

PGGLegal

PG Gell Legal Services Pty Ltd

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10 March 2020

Pamela Groat
TLK Partners
PO Box 708
KINGSGROVE NSW 1480

Dear Pamela,

D M Sayes SMSF

The bare trust deed within this pack contains the covenants in its rules as are specified in s67A of the *Superannuation Industry (Supervision) Act 1993* and is compliant with those requirements.

These documents have been prepared on the basis of current rules and by your instructions. You should take specific advice from appropriate experts to determine whether the costs and responsibilities involved in running a limited recourse borrowing arrangement are appropriate for your circumstances.

Yours faithfully



Peter Gell
M Tax
enc.

Email: peter@petergell.com.au

Limited Recourse Borrowing Arrangements

Excerpt: Section 67 – Borrowing & Section 67A

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 – SECT 67

Borrowing

Prohibition

- (1) Subject to this section and section 67A, a trustee of a regulated superannuation fund must not:
 - (a) Borrow money; or
 - (b) Maintain an existing borrowing of money.

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 – SECT 67A

Limited recourse borrowing arrangements

Exception

- (1) Subsection 67(1) does not prohibit a trustee of a regulated superannuation fund (the RSF trustee) from borrowing money, or maintaining a borrowing of money, under an arrangement under which:
 - (a) the money is or has been applied for the acquisition of a single acquirable asset, including:
 - (i) expenses incurred in connection with the borrowing or acquisition, or in maintain or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset), and

Example: Conveyancing fees, stamp duty, brokerage or loan establishment costs.
 - (ii) money applied to refinance a borrowing (including any accrued interest on a borrowing) to which this subsection applied (including because of section 67B) in relation to the single acquirable asset (and no other acquirable asset); and
 - (b) the acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset; and
 - (c) the RSF trustee has a right to acquire legal ownership of the acquirable asset by making one or more payments after acquiring the beneficial interest; and
 - (d) the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
 - (i) the borrowing; or
 - (ii) the sum of the borrowing and charges related to the borrowing;are limited to rights relating to the acquirable asset; and

Example: Any right of a person to be indemnified by the RSF trustee because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the acquirable asset.

- (e) if, under the arrangement, the RSF trustee has a right relating to the acquirable asset (other than a right described in paragraph (c)) - the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the acquiring asset; and
- (f) the acquirable asset is not subject to any charge (including a mortgage, lien or other encumbrance) except as provided for in paragraph (d) or (e).

Meaning of acquirable asset

- (2) An asset is an acquirable asset if:
 - (a) the asset is not money (whether Australian currency or currency of another country); and
 - (b) neither this Act nor any other law prohibits the RSF trustee from acquiring the asset.
- (3) This section and section 67B apply to a collection of assets in the same way as they apply to a single asset, if:
 - (a) the assets in the collection have the same market value as each other; and
 - (b) the assets in the collection are identical to each other.

Example: A collection of shares of the same class in a single company.

- (4) For the purposes of this section and section 67B, the regulations may provide that, in prescribed circumstances, an acquirable asset ceases to be that particular acquirable asset.

