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Bare trusts should use corporate trustees

Advantages over appointing individuals

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Self-managed superannuation fund (SMSF) trustees looking to set up a bare trust for the use of acquiring a property for their fund through gearing should use a corporate trustee for the vehicle instead of individuals, according to a solicitor servicing the sector.

"In most cases banks will want to have a look at the bare trustees before they go through with the loan and some banks, such as Westpac, will actually require a bare trustee to be a company before they will approve such a loan," Townsends Business and Corporate Lawyers superannuation solicitor Lawrence Shim said.

In addition to this requirement by some lending institutions, having a corporate trustee for a bare trust has its advantages in the event of the death of an individual.

"The death of an individual trustee will require surviving members of the super fund to arrange a grant of probate, appoint a new trustee, arrange for transfer of title to the new trustee, register that transfer and the like," Shim said.

"On the other hand if the director of a bare trust corporate trustee dies, you simply transfer the share to someone else. It's that simple," he said.

Furthermore, a bare trust involving corporate trustees will give the vehicle a better and clearer administrative structure.

"In many cases, those same individuals [trustees of the bare trust] are the members of the super fund and it is very easy to get the records mixed up," Shim said.

"Therefore, there is more risk of a merger of interests of the trustee and the beneficiary which can potentially render the super fund non-compliant, and in a worst-case scenario, the super fund may miss out on the investment all together," he said.

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