

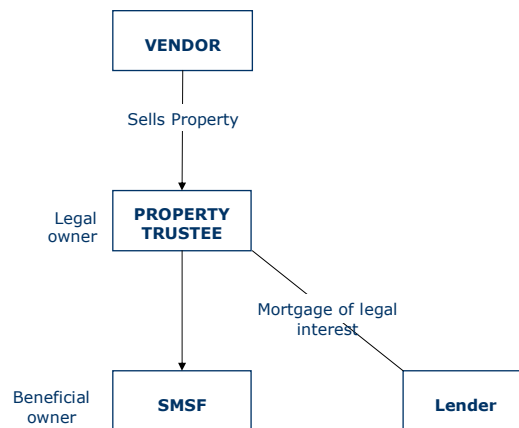
Borrowing by Self Managed Super Funds

The Basic Rule

Superannuation Industry (Supervision) Act 1993, section 67(4A) provides that a superannuation fund can borrow money if:

- the money borrowed is used to purchase an asset;
- the asset is held on trust so that the fund acquires a beneficial interest;
- The fund has the right to acquire legal ownership by making payment;
- The rights of the lender against the fund on default are limited to the security.

The Structure



The Process



- Establish/review the SMSF
- Establish the Property Trust Deed
- Obtain loan approval
- Contracts signed/exchanged
- Loan documents issued
- Settlement

Commonly Asked Questions



Question 1. How does my SMSF purchase a property?

Answer:

- SMSF chooses the property.
- Contract of Sale entered by Property Trustee.
- SMSF obtains loan approval.
- SMSF pays deposit, balance purchase money (less the amount borrowed), legal costs, and stamp duty in the normal way.
- On completion the SMSF borrows from the Lender. The property Trustee mortgages the legal title to the property to the Lender.
- The SMSF then manages the asset in the usual way.

Commonly Asked Questions



Question 2. What Paperwork is involved?

Answer:

- **Property Trust Deed** under which the Property Trustee holds the property as trustee for the SMSF.
- **Contract for Sale** to purchase the property (entered into in the name of the property trustee).
- **Loan Agreement** between the Lender and the SMSF.
- **Mortgage** over the property between the Lender and the Property Trustee.
- **Personal Guarantee** by members of the SMSF.

Commonly Asked Questions



Question 3. Can fund members occupy the property?

Answer:

- No. If fund members or related persons occupy the property, the “in-house asset rule” will have been breached.
- However, the SMSF can buy property that the members intend to live in after retirement.

Commonly Asked Questions



Question 4. Are there any other restrictions?

Answer:

- SMSF must comply with all regulations applying to superannuation funds.
- SMSF must ensure that the level of investment in real property is in line with the fund investment strategy.
- No specific prohibition on 100% of the funds total assets being in real property but SMSF may not be able to meet its diversification requirements under such a strategy.

Commonly Asked Questions



Question 5. Who pays what and when?

Answer:

- SMSF is responsible for paying all the usual overheads that any investor would expect to pay. For example:
 - council rates, water rates, and land tax (if any);
 - interest and other loan repayments;
 - the Lender's fees;
 - repairs;
 - property management costs; and
 - insurance premiums.

Commonly Asked Questions



Question 6. How can I sell the property?

Answer:

- The SMSF can direct the Property Trustee to enter into a contract for sale of the property to any third party.
- On settlement the mortgage loan is paid out.

Commonly Asked Questions



Question 7. What happens when the loan is paid out?

Answer:

- SMSF is entitled to have the legal title transferred to it.
- Transfer should be possible without incurring tax, GST, or stamp duty liabilities (other than nominal).

Commonly Asked Questions



Question 8. Who can be the Property Trustee?

Answer:

- The Property Trustee must be a separate entity from the SMSF Trustee.
- It is possible but not desirable for an individual member of the SMSF to act as a Property Trustee due to trust law issues regarding the merger of the interests of the trustee and the beneficiary.
- It is recommended that a special purpose company be registered to act as Property Trustee.

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