

**From:** Miroslav Zidlicky  
**Sent:** Wednesday, 6 March 2019 8:25 AM  
**To:** tombay1@bigpond.com  
**Subject:** Previous email seeking advice dated 23/1/2019 at 11.46am[SEC=UNCLASSIFIED]



Australian Government  
Australian Taxation Office

## [Super advice - For your information]

Reference Number: 1051491306770

Dear Margaret

Thank you for your email dated 23 January 2019 querying whether a self-managed **superannuation** fund (SMSF) can build a duplex on a property that is own by the SMSF. We further refer to a phone conversation between yourself and taxation officer, Miroslav Zidlicky on 5 March 2019 and apologise for the delay in our response.

The following guidance is general in nature and not binding on the Commissioner.

In your email you advised that:

- the SMSF owns the relevant property
- the property currently contains a residential house
- the duplex will be built at the back of the property, behind the existing house
- the SMSF will use its own cash to construct the duplex and will not borrow.

### **Investment restrictions**

The *Superannuation Industry (Supervision) Act 1993* (SISA) and the *Superannuation Industry (Supervision) Regulations 1994* (SISR) do not prescribe what a fund can and cannot invest in, they do however, restrict some investment practices of superannuation funds. The investment restrictions in the SISA and SISR aim to protect fund members by ensuring fund assets are not overly exposed to undue risk.

The investment rules are one of the most important requirements of the SISA and in summary, trustees need to ensure that a proposed investment:

- is permitted by the fund's trust deed;
- is in accordance with the fund's investment strategy;
- satisfies the sole purpose test;
- does not involve allowing a charge over fund assets or member benefits;
- does not involve a borrowing by the SMSF (with limited exceptions);
- does not constitute a loan or financial assistance to a member or member's relative;
- does not exceed the in-house asset limits;
- is not an acquisition from a related party (with limited exceptions);
- is made and maintained on an arm's length basis.

As advised over the phone, providing the SMSF's trust deed and investment strategy allows this type of investment there is no provision in the SISA or the SISR that would specifically prohibit this type of investment.

**If you have any questions, you can  
reply to this email, or phone us on**

**13 28 69**

Between 8.00am and 6.00pm, Monday to Friday, and ask for Miroslav  
Zidlicky on extension 33132. Please have reference number  
**1051491306770** ready, so that we can quickly access your details.

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Minutes of Trustees Meeting of Stewarts Superannuation Fund

Date : 6 March, 2019

Present: Thomas Stewart and Margaret Stewart

Minutes: The Chairperson reported that the minutes of the previous meeting had been signed as true record

Purpose: For the trustees to discuss the proposed development of property at 8 Doonella Street, Tewantin in light of reply from ATO (see attached reply)

Discussion: Thomas and Margaret discussed how best to derive a liveable income in retirement from the Super Fund's existing assets. At present dividends from share holdings, term deposits, and rental from 8 Doonella Street, are not enough to support them both comfortably.

Given that the ATO has approved, in theory, the building of a duplex at the rear of the block at 8 Doonella Street and as there was enough cash, after liquidating some shares, to commence calling for quotes and building said duplex without borrowing funds, the trustees felt it was timely to call for building quotes to build the duplex, which upon completion, would triple the income presently derived from the existing asset.

Action: Margaret to go ahead and liquidate 3000 CBA shares.

Tom to commence the process of asking Steve Campbell to approach builders wanting to quote on building the duplex.

Closure: 2.30pm March 6, 2019

Confirmed:



T.A. STEWART



M.L. STEWART

**From:** Tom Stewart  
**Sent:** Saturday, 23 November 2019 1:05 PM  
**To:** Tom Stewart  
**Subject:** Minutes of Trustees Meeting of Stewarts Super Fund

## Minutes of Trustees Meeting of Stewarts Super Fund

Date: 10 March, 2019

Present: Thomas Stewart and Margaret Stewart

Minutes: The Chairperson reported that the minutes of the previous meeting had been signed as a true record

Purpose: For the trustees to discuss the present condition of now vacant rental dwelling at 8 Doonella Street, Tewartin

Discussion: The trustees, Tom and Margaret Stewart, did an extensive inspection of the property and realised that several areas of maintenance needed to be addressed. It was discovered that two of the three air conditioning units no longer worked. The house had not been painted externally in approximately forty years and the roof had never been replaced. The house was built approximately in 1950.

The verandah balustrade was showing signs of irreparable rust in support areas and was considered near unsafe. In addition the existing concrete driveway was breaking up and would be considered a tripping risk into the future.

Action: Tom and Margaret agreed to set about arranging quotes for repair and maintenance work to be carried out.

Closure: 3.00 pm 10/3/2019

Sent from my iPad

*Confirmed:*



T.A. STEWART



M.L. STEWART