trustee and the LPR then be appointed.

That person should be someone who is trustworthy and older than the age of 18 and have the mental capacity to make decisions. A person who accepts the EPA must understand the legal position that they are putting themselves in and the member must understand that the EPA gives the LPR power to make decisions for the SMSF.

> PROBABLY THE MOST OBVIOUS CHOICE IS TO WIND UP THE SMSF BY ROLLING MONEY INTO A RETAIL FUND.

The power of attorney can come into effect immediately or when (or if) the SMSF member becomes incapable of making decisions. The SMSF's trust deed must allow for the appointment of the person holding the EPA as a trustee. The resignation of the member as a trustee or director of the corporate trustee must be in accordance with the trust deed, superannuation law and other relevant laws.

Each State and Territory has different laws for powers of attorney, so regard must be given to their specific provisions to ensure the EPA is valid.

The SMSF must also lodge a change of details document with the Australian Tax Office and ASIC (for change of directors) to ensure regulatory compliance. All relevant documents must be sighted by the SMSF's auditor at the annual audit of the SMSF.

If the SMSF has individual trustees, there may be additional costs involved in changing the legal ownership of the SMSF's assets because of the new trustee. Changes to the legal ownership of assets are not necessary if the SMSF has a corporate trustee.

The next option and probably the most obvious choice is to wind up the SMSF by rolling money into a retail superannuation fund, regulated by the Australian Prudential Regulation Authority (APRA).

Most retail superannuation funds have a range of investment options available. Some allow assets such as listed shares to be transferred to them. Others will only allow cash — which means assets would need to be sold.

If the SMSF is in accumulation phrase, the sale of assets will trigger capital gains tax. If the SMSF is in pension phase, no capital gains tax is payable on the sale of assets supporting the pension.

The last option is not something many SMSF investors are aware of. You could convert the SMSF into a Small APRA Fund (SAF). A SAF is similar to an SMSF but instead of the member being the trustee, a professional licensed trustee is responsible for running the superannuation fund.

Therefore, if an SAF contravenes superannuation law, the member is not liable. Like SMSFs, SAFs can acquire a broad range of assets and use similar investment strategies.

SAFs offer the flexibility of an SMSF but without the trustee responsibilities. Capital gains tax is avoided when switching from an SMSF to a SAF. This is because only the trustee changes.

The superannuation fund continues uninterrupted and does not dispose of any assets. Moving to a SAF may help retain investments such as shareholdings, investment properties or business real estate, so this is a good option for SMSF investors who want to keep existing investments.

Monica Rule is an SMSF specialist and has just written the sixth edition of The Self Managed Super Handbook – Superannuation law for SMSFs in plain English

Finding aged care is too complex to do on your own

Louise Biti

Think back to the first time you attempted anything. How well did you do? How long did it take you to work out how to do it and how many mistakes did you make along the way?

Some tasks are too complex and too important to do on your own. Working out the options available to fund a move into aged care is one of those daunting tasks that might be best done with help from a financial planner who is experienced in aged care advice.

Advice from a financial planner can help you and your family set your priorities, review your financial position and determine what you can afford, estimate the fees you might be asked to pay for care, determine the financial implications for selling or renting your home and identify opportunities to maximise the value of your estate.

Let's look at a hypothetical example. The residential aged-care service that Carol and her children, Helen and Alex, selected was close to Helen's home so she could visit her mother regularly, but it required a refundable accommodation deposit — RAD — that exceeded Carol's assets.

Helen thought she might need to help pay some of the cost for her mother (even though this might cause her financial difficulty) as she couldn't see alternatives other than looking at a cheaper residential service a lot further away.

The family sought advice from a financial planner and were relieved by the advice on options to use Carol's savings to pay a part-RAD, with the rest to be paid as a daily accommodation payment — DAP.

The family were advised to instruct the service provider to deduct the DAP from the RAD paid.

This reduces how much will be refundable to Carol's estate when she dies but takes the pressure off her cashflow so she can afford to pay her fees on her own.

The biggest expense with residential aged care is paying for the accommodation. You will be asked to pay a lump sum (the RAD) but if you don't want to sell assets you could choose to convert this into a daily fee (the DAP) using an interest rate set by the government. The rate is currently 5.76 per cent.

> YOU WILL BE ASKED TO PAY A LUMP SUM BUT IF YOU DON'T WANT TO SELL ASSETS YOU COULD CHOOSE TO CONVERT THIS INTO A DAILY FEE.

So, for example, if you are asked to pay a RAD of $400,000 you could choose to pay this lump sum or pay a daily fee of $63.12 (in addition to your daily care fees) or a combination. An adviser can help you make this decision.

By seeking advice, you don't have to face the decisions alone. Getting advice can guide you through the process to assess the solutions that suit you and your family.

Louise Biti is director of Aged Care Steps