LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

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Your Refer
Our Refere
Telephone:

Your named Bare Trust. Your SMSF's asset. Start with our free questions and hints. Your Deed comes with our law firm's cover letter, minutes and instructions.

Explore your SMSF Custodian Deed:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

24 June

Freshwater Custodian Pty Ltd ACN 393 939 939
1 Coastview Place
Freshwater NSW 2096
Australia

Dear Bare Trustee,

SMSF CUSTODIAN TRUST DEED
under sections 67A and 67B of the SIS Act
Freshwater Custodian Trust

Attached are the SMSF Custodian Trust Deed (**Bare Trust Deed**) and limited Minutes.

Is this a general bare trust or can it only be used for SMSFs?

This document is **not** a general-purpose bare trust. It is a highly specific legal document designed *only* for a Self-Managed Superannuation Fund (SMSF) to borrow money under a Limited Recourse Borrowing Arrangement (LRBA) in compliance with section 67A of the *SIS Act*.

What we do (and do not) do

Legal Consolidated provides the Bare Trust Deed only. We do not act for you in the property purchase. We do not act for you in the loan transaction.

We do not provide advice on:

- The drafting or the review of the Contract of Sale.
- How to describe the purchaser in any contract.
- Stamp duty calculations, land tax or any other imposts or exemptions.
- Land Titles Office or land registry requirements.
- Lender, bank, or financier requirements.

You must obtain your own independent advice from:

1. **Your own Lawyer:**
    - to review the attached SMSF Custodian Trust Deed to see if it suits your needs and is appropriate for your individual circumstances
    - regarding all of the above matters including the contract of purchase, property transfer and stamp duty.

Liability limited by a scheme approved under Professional Standards Legislation

2. **Your lender:** for the loan and mortgage requirements, however, the bank does not act in your best interests, it acts in its own best interests. Your own lawyer should carefully review anything that you sign before you sign it.

SMSF WARNINGS – PLEASE READ BEFORE SIGNING

This document records a bare trust for an SMSF Limited Recourse Borrowing Arrangement. Errors in the wider transaction may breach the superannuation rules, expose income to non-arm's length income tax or cause additional duty. The information below is general. We have not assessed your transaction or provided personal financial, investment, accounting or conveyancing advice.

We do not know your individual circumstances. Speak with your accountant, auditor, conveyancer and lawyer. Particularly, seek help on:

1. **SIGNING ORDER AND DUTY:** Your conveyancing lawyer must settle the purchaser description, evidence of intention and order of signing before you sign the Contract or this Bare Trust Deed.
    - State and Territory duty rules differ. The correct sequence depends on the proposed transaction and the concession or exemption sought.
    - Do not use a general State-by-State signing list as approval for your transaction. Obtain instructions before signing and do not backdate documents.

    An incorrect purchaser description, funding trail or signing sequence may cause additional duty or prevent a concession. Your conveyancing lawyer must confirm the required documents, lodgement and payment deadlines.
2. **SMSF DEED CHECK**: Confirm with your accountant and auditor that your SMSF's SMSF Deed, any updates and Investment Strategy permit borrowing and holding this specific asset. This Bare Trust Deed does not override your SMSF's rules. If you are unsure update your SMSF Deed at https://legalconsolidated.com.au/smsf-deed-variations/
3. **ASSET DESCRIPTION:** Identify the Trust Asset precisely, including each relevant title reference. The arrangement must concern a single acquirable asset under section 67A of the SIS Act. More than one title does not automatically mean more than one asset. Your advisers must apply the statutory test and the ATO's ruling SMSFR 2012/1 to the actual property. Separate land and construction contracts require particular care.
4. **PASSIVE BARE TRUSTEE:** Under this Deed, the Bare Trustee holds title and acts on lawful written directions. The Beneficiary receives income and pays expenses and Loan repayments directly. The Bare Trustee must not operate a bank account or mix funds for this arrangement, unless required by law.
5. **CONTRACT OF PURCHASE:** How the purchaser appears on the contract of purchase is important. For example, if you get it wrong you end up paying double or triple stamp (transfer) duty or
   Stamp Duty Offices prefer the p

   Example: *Jenolan Caves P*

   However, this is not a universal
   documents, and your specific le
   Do not merely sign what the bar
6. **SMSF BORROWING — BUSIN**
   entering into a new Limited Rec
   estate must acquire business re
   ordinary residential investment

Your SMSF borrows. Your Custodian holds title. Our Deed sets out their separate roles and provides the holding structure for your SMSF's limited recourse borrowing arrangement.

