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## SMSF BORROWING — BARE TRUST DOCUMENTATION

### IMPORTANT NOTE

A borrowing by the trustee of an SMSF is a sophisticated transaction and is subject to some risk.

The risks increase significantly if the arrangement has not been properly implemented. Some common mistakes include:

- Contracts of sale are signed or deposits paid before seeking expert advice.
- The conveyancer has not been properly briefed or does not understand the structure of the borrowing arrangement, including the State or Territory-specific stamp duty issues that arise in connection with an SMSF borrowing. We recommend that trustees engage a conveyancing lawyer or specifically request a lawyer when approaching a conveyancing firm.
- The entity that holds title to the asset is more than a mere bare trustee (eg, it has active duties other than merely holding title to the property or it is a trustee of a discretionary, unit or other trust or a trading entity in its own right).
- Advice is not sought about whether the asset being acquired constitutes multiple assets. Proceeding without advice on this aspect is especially risky in the case where the asset being acquired is real estate and chattels are also being acquired or the real estate is spread over multiple titles.

The laws permitting borrowings are subject to change, and accordingly, expert advice should be obtained if there is any doubt or if the documents provided by us are not implemented shortly after receipt.

We do not provide stamp duty advice for jurisdictions outside of Victoria. However, we are pleased to provide general guidance to interstate conveyancers regarding the implementation of these types of arrangements. Such specific guidance is included in our premium service. General guidance is also provided in our SMSF Borrowing Memo.

### NOTE TO ADVISERS, ACCOUNTANTS AND OTHER AGENTS

Advisers who complete this order form on behalf of an SMSF trustee agree that DBA Lawyers may seek to contact the SMSF trustee directly. Alternatively, the adviser undertakes to communicate our feedback including concerns to the SMSF trustee.

In particular, the covering letter provided with our borrowing documents will contain important information. Advisers should ensure that the SMSF trustee reads this letter, in conjunction with the explanatory memo on SMSF borrowings (also provided with our borrowing documents), and contact us if they wish to discuss this information further.

**SMSF BORROWING — BARE TRUST DOCUMENTATION**

Firm ordering (if applicable):

Person ordering:

Street address:

Postal address (if different):

Phone:

Email:

Tick here  if we are to invoice the fund's trustee (otherwise, our invoice will be made out to the person ordering)

By completing this order form, you confirm that you have read the 'Important Note' on page 1 of this order form.

Documents will be delivered by email as PDF files

Tick here  for hardcopy delivery (fee applies)**TYPE OF PACKAGE****Please choose the type of package:****Standard\*****Premium**

Direct loan from unrelated lender†

Related party loan

\*DBA recommends the premium service due to the complex nature of SMSF borrowings. By ordering 'standard' documents from us, you confirm that you have read and agreed to the terms on page 5 of this order form.

†Note the comments on page 5 of this order form regarding review of lender documentation.

**ASSET TO BE ACQUIRED**The fund will acquire: real estate  listed shares  unlisted shares  other **Option 1:** No asset has been found yet: **Option 2:** Description of asset: \_\_\_\_\_

For real estate, please supply the property address and certificate of title information (eg, volume &amp; folio reference(s)) or attach an extract of the title(s). It is important we are provided with exact title details. If in any doubt, consult with the fund's conveyancer to confirm the title details. If you do not provide at least volume and folio references, we may perform a title search and disburse the cost (approx \$20) to you.

Is this asset being acquired from a related party of the fund? no  yes  unsure if 'related' 

We take it that the fund is acquiring 100% of the property. If less than 100%, please contact our office.

**NAME OF FUND (borrower)**

Name of fund:

**SMSF COMPANY TRUSTEE**

Company name:

ACN:

Registered office:

Full names of all directors

T1

T2

T3

T4

OR, SMSF INDIVIDUAL TRUSTEES	
T1	Full name:
	Street address:
T2	Full name:
	Street address:
If there are more trustees, please provide their details under 'special instructions' on the last page.	

For Queensland real estate please complete this box for non-Queensland real estate please proceed to the 'Bare Trustee Details' section
<p><b>DETAILS OF THE BARE TRUST</b> (aka 'security trust', 'holding trust', 'custodian trust', 'property trust')</p> <p>Name of bare trust*: _____</p> <p>*It is our preference not to name bare trusts. However, we name bare trusts for Queensland property because a trust relationship can be registered on title. However, for non-Queensland property we only name the bare trust, at your request. If you do not provide us with a name for a Queensland bare trust, we will name it at our discretion with reference to the name of the SMSF or the asset being acquired.</p>

BARE TRUSTEE DETAILS	
(aka 'security trustee', 'holding trustee', 'custodian'; this entity holds the asset on trust for the SMSF)	
<b>COMPANY BARE TRUSTEE</b>	If company ordered from DBA, tick here <input type="checkbox"/> and proceed to 'Details of Lender' section (a new company order form should also be completed).
Company name:	
ACN:	
Registered office:	
Full names of all directors	
BT1	T1? <input type="checkbox"/>
BT2	T2? <input type="checkbox"/>
BT3	T3? <input type="checkbox"/>
BT4	T4? <input type="checkbox"/>
OR, INDIVIDUAL BARE TRUSTEES (note that individual bare trustees are not recommended)	
BT1	Full name: _____ T1? <input type="checkbox"/>
	Street address:
BT2	Full name: _____ T2? <input type="checkbox"/>
	Street address:

