

SMSF's to buy Property - Frequently Asked Questions

Q How does my SMSF purchase a property?

The SMSF chooses the property it wishes to invest in, in the ordinary way. Residential property must be purchased from an arm's length vendor. Non residential property can be purchased for full value from related parties so long as the property is let for business purposes.

The SMSF obtains a loan approval.

The SMSF's own lawyer/conveyancer acts on the purchase in the ordinary way. The purchase MUST be in the name of the Property Trustee.

The SMSF pays the deposit, the balance purchase money (less the amount borrowed), the legal costs, and stamp duty in the ordinary way.

On completion of the purchase the Property Trustee mortgages the property to the lender.

SMSF then manages the asset in the same way as you would with any other real estate investment.

Q Can I occupy the property?

No. If a member of the SMSF occupies the property the "in-house asset rule" would be breached. However, the SMSF can buy a property that the investor intends to live in after retirement. This is possible if you transfer the property from your super fund to yourself after you retire.

Q I thought super funds could not borrow or charge their assets. Is this correct?

That was correct, until amendments to the Superannuation Industry (Supervision) Act 1993 (SIS Act) made in September 2007.

Under the new section 67 (4A) of the SIS Act, SMSFs can borrow providing the following conditions are satisfied.

- The borrowed funds are used to purchase an asset (e.g. real estate)
- The asset is held on trust for the SMSF by another entity (i.e. the Property Trustee).
- The SMSF must have the right to acquire legal ownership of the asset by making payment.
- The lender's recourse against the SMSF must be limited to the underlying asset (i.e. the purchased property). The lender must not have a right of recourse against other assets of the fund.

Q What other restrictions apply?

SMSFs must comply with all regulations applying to superannuation funds.

SMSFs may acquire up to 100% of the fund's total assets in the form of real property. SMSFs must ensure that the level of investment in real property is in line with the fund's investment strategy, including diversification of assets, liquidity, and maximisation of member returns in the fund.

Where a fund invests 100% of its assets in real property, trustees must ensure that the fund continues to meet these requirements, for instance they must ensure the fund has sufficient liquidity to meet its liabilities (such as pension payments).

The government has also made it clear that super funds investing in these types of investments must have appropriate risk management measures in place and must understand the risks of investment.

Q Who pays what and when?

As the beneficial owner of the property and the borrower of the loan, the SMSF is responsible to pay all the usual amounts that you would expect to if you had bought an investment property and borrowed money on it in your own name rather than your super fund. For example, your SMSF will be required to pay council rates, water rates, and land tax (if any); interest and other loan repayments; lender's fees; repairs; property management costs; and any insurance premiums management fees imposed by the Property Trustee.

Q What about land tax?

As the SMSF is the beneficial owner of the property, land tax is payable by the SMSF. The SMSF will only have to pay land tax if the total land values exceed the proscribed amount.

Q What happens when the loan is fully repaid? Can legal title be transferred to the SMSF?

Would any stamp duty or GST be payable with respect to the transfer?

When the loan is fully repaid, the SMSF is entitled to have the legal title transferred to it. Depending on how the trust structure is set up and administered, this transfer should be possible without incurring tax, GST, or stamp duty liabilities (other than nominal) as the SMSF will already be the beneficial owner. Of course, this position may change because of future changes in the laws.

Q How can I transfer the property?

The SMSF can direct the Property Trustee to sell to any third party (subject to paying out the mortgage loan and any other amounts which might be outstanding).

Q Who can be the Property Trustee?

The Property Trustee should be an arms length trustee from the SMSF Trustee and the members of the SMSF. This is to ensure that the transaction is not a facade, and the related party and in house asset rules are complied with.