

Instructions for SMSF Gearing Documents Package

Thank you for your enquiry. If an SMSF wishes to take advantage of s.67(4A) and gear the acquisition of an investment asset it needs to adhere to the following procedure.

The Process – the 15 Steps in a Typical SMSF Borrowing

Typically a borrowing by an SMSF has the following steps:

- 1 Determine (often with the help of the fund's accountant or financial planner) that borrowing would be an appropriate strategy to leverage investment
- 2 Check the trust deed to ensure the SMSF Trustee has power to borrow, grant security and allow assets to be held by custodians/nominees for the trustee (if not, amend the trust deed if appropriate)
- 3 Check the investment strategy to ensure it allows for the acquisition of the investment asset and permits borrowing for that purpose (if not, amend the investment strategy if appropriate)
- 4 Source the asset for purchase, negotiate the price and reach agreement with the vendor
- 5 Finalise borrowing arrangements with the lender including in-principle loan approval
- 6 Determine who is to be the Bare Trustee – if a new company, purchase the new company
- 7 Arrange for the Bare Trustee to resolve in writing to act as custodian of the asset for the SMSF Trustee
- 8 Arrange for the SMSF Trustee to resolve in writing to purchase the asset and to appoint the Bare Trustee to act for the SMSF Trustee as bare trustee of the bare trust
- 9 Arrange for the Bare Trustee (note: not the SMSF Trustee) to sign the purchase contract. Use only SMSF money for any deposit to be paid.
- 10 Ensure the SMSF Trustee provides all the deposit money for the purchase directly from the SMSF's account
- 11 Arrange for the Bare Trustee and the SMSF Trustee to sign the bare trust deed (signing of the bare trust deed must occur before exchange of contracts in Queensland and South Australia and after exchange of contracts in NSW, Victoria, Tasmania and the ACT – either is ok in WA)
- 12 Arrange for the SMSF Trustee (note: SMSF Trustee is the borrower) to sign all loan documents with the lender
- 13 Complete the purchase of the asset using only the SMSF's money and the loan by the lender
- 14 Submit the bare trust deed to the stamp duty authority for payment of stamp duty
- 15 When the loan is eventually repaid, transfer the asset from the Bare Trustee to the SMSF Trustee for nominal stamp duty provided the bare trust deed was stamped previously.

Our Services

TOWNSENDS BUSINESS & CORPORATE LAWYERS is one of Australia's leading providers of superannuation advice. The firm provides a full SMSF Gearing Service or the client's choice of a range of options to enable Self Managed Superannuation Funds to choose the most appropriate documents for their needs:

Corporate Trustee for Bare Trust

Setting up new company to act as trustee of the bare trust

Electronic Version delivered by email	\$590 incl. GST
Hard Copy Version delivered by courier	\$690 incl. GST

Super Gearing Pack consisting of

- covering letter outlining the steps of the transaction and how to implement it
- advice letter explaining the legal issues of the transaction, the superannuation compliance issues and outlining some guidance regarding the necessary investment strategy
- the bare trust deed
- the trustee minutes
- the custodian minutes
- a guide of the transaction for the trustee to give to their conveyancing solicitor if real estate is being purchased so that solicitor understands the precise order in which the documents must be signed and the stamp duty issues that require additional attention

\$935 incl. GST

Super Gearing Pack consisting of everything except the bare trust deed

\$550 incl. GST

Stamping the Bare Trust Deed consisting of

- covering letter advising of requirements for statutory declaration for local stamp duty authority in respect of application for concessionary stamp duty on bare trust deed
- preparation of statutory declaration
- preparation of letter to stamp duty authority from SMSF
- letter of advice on how to complete, execute and process all documents through the stamp duty authority

\$330 incl. GST

Existing SMSF Deed Review

- A review of the existing superannuation trust deed to ensure the deed provides the trustee with the necessary power to borrow
- Letter of advice confirming power or outlining deficiency

\$192.50 incl. GST

Amending Existing Trust Deed

Providing all documents necessary to allow the existing trust deed to be amended to provide the trustee with the necessary power to borrow

\$270 incl. GST

Loan Pack for use where the loan is not coming from a bank but from a private party often related in some way to the Fund

