

**SELF MANAGED SUPERANNUATION FUND
LIMITED RECOURSE BORROWING ARRANGEMENT
INSTRUCTION SHEET**

**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

A. ADVISOR/PERSON ORDERING DEED:

Enquiries, documents, invoices will be directed to this person, unless otherwise stated

Person Ordering:

Firm Name:

Street Address:

Suburb/Postcode

Telephone:

Fax:

Email:

Signature:

B. REQUIRED DOCUMENTS:

- Copy signed SMSF Deed and all deed amendments/appointments

Enclosed: ☐

Are these deeds to be returned?

Yes: ☐

No: ☐

Note: You must forward signed and dated page extracts for deeds prepared by MJHC Legal. In all other cases, you must forward a complete set of all trust deed documents including changes to Trustees.

See information contained under 'Missing Documents' if not all SMSF deeds can be provided

- Copy Certificate(s) of Title

Enclosed: ☐

- Copy signed and dated/proposed purchase Contract of Sale

Enclosed: ☐

- Copy Vendor's Statement

Enclosed: ☐

C. SMSF NAME:

Fund Name:

D. REQUIRED INFORMATION:

Correspondence to be sent: Direct to client: ☐ Via advisor/accountant: ☐

(copy will be sent to Fund accountant/advisor)

Is this an existing Fund? Yes ☐ No ☐

If No, please complete New Fund Instruction Sheet and go to Part E. If Yes, complete the remainder of this Part.

Was the existing trust deed established or amended by MJHC Legal? Yes ☐ No ☐

The original deed which set up the Fund was dated:

DD/MM/YYYY

The fund commencement date specified in the original deed was:

(this may or may not be the same date as the date of the original deed)

DD/MM/YYYY

Any Deeds of Amendment or Variation are dated:

(go to Part N. Additional Information if insufficient space)

DD/MM/YYYY

DD/MM/YYYY

DD/MM/YYYY

E. TRUSTEE DETAILS:

Is the SMSF Trustee a company or individuals?

company ☐

individual ☐

If company, complete Part F.

If individuals, proceed to Part H.

If Individuals, are SMSF trustees to be replaced by a company?

Yes ☐

No ☐

If Yes, do you require MJHC to prepare new trustee appointment documents?

Yes ☐

No ☐

Is the security/custodial trustee a company or individuals?

company ☐

individual ☐

If company, complete Part O.

If individuals, proceed to Part H.

If a Company, do you require MJHC to incorporate the security/custodial trustee?

Yes ☐

No ☐

F. SMSF COMPANY TRUSTEE:

Company Name: ACN:
Address:

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part N. Additional Information

G. SECURITY/CUSTODIAL COMPANY TRUSTEE:

Company Name: ACN:
Address:

If a sole director company, is the sole director also the sole company secretary? Yes ☐ No ☐

If No, provide details of the company secretary in Part N. Additional Information

H. INDIVIDUALS INVOLVED:

The trustees of the SMSF can not also be the trustees of the security/custodial trustee. (E.g. If Individuals are trustees of the SMSF, the trustees of your security/custodial trustee could be a company or other individuals) See Part R. Important Information.

All director details must be provided for all companies involved.

1. Full Name:
Street Address:
Gender: male: ☐ female: ☐ DOB:
DD/MM/YYYY

This person is a: SMSF Trustee: ☐ SMSF Trustee Director: ☐ S/C Trustee: ☐ S/C Director: ☐
Present at Meeting ☐ Not Present at Meeting ☐

Select each check box that is relevant for **all** the roles performed by all individuals

2. Full Name:
Street Address:
Gender: male: ☐ female: ☐ DOB:
DD/MM/YYYY

This person is a: SMSF Trustee: ☐ SMSF Trustee Director: ☐ S/C Trustee: ☐ S/C Director: ☐
Present at Meeting ☐ Not Present at Meeting ☐

3. Full Name:
Street Address:
Gender: male: ☐ female: ☐ DOB:
DD/MM/YYYY

This person is a: SMSF Trustee: ☐ SMSF Trustee Director: ☐ S/C Trustee: ☐ S/C Director: ☐
Present at Meeting ☐ Not Present at Meeting ☐

4. Full Name:
Street Address:
Gender: male: ☐ female: ☐ DOB:
DD/MM/YYYY

This person is a: SMSF Trustee: ☐ SMSF Trustee Director: ☐ S/C Trustee: ☐ S/C Director: ☐
Present at Meeting ☐ Not Present at Meeting ☐

I. ASSET TO BE ACQUIRED:

Date Asset to be acquired: Approximate Cost: \$
DD/MM/YYYY

Details of Asset to be acquired:

Property Address:

Title Details Volume: Folio:
(obtained from Contract/Title certificate) Lot Number: Plan Number:

Provide a copy of the Contract of Sale or Title Statement

Name of Lender (if known):

J. LENDER DETAILS:

Self Funded: ☐

Bank Financier: ☐

Name of Lender:

tel:

Contact Name:

email:

Street Address:

If self funded, is MJHC to prepare loan documents and mortgage?