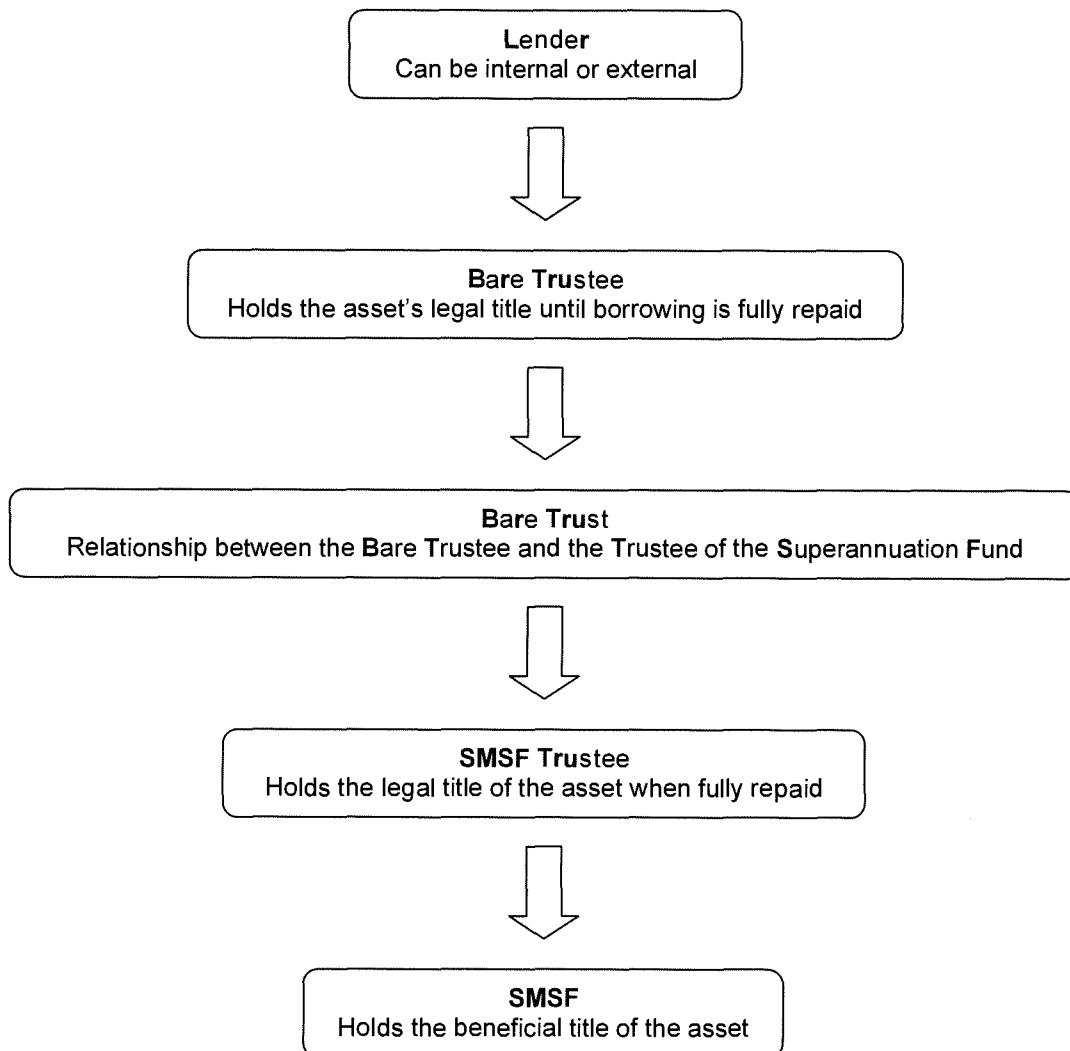
RSF trustee

- (5) Paragraphs (1)(d) and (e) do not apply to a right of:
 - (a) a member of the regulated superannuation fund; or
 - (b) another trustee of the regulated superannuation fund;

to damages against the RSF trustee for a breach by the RSF trustee of any of the RSF trustee's duties as trustee.

- (6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to a right of any person against the RSF trustee includes a reference to a right of a person who is the RSF trustee, if the person holds the right in another capacity.