Read the acquisition rules with your SMSF Deed and loan terms.

Build this document here:

legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

The restriction does not apply to qualifying borrowing arrangements entered into before 10 August 2026, including protected refinancing arrangements and acquisitions under earlier arrangements.

Before signing, obtain confirmation from your accountant and independent property lawyer that the proposed acquisition complies with the borrowing rules. Legal Consolidated has not investigated the proposed property or determined whether it qualifies as business real property.

No legal advice

Again, Legal Consolidated is not providing any advice or any legal advice. The above list is not conclusive. You must seek your own legal advice from your own property and conveyancing lawyer.

How to print the SMSF Bare Trust Deed

After your accountant has read and signed off on its purpose and when you are satisfied that the Bare Trust Deed is according to your instructions:

1. Download the PDF (Do not print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
   100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).

Read the SMSF Trust Deed to check and verify all the names and details

Before printing and signing, check every name, address, capacity and asset description. Include the relevant legal identifiers, such as title references. We have not verified those details or sighted or checked the SMS
authority of the parties.

After the Bare Trust Deed is signed sc
also email a copy for your accountant.

Should the Custodian Bare Trust ha

Yes. Lenders and other third parties of
arrangement a Bare Trust Identificatio

The name is for identification only. It d
Bare Trustee additional powers or duties, change ownership of the Trust Asset or allow the Deed to hold more than one asset. The Bare Trustee remains passive and acts only as directed by the SMSF Trustee.

Choose a name for your Bare Trust as you build. Your completed Deed carries that name through the document, alongside your trustee and SMSF details.

Free hints guide you through the questions.

Explore your SMSF Custodian Deed:

legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

What purchaser name appears on the Contract of Sale?

The Bare Trust Identification Name is not automatically the purchaser name. Requirements differ between lenders and State and Territory revenue offices.

For example, your property lawyer or conveyancer may approve one of the following descriptions for the particular transaction:

<Name of Company Pty Ltd> ACN <insert ACN>

or:

<Name of Company Pty Ltd> ACN <insert ACN> as custodian for the <Name of SMSF> ABN <insert SMSF ABN>

We do not provide this advice. Your conveyancing lawyer must approve the purchaser description before you sign the Contract of Sale.

What to do after signing

Once the Bare Trust Deed is signed, ensure the integrity of the bare trust and avoid tax and duty penalties:

1. **Maintain a Clear Money Trail:** Keep evidence that the Beneficiary provides the purchase money, including the deposit and settlement funds, from its own funds or the Loan. Record payments made directly from the SMSF's bank account or on its behalf through a solicitor's trust account or settlement. Ask your conveyancing lawyer to confirm the evidence required for the relevant duty concession.
2. **Lodge for Duty as Required:** Your conveyancing lawyer must confirm whether this Bare Trust Deed and the transaction require lodgement, assessment or endorsement, and arrange them within the applicable deadlines. Duty, concessions and exemptions differ between States and Territories. Do not assume that the Deed or a later transfer of title attracts only nominal duty.
3. **Keep the Bare Trustee Passive:** The Beneficiary receives the asset's income, pays its expenses and accounts for the arrangement. Under this Deed, the Bare Trustee must not open a bank account, apply for an ABN or TFN or lodge a tax return for the bare trust, unless required by law. Your accountant must confirm the tax and reporting treatment of the actual arrangement.
4. **No Legal or Taxation Advice Provided** Legal Consolidated's role is strictly limited to the preparation of this Bare Trust Deed based on the instructions provided. The law firm has given no legal, taxation, or financial advice to any party regarding the Bare Trust Deed, its suitability, or its consequences. The law firm has not reviewed the purpose for which you require this document, nor conducted any verification or due diligence on the parties or the compliance of the SMSF. All parties, including any lenders, must seek their own independent legal, financial, and taxation advice before signing.
5. **Stamp Duty and Execution** This Bare Trust Deed may have significant stamp duty and taxation consequences. As stated in the warnings above, the timing of signing (executing) this Bare Trust is critical and varies by State and Territory. It is your sole responsibility to seek independent conveyancing and accounting advice on these matters. We are not acting as your conveyancer and have not provided any advice on the stamp duty implications or the correct execution process for your specific transaction. No legal or general advice has been provided.