DETAILS OF LENDER	
<b>Option 1:</b>	bank or unrelated lender, name of entity: _____ (now proceed to page 5)
<b>Option 2:</b>	related party (specify which below)
trustee of a related trust	<input type="checkbox"/> name of trust: _____ (indicate the trustee on next page in company details or individuals as appropriate)
related company	<input type="checkbox"/> (fill out company on next page)
SMSF member(s)	<input type="checkbox"/> (fill out individuals on next page)
other natural person(s)	<input type="checkbox"/> (fill out individuals on next page)

COMPANY DETAILS			
Company name:			
ACN:			
Registered office:			
Full names of all directors			
LT1		LT2	
LT3		LT4	
OR, INDIVIDUAL(S) (if applicable)			
LT1	Full name:		
	Street address:		
LT2	Full name:		
	Street address:		

FOR DIRECT BANK/UNRELATED LOANS, PLEASE PROCEED TO NEXT PAGE FOR RELATED PARTY LOANS, PLEASE COMPLETE THE DETAILS BELOW	
DETAILS AND TERMS OF THE LOAN	
<p>Ideally a borrowing from a related party should be on arm's length terms. This is evidenced by benchmarking the terms to what is offered to SMSFs in the marketplace. Due to the special nature of limited recourse SMSF loans, banks often impose tighter restrictions such as a conservative loan-to-value ratio and premium interest rate (and for this reason, benchmarking the terms to the related party's own cost of finance is not necessarily appropriate). We recommend that the trustee collect and retain evidence from independent sources to be able to demonstrate that the loan reflects arm's length terms, in the event of audit.</p>	
Total purchase price of asset: \$	
Amount contributed by borrower: \$	
Amount contributed by lender (ie, what is the facility limit?): \$	
Type of loan:      principal and interest <input type="checkbox"/> interest only <input type="checkbox"/>	
Interest rate is:      fixed <input type="checkbox"/> variable <input type="checkbox"/>	
Interest rate*:                      % per annum	
Penalty interest rate (eg, normal interest rate + 2%):	
Term (eg, 7 years):	
Repayments:      monthly <input type="checkbox"/> quarterly <input type="checkbox"/> other:	
<p>* The interest rate must be certain and capable of being worked out by a third party. For example, it could be expressed as a percentage (eg, x %) or as a benchmark that is readily understood (eg, RBA cash target rate + x %). Please use the 'additional instructions' on the following page if you need to include further explanation about the loan terms. Please proceed to next page.</p>	

## ADDITIONAL DOCUMENTS

If you are ordering a **standard package**, please read our important note at the bottom of this page and return this order form to our office with a completed Costs Document.

If ordering our **premium service**, please return this order form with our Costs Document and arrange for the following to be forwarded to us:

- copy of the SMSF's latest trust deed;
- if real estate:
  - copy of any sale contract that has already been drafted/completed
  - copy of the certificate of title to the property (a copy might appear in the sale contract) and
  - the conveyancer's contact details.

## SPECIAL INSTRUCTIONS

## STANDARD PACKAGE

DBA recommends the premium service due to the complex nature of SMSF borrowings and the stamp duty, tax and super compliance issues these arrangements can give rise to. Incorrect implementation could give rise to significant penalties and could increase the risk of additional duties and taxes being incurred. By ordering the standard package, you acknowledge that DBA has only been instructed to provide documents and not to be involved in implementation, such as liaising with the fund's conveyancer or assisting any other parties involved in implementing the arrangement.

If our further assistance is required, we would be pleased to assist and in this case our attendances will be charged at our hourly rates. This also applies if any changes to documentation are later required as a result of incorrect or altered instructions. Our lawyers' hourly rates are available on request.

Some key points to bear in mind during implementation are:

- It is the trustee's responsibility to ensure their conveyancer is properly briefed and understands the structure of the arrangement. These arrangements are more complex than a usual property purchase and give rise to additional stamp duty issues, which the trustee should seek State or Territory-specific advice on. The signing of the sale contract and payment of any deposit often impacts the stamp duty position. Please refer to the 'Important Note' on page 1 of this order form.
- The fund's trustee must ensure it has adequate power to borrow under the fund's deed.
- The entity acting as bare trustee should not have any duties other than passively holding the property for the benefit of the fund's trustee.
- All of the usual investment laws apply to an SMSF trustee when it borrows to buy an asset. These include the laws on acquisitions from related parties, in-house assets, etc.
- For a related party loan, the arrangement should be at arm's length and the trustee should retain evidence to be able to demonstrate this in the event of an audit.
- It is vital that there is only one borrowing arrangement for each 'single' asset being acquired.

Please also refer to the SMSF Borrowing Memo which is provided with all DBA borrowing packages.

## REVIEW OF LENDER DOCUMENTATION

Certain lenders (typically banks) require independent lawyers to review their documentation and produce various certificates before lending. DBA is typically happy to attend to this task, however, it is not included in the scope of either the standard package or the premium service and is charged on a time spent basis at usual hourly rates. In some cases DBA is prevented from reviewing loan documentation as some lenders will not consider DBA to be 'independent' where DBA has prepared the limited recourse borrowing documentation. Unless DBA has been instructed to also engage in this task, DBA makes no comment as to the appropriateness of the lender documentation.