Simplified limited recourse borrowing arrangement structure

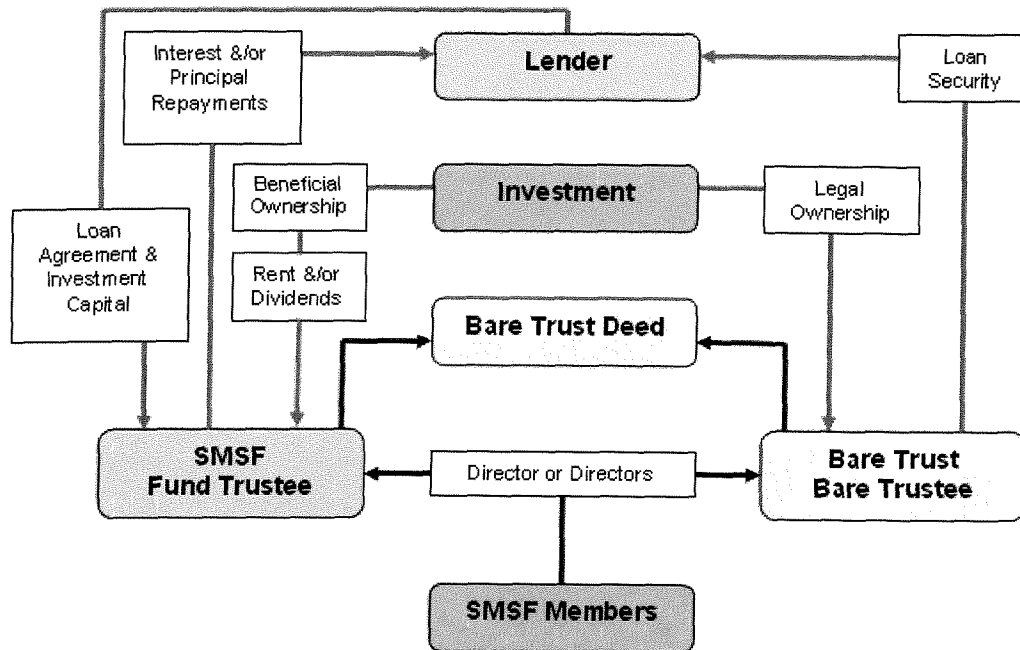




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Typical limited recourse borrowing arrangement set-up

Corporate trustee



Please note:

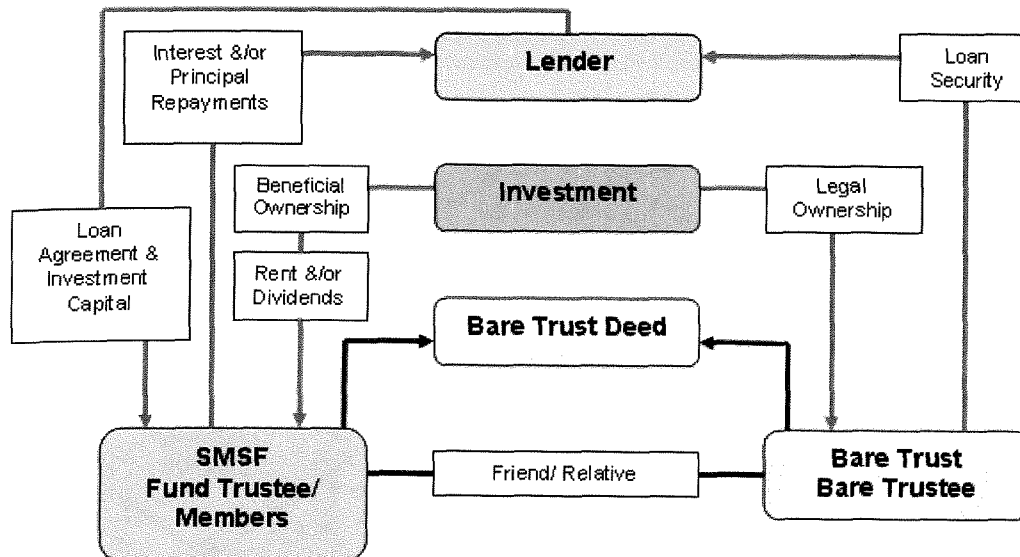
- Red arrows represent the legal processes that occur for the limited recourse borrowing arrangement to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Fund Trustee, the Bare Trustee and the SMSF Members.
- The SMSF & Bare Trust Deed cannot have the same trustee, however, they can have the same directors of different corporate trustees.
- The member or members of an SMSF can also perform the function of the Lender, and it is up to the Lender and SMSF Members to determine the loan security, and the frequency and structure of repayments. If a financial institution is the Lender and requires additional security over the amount borrowed then professional advice should be obtained.



Reckon™

Typical limited recourse borrowing arrangement set-up

Individual trustees



Please note:

- Red arrows represent the legal processes that occur for the limited recourse borrowing arrangement to be implemented correctly.
- Black arrows represent the relationship between the two trust structures, the Fund Trustee, the Bare Trustee, and the SMSF Members.
- The SMSF & Bare Trust Deed cannot have the same trustee, however, they can have the same directors of different corporate trustees.
- The member or members of an SMSF can also perform the function of the Lender, and it is up to the Lender and SMSF Members to determine the loan security, and the frequency and structure of repayments. If a financial institution is the Lender and requires additional security over the amount borrowed then professional advice should be obtained.

