

## INFORMATION NOTES ON TRANSFER OF LAND BETWEEN BARE TRUST AND SUPERANNUATION FUND

# MJHC LEGAL LAWYERS

Superannuation · Property · Wills · Commercial

All correspondence to:  
PO Box 412  
Mount Waverley VIC 3149

Office Address  
21 Hudson Place  
Rowville VIC 3178  
t: +61 3 9763 0139  
www.mjhclegal.com

The information contained in these notes is general in nature and is intended only to cover transactions involving the transfer of property from a Security/Bare Trust to a Superannuation Fund. A reference to Bare Trust is also a reference to Security Trust, SMSF gearing Trust or LRB Trust. Prior to transferring the property to the Fund, the trustees of the Fund should have regard to the following (which is not an exclusive list of considerations):-

### TAXATION & DUTY ISSUES

#### Transfer Duty

Transfers of Victorian land are dutiable transactions under the Duties Act.

Where property is held in the name of a Bare Trustee, the Bare Trustee would have first acquired the property being transferred in one of the following ways:-

- The Bare Trustee was named as the purchaser in the Contract of Sale (ideally the contract would have expressly stated that the Bare Trustee was acquiring the property on behalf of the Superannuation Fund).
- The Fund Trustee was the named purchaser in the Contract of Sale and the Bare Trustee was subsequently nominated as a replacement purchaser to the Fund.

The property transfer should be exempt from duty provided it is made whereby:

- The property was first acquired by the Bare Trustee (as apparent purchaser) on behalf of the Fund Trustee (which was the real purchaser).
- The transfer is from the Bare Trustee (as apparent purchaser) to the Fund Trustee (as the real purchaser).
- The Fund provided from its own funds and/or borrowings all of the purchase monies including the deposit when the property was first acquired by the Bare Trustee.

#### Goods & Services Tax

There should be no GST implications associated with transferring the property to the Fund Trustee. The Bare Trustee would not ordinarily be registered for GST purposes. The transfer of the property to the Fund Trustee is not a taxable supply for GST purposes.

#### Capital Gains Tax

The transfer of the property by the Bare Trustee to the Fund Trustee should not have CGT implications for either the Bare Trustee or the Fund. A CGT event should not occur because the Fund is absolutely entitled to the property as against the Trustee of the Trust.

### BORROWING RESTRICTIONS

The property being transferred is held by the Bare Trustee because the Superannuation Fund borrowed to provide monies to originally purchase the property. It is a requirement of the superannuation law that where a Superannuation Fund borrows, the property being acquired must be held by a Bare Trust whilst the borrowings are maintained. This means that you **cannot** transfer the property back to the Fund Trustee unless and until all the borrowings have been repaid and all charges and encumbrances released/withdrawn.

If there are any monies still owed by the Fund or any mortgages or charges registered or unregistered over the property being transferred, it will be necessary as part of this transaction to repay the amount still owing and to obtain necessary mortgage discharges and/or releases.

Liability limited by a scheme approved under Professional Standards Legislation