- loan agreement between the super fund trustee (borrower) and the lender (including where a company has been set up to borrow from the bank and on-lend to the super fund [note that if a member of the fund is a shareholder of the lending company then the loan must comply with Div 7A ITAA 36]
- security documents (eg mortgage) to secure the repayment of the loan
- the trustee minutes
- the custodian minutes
- the lending company minutes

\$495 incl. GST

Lease Pack to use if the purchased property is to be leased thereby requiring documentation of the formal direction to lease by the SMSF to the Bare Trustee

- direction by super fund trustee as beneficiary under the bare trust to the Custodian/Bare Trustee authorising the latter to enter the proposed lease
- the trustee minutes
- the custodian's minutes

\$275 incl. GST

Review of Third Party Lender's Documents for use when the loan is coming from a bank or other third party lender not related in any way to the SMSF

Reviewing and advising the SMSF on the documents the lending bank or other third party lender is asking the SMSF to sign

- the loan agreement **\$550 incl. GST**
- the mortgage document **\$550 incl. GST**
- any personal guarantee **\$550 incl. GST**
- any other security document **\$550 incl. GST**

Bare Trustee Company Order Form

FIRM/PERSON PLACING ORDER

Date	
Name	
Company Name	
Street Address	
Billing Address (if different)	
Telephone	
Fax	
Email	

Authorised by: _____ Signature: _____

We draw your attention to the Section 117 of the Corporations Act 2001 that a company must first receive written consent from a person before appointing them as a Director and/or Secretary. We are proceeding with the registration on the assumption that you have the proper authority to instruct us.

Proposed Name of Company

Preferred state of registration

Is this identical to a Registered Business Name? Yes No

If Yes: I DECLARE that I make this application for the company name AS or ON BEHALF of, and with the authority of, all the registered owner(s) of the above identical business name(s).

Signature	Print Name	Date:

REGISTERED OFFICE OF NEW CORPORATION

Address - Include Suite / Level (No PO Box)

Full Name					
Former Name (if applicable)					
Date of Birth		Town of Birth		Country of Birth	
Director	<input type="checkbox"/> Yes <input type="checkbox"/> No	Secretary	<input type="checkbox"/> Yes <input type="checkbox"/> No	Public Officer	<input type="checkbox"/> Yes <input type="checkbox"/> No
No./Class of shares					

Full Name					
Former Name (if applicable)					
Date of Birth		Town of Birth		Country of Birth	
Director	<input type="checkbox"/> Yes <input type="checkbox"/> No		No./Class of shares		
No./Class of shares					
Full Name					

Former Name (if applicable)					
Date of birth		Town of Birth		Country of Birth	
Director	<input type="checkbox"/> Yes <input type="checkbox"/> No		No./Class of shares		
No./Class of shares					

Full Name					
Former Name (if applicable)					
Date of Birth		Town of Birth		Country of Birth	
Director	<input type="checkbox"/> Yes/ <input type="checkbox"/> No		No./Class of shares		
No./Class of shares					

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this order.

CONFIRMATION OF ORDER

I confirm that I am authorised by the proposed directors, officers and shareholders to instruct you to register this company.

Signature	Print Name	Date:
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PAYMENT DETAILS

We will contact you when the work is complete and will forward the documents upon payment of our fee of

\$ 590.00 for electronic copy (including GST) or

\$ 690.00 for hard copy (including GST)

Please make payment to: **TOWNSENDS BUSINESS & CORPORATE LAWYERS**

Cheque

Cheque enclosed for \$590.00 / \$690.00 (please circle)

Credit Card

Please charge \$590.00 / \$690.00 (please circle)

Visa / Master Card / Amex (please circle one)

_ _ _ _	_ _ _ _	_ _ _ _	_ _ _ _
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Expiry Date: /

Cardholder's name:

Address:

Authorised Cardholder's Signatory _____

Please SCAN / EMAIL or FAX signed order form to:

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Level 9, 65 York Street, Sydney NSW 2000

Phone: (02) 8296 6222

Fax: (02) 8296 6200

Email: info@townsendslaw.com.au

Thank you for your order. We will contact you shortly. If you require any further information or assistance in the interim please do not hesitate to contact us.

SMSF BORROWING & SECURITY TRUST ORDER SHEET

Please complete all details in block letters

Order placed by

Signature

Firm name
(if applicable)

Street address

Postal address
(if different)

E-mail

Phone Fax

Documents & invoice will be directed to this person, unless otherwise stated.