Legal Consolidated provides no legal advice

While we provide the SMSF Custodian Bare Trust Deed, the borrowing process involves other documents that we do not prepare or review and have no knowledge of.

1. We do not review your SMSF Deed. Have your advisers confirm that the SMSF Deed and Investment Strategy permit the proposed borrowing and asset. Our SMSF Deed update provides borrowing powers, but it does not make an otherwise prohibited transaction lawful.

2. **We do not review the Contract of Purchase** The Contract of Sale is between the Vendor and your new Bare Trustee company. We do not review this contract. Engage a conveyancer if you are dealing with real estate.

3. **We do not review the Loan Agreement** The loan agreement and security documents are separate from this Bare Trust Deed. The lender decides which parties must sign them. We do not review those documents.

4. **We do not give advice on Guarantees** Lenders often require the members of the SMSF to sign Personal Guarantees. This makes the members personally liable if the super fund assets are insufficient. The Bank prepares these guarantee

documents. We do not provide the "Independent Legal Advice" (Solicitor Certificates) that banks often request for guarantors.

Proforma Minutes of Meeting – administration only

The attached minutes authorise the Bare Trustee to accept appointment and sign this Bare Trust Deed. They do not approve the SMSF's investment or borrowing decision.

1. What the attached Minute covers Th
records the Bare Trustee's resolution to
Bare Trust Deed.

2. What the attached Minute does NO
the decision to purchase the property or
they must speak with their accountant ar
minutes to cover:

- **The Investment Decision**: The S
confirming the purchase aligns w
- **Evidence of Intention and Duty**
records are required to establish
money and signing sequence for the relevant duty treatment. The attached administrative minutes do not replace those transaction-specific records.

These minutes accept the Custodian's appointment. Your SMSF trustee also needs its own investment and borrowing decisions. Keep the records together so your auditor follows the whole transaction.

The minutes and Deed perform different jobs.

Explore your SMSF Custodian Deed:

legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

Because we do not know your specific State or signing date, we cannot provide these transactional minutes.

Financier and Foreign Investment (FIRB) Requirements

Furthermore, no advice has been provided on any third-party requirements. If you are obtaining finance for this purchase, it is your responsibility to ensure this deed is acceptable to your specific lender.

No advice has been provided regarding the *Foreign Acquisitions and Takeovers Act 1975* (FIRB). If any party is a 'foreign person', you must seek specialist advice to ensure compliance with all foreign investment laws. Further, no advice has been given on stamp duty and land tax, including penalty foreigner land tax and stamp duty rates.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,

Legal Consolidated

Legal Consolidated Barristers & Solicitors

Resolution by the Bare Trustee

Held at ……

On ……day of …….. 20…….

Trustee full name(s) ("**Bare Trustee**"):

Freshwater Custodian Pty Ltd ACN 393 939 939
1 Coastview Place, Freshwater NSW 2096, Australia

Quorum: It was noted that a quorum was present at the meeting.

Notice of Meeting: The Chairperson confirms that the meeting was called and held in accordance with the Bare Trustee's governing rules and applicable law. Any waiver of notice operates only to the extent permitted by those rules and law.

Chairperson: It was resolved that the person signing these minutes be the chairperson (Chairperson).

Limited scope of this Minute

1. What this Minute covers This Minute is administrative only. It records the Bare Trustee's resolution to accept the appointment and sign this specific Bare Trust Deed called the Freshwater Custodian Trust.