Bare Trust Deed

Prepared by:

PGGLegal
PG Gell Legal Services Pty Ltd

Bare Trust Deed

This Deed is made on the Date of this Deed as described in the Schedule.

Parties

Between

The person or persons, entity or entities named and described in the Schedule as the Bare Trustee.
(‘the Bare Trustee’)

And

The person or persons, entity or entities named and described in the Schedule as Fund Trustee.
(‘the Fund Trustee’)

Recitals

The Bare Trustee has acquired or intends to acquire the Investment described in Section 5 of the Schedule (‘the Investment’) as bare trustee (such trust now referred to as ‘the Trust’) for the Fund Trustee as trustee of the Self-Managed Superannuation Fund described in Section 2 of the Schedule (‘the Fund’) and in accordance with the terms of this Deed.

Provisions:

1. The Trust is established and will take effect upon execution of this Deed.
2. All monies required for the purchase of the Investment will be provided by the Fund Trustee and the Bare Trustee will at all times, hold the Investment in trust for the Fund Trustee.
3. The Fund Trustee has the beneficial interest in the Investment and in all the earnings, profits or gains accrued or to accrue in respect of the Investment at all times;
4. The Bare Trustee or the Bare Trustee’s successor will effect the transfer of the Investment to the Fund Trustee for nil consideration as and when directed by the Fund Trustee following the making of one or more payments by the Fund Trustee after acquiring the beneficial interest in the Investment in accordance with the *Superannuation Industry (Supervision) Act 1993*.
5. The Bare Trustee has been authorised by the Fund Trustee to complete any documents giving effect to any purchase, sale and registration of transfer of the Investment as instructed by the Fund Trustee.
6. All dealings with the Investment including the exercise and performance of all the rights duties and powers relating to the Investment will be exercised by the Bare Trustee only as directed by the Fund Trustee.
7. The Bare Trustee will grant a mortgage or charge over the Investment if requested by the Fund Trustee and not otherwise. The Bare Trustee shall have the power to grant indemnities and to enter into guarantees to secure the borrowings of the Fund Trustee used to fund the acquisition of the Investment referred to in the Schedule.
8. The Bare Trustee agrees to limit any rights of indemnity it may have as against the Fund Trustee and the Fund for the purposes of s67A(1)(d) of the *Superannuation Industry Supervision Act 1993* to the Investment (as the acquirable asset for the purposes of that section) only, and not to other assets of the fund of which the Bare Trustee is trustee.

9. The Bare Trustee indemnifies the Fund Trustee for any loss incurred by the Fund Trustee incurred by any breach by the Bare Trustee of the terms of this Deed or for any act, omission, fraud, misrepresentation or default of the Bare Trustee or its servants or agents under the terms of this Deed.

Schedule

1. **Date of this Deed:** / /
 DD / MM / YYYY
2. **Fund Name:** D M Sayes SMSF
3. **Bare Trustee:** D M Sayes BTT Pty Ltd
 ACN 639 685 297
4. **Fund Trustee:** D M Sayes SMSF Pty Ltd
 ACN 639 685 279

5. **Investment:**

Please print details of Investment

Execution

Executed as a Deed.

EXECUTED by
D M Sayes BTT Pty Ltd
ACN 639 685 297
as Bare Trustee
in accordance with section 127 of the
Corporations Act 2001 by its Directors
or Director and / or Secretary:

Please print name of Director / Sole Director*

Signature

Please print name of Director / Secretary*
* Delete as appropriate

Signature

_____/_____/_____
Date

EXECUTED by
D M Sayes SMSF Pty Ltd
ACN 639 685 279
as Fund Trustee
in accordance with section 127 of the
Corporations Act 2001 by its Directors
or Director and / or Secretary:

Please print name of Director / Sole Director*

Signature

Please print name of Director / Secretary*
* Delete as appropriate

Signature

_____/_____/_____
Date