



**SMSF FACT SHEET:  
BROKER**



# SMSF: TECHNICAL SUMMARY

There are several areas that finance brokers should be particularly mindful of when a client wishes to establish an SMSF and/or wants to use an SMSF to acquire a property with borrowings. Find out more from SMSF specialist, Chris Levy, Aquila Super.

## Client details required for the establishment of an SMSF

Once a decision to establish an SMSF has been made by a client, there are various details required for the set-up process, and one important step is if a corporate trustee is to be used:

- Proposed name of SMSF
- Trustee structure – Individuals or company
- Member details – full name, date of birth, TFN, and street address.

If a company is to be the trustee, we also need the member's place of birth and current occupation. More importantly, the **Director ID** needs to be issued by ASIC for all prospective directors. If they do not have one, this will need to be done prior to starting the Fund establishment process.

Obtaining a Director ID can only be done by the member through ASIC (i.e. it cannot be done by the accountant), which can prove difficult for some clients as they may need to navigate MyGov. In practice, we have found that obtaining a Director ID is not only an arduous process for clients as they need to provide various forms of identification, but that it can drastically slow down starting off the fund establishment process.



## **SMSFs are a financial product**

Whilst purchasing property in an SMSF, with or without borrowing, can be beneficial to a trustee, it is important for brokers to be aware that SMSFs are a financial product.

As such, only licenced financial advisers can make recommendations about establishing an SMSF and/or using gearing to purchase a property within one. Accordingly, finance brokers will need to be especially careful around the giving of advice to clients around the subject of SMSFs and gearing within one.

Ideally, brokers will have a relationship with a licenced financial planner so they may refer prospective trustees, who are legally able to review a client's affairs and assess whether an SMSF is right for them.

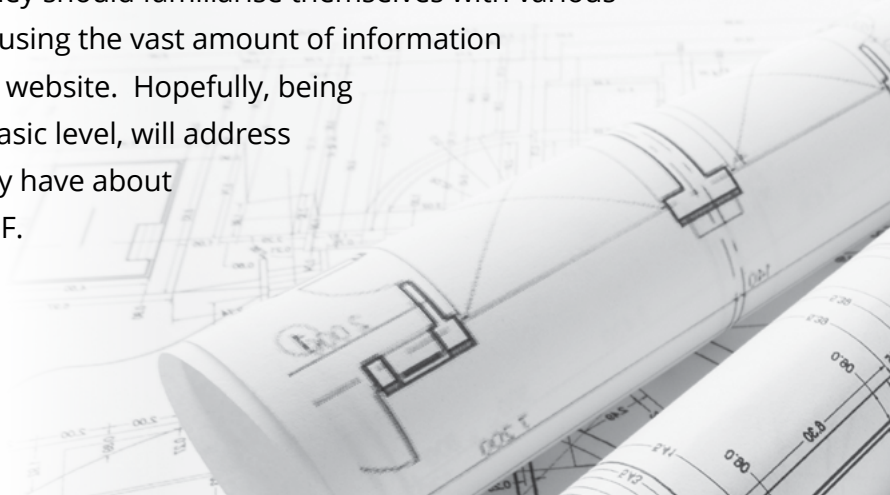
## **Clients being contacted by the ATO when establishing an SMSF**

Over the last several years, we have seen the ATO regularly contact trustees of a prospective SMSF. They typically do this after they have signed the paperwork and when the accountant requests the TFN and ABN. There appears to be two main reasons for this ATO contact:

- The ATO may have some concerns for some reason and want to ensure that the new Fund is not just a vehicle for an early release scheme.
- The ATO wants to know that the trustees have some understanding of what is required in running a Fund and that there are certain activities and investments that the Fund cannot engage in.

At the very least, any contact and questioning from the ATO can prove alarming for some trustees if not forewarned beforehand as many people have never been contacted by them for their personal affairs. The questioning can also, at times, feel like an interrogation as the ATO assesses the knowledge of the SMSF laws, adding to the Trustee's discomfort.