SELF-MANAGED SUPERANNUATION FUND DETAILS

Fund name

ABN

Borrowing Power:

Clause in Fund's Deed which permits borrowing: _____ OR

Please confirm for me that the Fund is permitted to borrow (tick as applicable)

is a member of SUPERCentral
(SUPERCentral ref: _____)

is to be converted to SUPERCentral prior to loan

is NOT a member of SUPERCentral,
borrowing power to be identified in copy deed provided

**FUND TRUSTEE DETAILS
TRUSTEE - COMPANY DETAILS**

If the Fund Trustee is a Company then complete this part only
 If the Fund Trustee is an Individual/Group of Individuals complete TRUSTEE DETAILS - INDIVIDUALS below only

Company name				
ACN				
Date of Incorporation	/ /	(dd/mm/yy)		
Address of Registered Office				
Phone			Fax	

Full names of all directors of the trustee company:

T1		T2	
T3		T4	

Rule/article number in the company's constitution authorising a written resolution instead of holding a directors meeting:

OR TRUSTEE – INDIVIDUAL(S) DETAILS - Do not complete if COMPANY DETAILS have been completed

If **individual** trustee(s), please supply full (including middle) names and addresses.

T1	Full name	
	Address	
T2	Full name	
	Address	
T3	Full name	
	Address	
T4	Full name	
	Address	

ASSET TO BE ACQUIRED

There can be no recourse beyond this asset under the terms of any loan, security or guarantee.

Description of asset _____

Is the asset land? If so, complete this part L

L	Street and address			
	Title particulars (e.g. Lot, Plan etc.)			
	Price	\$	Date of contract of sale	
	Full name of vendor			
	Is vendor associated or connected with the Fund in some way?	Yes <input type="checkbox"/> No <input type="checkbox"/>		
	Finance	Westpac <input type="checkbox"/> NAB <input type="checkbox"/> Member's own <input type="checkbox"/> Other <input type="checkbox"/> Not yet known <input type="checkbox"/>		

SECURITY TRUST - CUSTODIAN DETAILS

(To distinguish from the Fund Trustee and for other reasons we refer to the trustee of this trust as the Custodian)

COMPANY DETAILS (A company as Custodian is strongly recommended)

**If the Custodian is a Company then complete this part only,
If the Custodian is an Individual/Group of Individuals complete CUSTODIAN DETAILS - INDIVIDUALS below only**

Company name				
ACN				
Date of Incorporation	/ /	(dd/mm/yy) or	<input type="checkbox"/>	As per attached Company Order Sheet
Address of Registered Office				
Phone			Fax	

Full names of all directors of Custodian company:

C1		C2	
C3		C4	

Rule/article number in the company's constitution authorising a written resolution instead of holding a directors meeting:

OR CUSTODIAN – INDIVIDUAL(S) DETAILS - Do not complete if COMPANY DETAILS have been completed

WARNING – individual custodians may be imprudent under the *Superannuation Industry (Supervision) Act 1993* for the Fund and may not be permitted under the Fund's borrowing arrangements.

If **individual** custodian(s), their full names and addresses (Note: a company custodian is advisable and two individual custodians are a better option than one individual custodian).

C1	Full name	
	Address	
C2	Full name	
	Address	

Loan Agreement/Instalment Agreement

**Please complete all details in block letters*

The Lender

Name of Lender

(This is the person or entity lending the purchase money for the geared asset)

ACN of Lender

(Not applicable if Lender is a company)

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Address of Lender:

Street address

Suburb		State/Territory		Post Code	
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Is the SMSF trustee or a member of the Fund a shareholder of the Lender? Yes No

(if 'Yes' then loan agreement must comply with Div 7A ITAA 1936)

The Loan

Amount of Loan:

\$

Interest Rate

	%
--	---

Default Interest Rate *(if any)*:

(The higher rate payable if the interest payments are not paid on time)

	%
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The Repayment

Date of Repayment

(When does the loan have to be repaid in full?)

Date (dd/mm/yy) OR

Length of Term of the Loan: Years

Manner of Repayment of Loan *(tick as appropriate)*

Interest only Principal and interest

How often is interest payable? monthly quarterly annually

How much is each payment: Interest Principal

Please SCAN / EMAIL or FAX signed order form to:

TOWNSENDS BUSINESS & CORPORATE LAWYERS

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Phone: (02) 8296 6222

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