Yes ☐

No ☐

If Yes, complete Part K.

If No, proceed to Part L.

K. LOAN DETAILS:

Only complete below if MJHC to prepare loan documents

Loan Amount:

\$

Loan Term:

Are 'safe harbour' loan terms to apply?

Yes ☐

No ☐

If No, complete the following:

Interest Rate:

Interest Only: ☐

OR

Principal & Interest: ☐

Variable: ☐

OR

Fixed: ☐

If fixed, period:

Unless otherwise advised, documents and invoicing will be prepared on the basis that the Purchaser's Conveyancer/Lawyer will attend to registration of mortgage documents. Additional Fee will apply if MJHC Legal is to register the mortgage

L. FOR MINUTES OF MEETING:

Place of Meeting:

Address of Individual 1 unless otherwise stated

Name of Chairperson:

Individual 1 unless otherwise stated

If not all Trustees/directors were present at Meeting you **must** select one of the following options:

☐

The absent Trustees/directors attended by telephone:

OR

☐

Circulating Resolutions required for signature by all Trustees/directors:

(See Part R. Important Information)

When is the meeting date?

DD/MM/YYYY

or for client flexibility is date to be left blank?

Yes ☐

No ☐

M. DOCUMENT & SERVICES REQUIRED:

- ☐ Limited Recourse Borrowing Security/Bare Trust Deed Package
- ☐ New Superannuation Fund (if the SMSF does not already exist)
- ☐ New Trustee Appointment Package (where individuals are being replaced by Company Trustee)
- ☐ Deed Upgrade Package (most Lenders require specific clauses in your SMSF Rules)
- ☐ New Company as SMSF Trustee
- ☐ New Company as Security/Custodial Trustee
- ☐ Loan Agreement & Mortgage Package (where borrowings are self funded by associated parties)
- ☐ Review of Mortgage/Guarantee documents prepared by Banker/Financier
- ☐ Conveyancing & legal services for property purchase
- ☐ Lease Agreement (where there is no existing written Lease)

N. ADDITIONAL INFORMATION:

O. DOCUMENT DELIVERY:

Prepared documents are to be sent by:

email: ☐

mail: ☐

express post: ☐

Additional Fee of \$13.00 applies

P. PAYMENT DETAILS:

Payment of Invoice is required before document package delivery unless other arrangements are in place.

Credit Card and bank deposit/internet banking options will be set out in the Invoice.

Q. COMPLETED INSTRUCTIONS:

Please forward completed instructions to MJHC Legal:

email: mjhc@mjhclegal.com

mail: PO Box 412, Mount Waverley VIC 3149

Print and review your instructions before submitting and retain printed copy for your file. Adobe Reader will not allow you to save the data in this form.

The Email button will forward your completed Instruction Form to MJHC Legal, Solicitor.

The Reset button will clear all data in the form.

If the existing deed was not prepared or amended by MJHC Legal you must submit the completed instruction form by mail together with copies of all documentation referred to in Part C.

In submitting the completed Instruction Form, the person described in Part A authorises MJHC Legal to prepare the documents selected in Part M. Document & Services Required and agrees to pay the Fees payable for those packages. You understand that typing/spelling errors or incorrect information given are your responsibility.

Print Form

Submit by Email

Reset

R. IMPORTANT INFORMATION:

Limited Recourse Borrowings

A trustee of a self managed superannuation fund is permitted to borrow money or maintain a borrowing of money under an arrangement where:-

- the borrowing is applied for the acquisition of a single acquirable asset other than a one which the self managed superannuation fund would be prohibited from acquiring;
- the asset is held on trust for the self managed superannuation fund so that the trustee acquires the beneficial interest in the asset;
- the self managed superannuation fund has the right to acquire legal ownership of the asset after making one or more payments; and
- the rights of the lender against the self managed superannuation fund in relation to the borrowing (and any related charges or securities) are limited to the asset acquired.

Investment Rules Still Apply

The other usual rules regarding investments by a self managed superannuation fund and investment restrictions apply to any assets purchased through these SMSF limited recourse borrowing arrangements.

The asset being acquired must comply with the investment restrictions, which include:-

- the Sole Purpose Test;
- the Fund's governing rules;
- investment strategy;
- commercial and arms length dealings at market value;
- acquisition of assets from related party rules (business real property and listed market securities); and
- in-house asset rules.

Missing Documents

If you have checked a box that documents are 'not enclosed', you will need to provide copies in order for the property transfer documentation to be completed by MJHC Legal.