Very rarely have we seen the ATO reject an SMSF ABN application as they are not comfortable with the trustee's SMSF knowledge and/or what they intend to use the money for. That said, it is strongly recommended that finance professionals firstly warn prospective trustees that the ATO may reach out to them, that they shouldn't be alarmed by this, and that they should familiarise themselves with various aspects of managing an SMSF using the vast amount of information available including on the ATO website. Hopefully, being aware of the rules, even at a basic level, will address any concerns that the ATO may have about their ability to manage an SMSF.





## Delays with ABNs, TFNs, SuperStream

Several years ago, the ATO introduced a more rigorous and fully electronic system to manage the process of rolling over of monies from one superannuation fund to another. Previously, this was very straightforward, with superannuation funds just issuing cheques and providing a roll-over statement in paper form.

It became mandatory for SMSFs to also use the electronic SuperStream for roll-overs from October 2021 and to say that it's been problematic is an understatement.

The current iteration of SuperStream seems extremely fragile, with only minor discrepancies causing rollovers to fail. Even worse, the way the system currently works does not lend itself to identifying what the problem is – all a fund receives from the system is that it has failed. The administrator is left to attempt to work out what the problem might be through a process of trial and error.

Finance brokers will generally not have to deal with the headaches and annoyances that can occur with the rolling over of money into an SMSF, as this task is generally the responsibility of the SMSF's accountant. However, they should be mindful that there could well be delays in having the money transferred into the Fund's bank account as a result of these problems. Such delays are usually measured in weeks; however, we have occasionally seen some delays stretch into months.

As such, brokers should always factor in possible delays where time-sensitive actions loom, especially property settlements. We have seen instances where property purchases fall over because the trustees simply couldn't get their original superannuation fund to transfer the money across to their SMSF.



## Banks and Bare Trust/Custodian structures

Some areas for consideration:

- Finance brokers should familiarise themselves with the intricacies of borrowing within an SMSF, and especially the need for a legally valid limited recourse borrowing structure (LRBA).
- Many trustees desirous of using an SMSF for borrowing are not aware of this, thinking that just a standard bank loan is used.
- Unfortunately, the LRBA requirement unique to SMSF borrowing adds an extra layer of complexity and, unfortunately, cost.
- Brokers should also be mindful of who will prepare the legal documents for the LRBA, specifically the custodian bare trust. Increasingly finance institutions that offer SMSF borrowing have their own pre-vetted and approved templates, but this is not always the case. In this instance, the accountant or administrator can usually assist organise the paperwork.
- The broker might also want to consider who the custodian might be. In previous years, the individual members might act as the custodians. However, financial institutions are increasingly insisting on a new company being set up to act in this role, incurring even further costs.
- More information on LRBAs may be found on the ATO website, linked below:  
<https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/in-detail/smsf-resources/smsf-technical/limited-recourse-borrowing-arrangements-questions-and-answers>





## LRBA paperwork and stamp duty

Acquiring a property under an LRBA structure can run the risk of additional stamp duty if not done in the correct order. Specifically, the establishment of the bare trust arrangement that underpins the custodian arrangement must be dated correctly and the order of setting up the bare trust differs between states and territories.

In some jurisdictions, the bare trust must be legally in place before a contract to purchase a property is signed. In others, it can only be done afterwards.

Failure to get the order correct can result in double stamp duty as the local Office of State Revenue deems there to have been two property transfers for the one transaction. We have even heard of one case where they attempted to charge three lots of stamp duty on the one property purchase. For this reason, it is imperative that the SMSF trustees discuss the correct legal approach with their conveyancing lawyer before the LRBA has been established and, ideally, before an SMSF trustee has signed a contract or put any deposit down on the property.

