



Q & S CONVEYANCING UPDATE

ISSUE 22, 24 FEBRUARY 2009

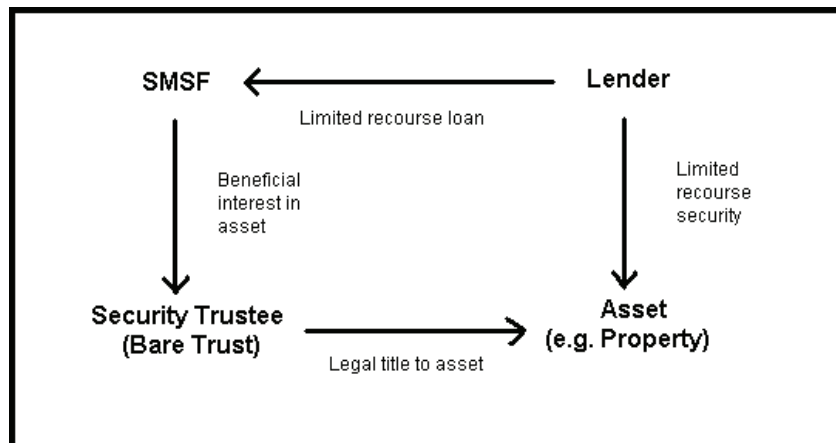
SELF MANAGED SUPER FUNDS – BORROWING TO BUY REAL ESTATE

More and more Australians are establishing their own self managed super funds (SMSF) so that they can control how their superannuation is invested. Due to the recent share market crashes, many superannuation funds have incurred losses in their share portfolios and accordingly many super fund trustees are exploring other investment opportunities including real estate.

The difficulty in investing in property is that a large amount of capital is required to purchase the asset. Until recently, the superannuation laws prevented superannuation funds from borrowing money and using property as security. However, this is now possible due to the amendments to the Superannuation Industry Supervision Act in 2007 which allow super funds to borrow money to purchase property provided that the arrangement meets certain criteria which includes the following:-

- The money borrowed is applied to acquire an investment property.
- The property is held on trust by a separate trust and the SMSF is the sole beneficiary of that trust.
- The SMSF can have the title to the property transferred to it from the trust but this will take place after the repayment of the loan.
- The rights of the lender are against the property and not the assets of the SMSF generally.
- The property held by the trust must be the only asset held by that trust.
- The SMSF cannot acquire an asset from a member or a relative of a member unless the asset is business real estate.

Below is a diagram showing the basic structure of how a SMSF can borrow to purchase real estate.



It is necessary to establish the trust before entering into a contract to purchase property. We can assist in setting up the trust structure.

Richie Muir, Solicitor, Quinn & Scattini

If you would like to ask any question about this or any other similar issue Richie may be contacted on 38212766 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. In addition to residential and commercial Conveyancing services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.

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