In assessing whether a transfer of property between superannuation funds is eligible for duty exemption, the State Revenue Office needs to sight copies of signed and dated Deeds of Establishment, Deeds of Amendment and any Deeds of Trustee Appointment. If there are any missing documents, it will be necessary for MJHC Legal to prepare additional supporting material and an additional fee will apply.

Security/Custodial Trust Document Review

If the Borrowings being made by the self managed superannuation fund are through a third party lender such as a bank, you can expect that your superannuation fund documentation and the limited recourse borrowing arrangements will be subject to a legal review by your lender. Some lenders will require your self managed superannuation fund trustee to be a company. Some lenders will require the security/custodial trustee to be a company. Due to Trust Law, it will not be possible for the trustee(s) of the self managed superannuation fund and the trustee(s) of the security/custodial trust to be identical trustee(s).

Superannuation Law can be quite complex. The requirements and structuring for limited recourse borrowing arrangements by self managed superannuation fund are also complex and onerous. Failure to satisfy those requirements can result in a breach of the Superannuation Law and possible non-compliance. It is highly desirable that whoever is performing the legal/conveyancing services associated with the property acquisition understands the nature and legal effect of the Superannuation Law requirements and in particular the structuring of the limited recourse borrowing arrangement.

The SMSF borrowing package deals only with the internal documentation required to satisfy the Superannuation Law requirements for borrowings by a self managed superannuation fund. Additional legal/conveyancing services will need to be provided in relation to the property being acquired by the superannuation fund. The offices of MJHC Legal, Solicitor can provide you with those legal/conveyancing services for an additional fee.

Effective Dates

The fund and the security/custodial trustee must resolve to execute the prepared documents. The date the parties meet will usually be the date of the prepared documents. However, the date on which the security/custodial trust comes into effect can be a future date. It is not possible to retrospectively establish a trust.

Meeting & Resolutions

It is not always a legal requirement that individuals physically attend a meeting of trustees or directors of a corporate trustee. Most modern trust deeds and company constitutions permit teleconferencing. Attendance by telephone can be a convenient method of meeting where parties are physically separated. You must indicate whether or not a party was or will be physically present at a meeting.

A circulating resolution is an alternative to attendance at a meeting in person or by telephone. A circulating resolution requires all parties to sign and date the resolution. It is also necessary for the parties to be provided with all relevant material relating to the resolution. This may not always be convenient or a secure means of safeguarding the material.

Importantly, a circulating resolution does not have any legal effect until the resolution is signed and dated by all required parties. It will also only be effective from the date on which the last signature is obtained to the circulating resolution. For these reasons, physical or telephone attendance at a meeting is preferred over a circulating resolution.

Costs associated with SMSF Limited Recourse Borrowings

In addition to the usual government duties and registration fees associated with real estate purchases, the transactional costs associated with SMSF borrowings under an SMSF limited recourse borrowing arrangement can be significant. In addition to the usual banking applications fees and charges, the fund will also pay for legal review of transactional documents by the Lender's internal legal team or external panel firm of solicitors. The cost of those lender legal review fees are typically between \$1,800.00 - \$2,200.00. Overall the costs of lenders will vary from lender to lender and you should allow between \$3,000 - \$3,950.00 as part of the costs you will incur in the transaction. You may also incur costs with obtaining advice and services from your accountant, financial advisor, finance broker and other professionals.

Funds will also incur legal costs for professional fees and out of pocket expenses for the services provided by MJHC Legal, Solicitor. The extent of those fees and charges will depend on the nature and extent of the work requested. Funds will be provided with information regarding costs that will be incurred and will be requested to enter into a Fee Agreement. Full details of the terms and conditions of the retainer will be provided after instructions are received. Funds should allow for professional fees of \$3,700.00 - \$4,770.00 for the following work typically performed:-

- SMSF borrowing documents and compliance review.
- Review of Loan Documents prepared by Lender.
- Conveyancing/Legal Services associated with property purchase.

The above indicative figures do not include out of pocket expenses. Additional professional fees will also be incurred for establishing new companies to act as Trustees, Deed Upgrades, Deeds of Trustee Appointment, Loan and Mortgage work for self funded borrowings, lease document preparation.

Other Issues

- Unless otherwise stated, your SMSF limited recourse borrowing arrangements will be governed by the laws applicable to the laws of the State or Territory of your self managed superannuation fund.
- Duty may be payable on the security/custodial trust deed in the State or Territory whose laws are to apply to the trust.

DISCLAIMER:

MJHC Legal prepares documentation based on your written instructions. MJHC Legal is not licensed to provide financial product advice. The rules concerning Self Managed Superannuation Funds change and it may be advisable to request specific advice.

Liability limited by a scheme approved under Professional Standards Legislation.