

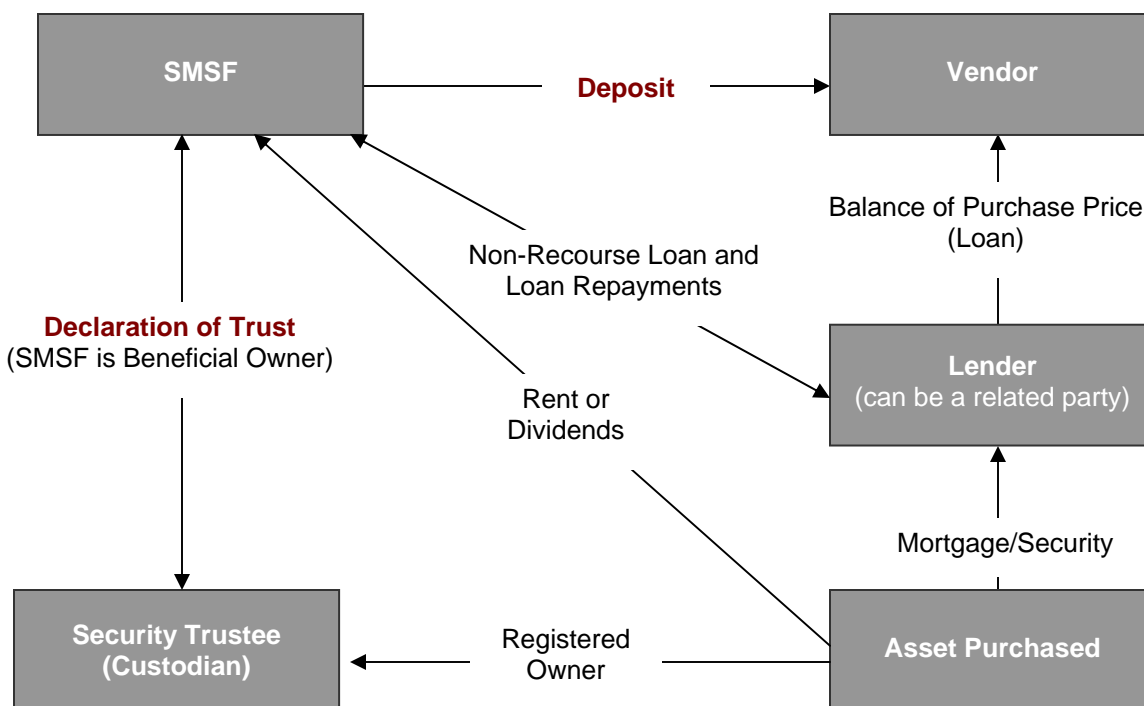
SMSF Borrowing Fact Sheet Guide for SMSF Trustees.

The New Rules

Section 67 (4A) of the Superannuation Industry Supervision Act was amended in September 2007 allowing self managed superannuation fund (SMSF) trustees to borrow to acquire assets, subject to certain conditions being met. The conditions of the arrangement are:-

- The borrowing is limited recourse – the lenders only security is the asset purchased (no personal guarantee permitted unless structured so that there is never any call on SMSF assets);
- The SMSF could ordinarily acquire the asset without borrowing; and
- A third party (security trustee) holds legal title to the asset on trust for the SMSF trustee. The SMSF Trustee then has a beneficial interest and a right to call for a transfer of legal title when the loan is repaid and the mortgage discharged.

The Typical Borrowing Structure



Example of asset held on trust for SMSF by security trustee until loan repaid and mortgage discharged. All asset income paid to SMSF to finance loan repayments

Documentation required

- SMSF Deed Establishment/Upgrade
- Custodian Trust
- Loan Documentation (bank lending versus related party – the latter will require non-bank loan documentation)
- Mortgage Documents
- Lease Documents (where required)

This list may not be exhaustive and use of a checklist from your preferred document supplier is recommended.

Establishment Costs

- Stamp duty (property) and conveyancing
- Lenders fees
- Advice fees from your Financial Planner including a written Statement Of Advice
- Legal advice, documentation (trusts) and lending documents
- Insurance – personal (life and salary continuance) and general (building, contents etc)
- Accounting and taxation advice (where required)

Dollar figures have not been provided because of the varying services available. Your financial planner can provide approximations...

SMSF Trustee Requirements

A SMSF Trustee borrowing funds on behalf of the SMSF must ensure that:

- The loan complies with the SIS Act, including the lenders rights against the SMSF trustee for a default on the borrowing being limited to the underlying asset only;
- The fund has sufficient cash flow to repay the principal and interest (without relying on member contributions);
- The SMSF deed allows the SMSF trustee to borrow and acquire the relevant asset (you may need a legal review of the trust deed);
- The transaction is consistent with the SMSF investment and risk management strategy (the investment must be in the best interest of members and the risks and benefits have been considered)
- A declaration of trust is executed between the security trustee and fund trustee; and
- The structure of the transaction and the investment is signed off by the fund auditor as compliant with the Superannuation Industry Supervision Act (SIS).

SMSF Trustee Considerations

Issues for SMSF trustees to consider when borrowing are:

- the sole purpose test – assess the situation to ensure the investment is for the sole purpose of providing member benefits
- the investment strategy – are the fund's investment strategy and risk management procedures in line with their investments?
- in-house asset rules – do they apply?
- related party acquisitions – a super fund is prohibited from acquiring assets from members and related parties except for business real property and listed securities
- arm's length – the terms and conditions of the borrowing arrangement must be as if the transaction was done at arm's length
- cash flow – the fund must have sufficient cash flow to pay interest
- commercial matters – assess the investments from a commercial viewpoint for acceptable returns and expenses such as tax (including CGT and land tax) and stamp duty, and
- regulation – caution needs to be exercised when considering regulation. There may be conflict with contribution caps and possible new rules; a limited window of opportunity may apply.

Some Tax and Legislative Issues/Considerations

- Capital Gains Tax
- Stamp Duty – establish documentation correctly to avoid double duty
- Land Tax
- Goods and Services Tax
- Div 7A loans
- Deductibility of interest

Panel of Lenders

The lender can be a bank, non-bank financial institutions, specialist financiers, margin lenders or a related party.

Disclaimer: The information contained within this document is based on information believed to be accurate and reliable as at 1 July 2008 and is subject to change.