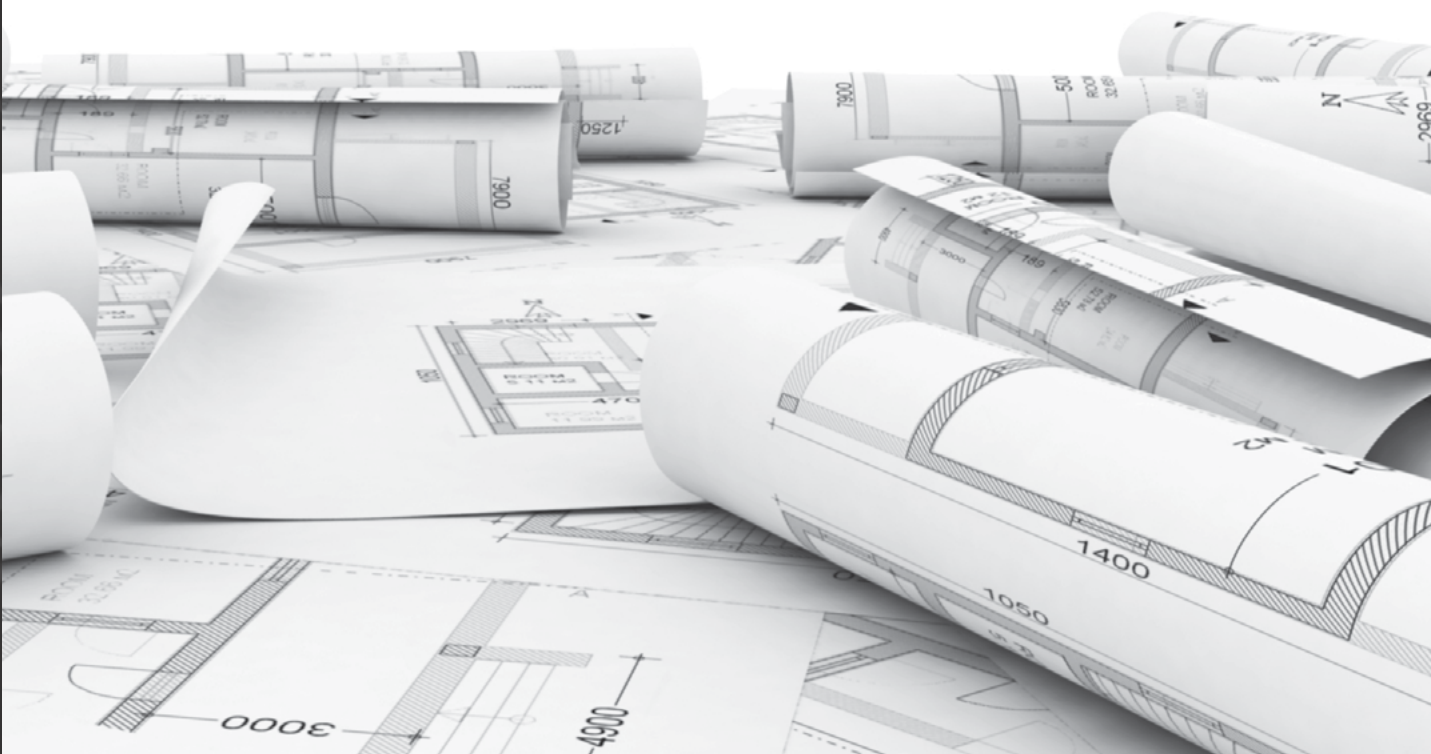


### Contact Aquila Super:

Chris Levy,  
Partner

02 6230 4663

[Chris\\_Levy@aquilasuper.com](mailto:Chris_Levy@aquilasuper.com)





# SMSF: PRODUCT OVERVIEW

## Obtaining SMSF finance for a commercial property

Aquamore is an established private lender that specialises in short-term commercial finance facilities.

SMSF product overview:

- Amount: \$300K - \$7.5M
- Term: Up to 3 years, with the option of x2 rollovers (9 years)
- LVR: Pending security type
- Rate: From 8.99%p.a.
- Loan application fees: from 1.5%
- Will consider credit-impaired borrowers and out-of-the-box scenarios on a judgemental credit basis
- No industry or postcode restrictions
- Income assessment done on a full doc basis
- No minimum liquidity requirements



### Contact Aquamore:

Matthew Porch,  
Head of Distribution  
0482 777 222  
[matthew.porch@aquamore.com.au](mailto:matthew.porch@aquamore.com.au)

