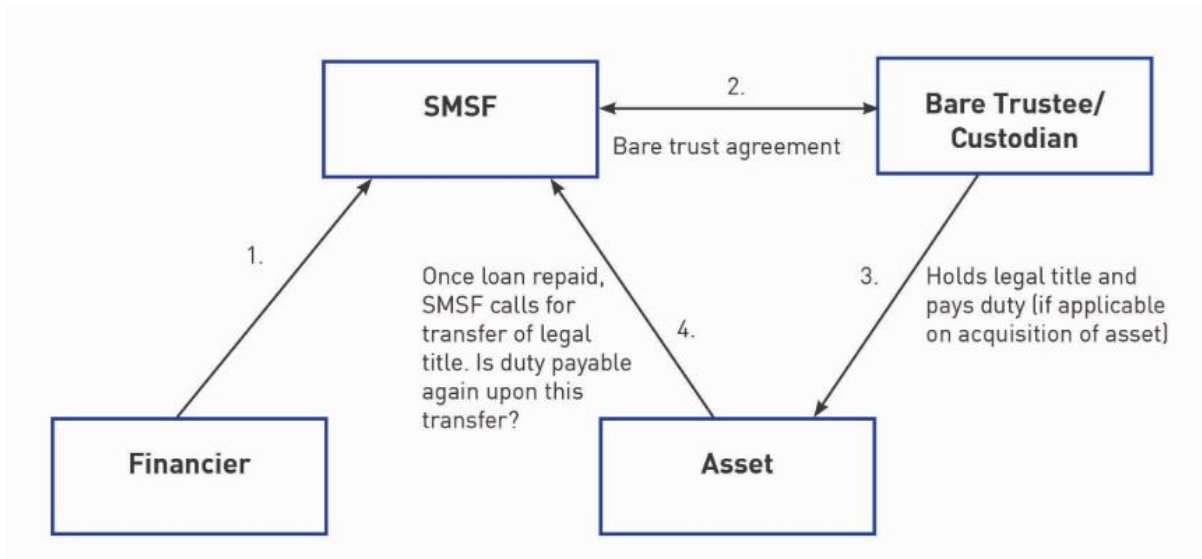


A step by step guide to borrowing to purchase a property



- Determine that borrowing would be a suitable arrangement (considering likely return, ability to service the loan via cash flow etc)
- Check that your Fund allows you to borrow:
 - Check the SMSF trust deed to ensure trustee has power to borrow, grant security & allow assets to be held by custodians/nominees for the trustee (if not, amend the trust deed)
 - Check the SMSF 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)
 - Check that the fund will generate sufficient cash flows (contribution etc) to service the loan
- Confirm your pre-approval for finance with your lender
- Determine who is to be the custodian – The Custodian is the entity which will appear on the title as owner – effectively on behalf of the super fund. if a new company, register the new company
- Document the arrangements:



- Custodian resolves in writing to act as custodian for the super fund trustee in the purchase of the asset
- SMSF trustee resolves in writing to purchase the asset and to appoint the custodian to act for the super fund trustee as bare trustee of the bare trust
- Create a Bare Trust Deed in the above names
- The Custodian signs the purchase contract (NOT the SMSF trustee)
- The SMSF pays the deposit for the purchase (Ideally direct from the super fund's account. If it is paid outside the fund (eg by the individual), then this must be recorded as an undeducted superannuation contribution in the SMSF's records)
- Custodian and SMSF trustee sign the bare trust deed
- The SMSF trustee is the BORROWER so will sign all loan documents with the lender
- Purchase of the asset is completed using only money coming from the SMSF's account or from the loan by the lender
- Check state stamping requirements (requirement is different from state to state)
- When the loan is eventually repaid the asset can be transferred from the custodian to the super fund trustee. At which case the property is then owned entirely by the fund.

SMSF borrowing rules

The arrangement is a limited recourse borrowing arrangement (LRBA) and must satisfy the following conditions:

- The SMSF uses the borrowed monies to purchase a single asset, or a collection of identical assets that have the same market value
- The SMSF can't use the borrowed monies to improve a purchased asset
- The SMSF trustees receive the beneficial interest in the purchased asset but the legal ownership of the asset is held on trust (the declaration of Custody Trust)
- The SMSF trustees have the right to acquire the legal ownership of the asset by making one or more payments
- Any recourse that the lender has under the LRBA against the SMSF trustees is limited to the single fund asset (including rights to income). Lenders can legally demand an individual to provide a personal guarantee against personal assets





- Replacing the asset subject to the LRBA is possible only in very specific circumstances.

The ATO defines the following

- **‘Maintaining’**: ordinarily means work done to prevent defects, damage or deterioration of an asset, or in anticipation of future defects, damage or deterioration, provided that the work merely ensures the continued functioning of the asset in its present state.
- **‘Repairing’**: Ordinarily means remedying or making good defects in, damage to, or deterioration of an asset and contemplates the continued existence of the asset. A repair is usually occasional and partial, restoring the function of the asset without changing its character.
- **‘Improving’**: Significantly altering the state or function of the asset for the better.

Source: Superguide