2. What this Minute does NOT cover: This Minute does not approve the investment, purchase or borrowing arrangement. The parties must obtain advice from their accountant and conveyancing lawyer on the additional resolutions and transaction records required, including:

- **The Investment Decision:** The SMSF trustee requires a separate minute confirming the purchase aligns with the Investment Strategy.
- **Evidence of Intention and Duty:** The conveyancing lawyer must confirm the records required to establish beneficial ownership, the source of purchase money and the signing sequence for the relevant State or Territory duty treatment.

The Bare Trust Deed was tabled. IT WAS RESOLVED that the Bare Trustee accept appointment and approve execution of that Deed, subject to the governing rules of the Bare Trustee and applicable law:

1. Freshwater Custodian Pty Ltd (the Bare Trustee): accepts the role of trustee of the Bare Trust Deed.

   Freshwater Custodian Pty Ltd ACN 393 939 939
   1 Coastview Place, Freshwater NSW 2096, Australia

2. Freshwater Custodian Pty Ltd (the Bare Trustee) acknowledges educating itself and seeking from the accountant, conveyancing lawyer and auditor advice on many of the critical operational requirements of the trust, including:

(a) the need to keep a clear evidence trail of purchase money provided by or on behalf of the Beneficiary, including payments through a solicitor's trust account or settlement;
(b) the legal requirement to lodge the Bare Trust Deed and any duplicates with the applicable State Revenue Office for stamp duty assessment, as required;
(c) the requirement for the Bare Trustee to remain entirely passive, with all financial transactions and tax reporting to be handled by the Beneficiary (SMSF);
(d) that the Bare Trustee must not open a bank account for this Trust, as all financial transactions must be processed directly by the Beneficiary (SMSF).
(e) the Beneficiary's indemnity is subject to the exclusions and limited recourse provisions of the Bare Trust Deed and gives no recourse to other assets of the Beneficiary, the SMSF or any member;
(f) the importance of ensuring the Bare Trustee and Asset details in the deed are accurate before signing; and
(g) the rule that this trust must hold only the single specified asset.

Freshwater Custodian Pty Ltd (the Bare Trustee) has received a copy of the Bare Trust Deed.

3. Freshwater Custodian Pty Ltd (the Bare Trustee) will perform its duties under the Bare Trust Deed and applicable l
subject to the Deed's exclusions
as permitted by the SIS Act. This
indemnity.
4. Authority is given for the Bare Tru
Bare Trust Deed and the Trust A
third parties, as required, includir
authorities and the Australian Ta
5. **Non-Reliance on Deed Provide**
below) acknowledge and confirm
Deed has not provided any legal,
(b) The provider has not reviewed the Beneficiary's (SMSF) current SMSF Trust Deed, Investment Strategy, or compliance status. (c) The parties have been advised to seek their own independent legal, accounting, and financial planning advice before signing and have not relied on the provider. (d) It is the parties' sole responsibility to ensure the Bare Trust Deed is acceptable to their lender and that the signing order is correct for stamp duty and SIS legislation purposes.
6. **Acknowledgement of SMSF Requirements:** The Bare Trustee and Beneficiary acknowledge the need for independent advice on: (a) arm's length dealing and the non-arm's length income rules; (b) the prohibition on using borrowed money to improve the asset and the restrictions on changing or replacing the asset; (c) the single acquirable asset requirements and, for real property, eligibility under the current borrowing rules; (d) purchaser descriptions, duty, funding evidence and signing sequence; and (e) the SMSF Deed, Investment Strategy and valid investment and borrowing decisions. These minutes do not establish that those requirements have been satisfied.

Follow the purchase money. Keep the deposit, settlement and loan records. A clear trail explains who paid and who owns the beneficial interest. Your conveyancing lawyer checks the duty evidence.

Payments through a solicitor's trust account also need a clear record.

Explore your SMSF Custodian Deed:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

Closure: There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

..... Person chairing the meeting

The Bare Trustee signs here: ……..

The Beneficiary (SMSF Trustee) signs acknowledging all resolutions above:

……: ……

All members of the SMSF sign acknowledging all resolutions above:

……: ……

Bare Trust Deed for the Freshwater Custodian Trust

In compliance with SIS Act s

- 287 Viking Street, Nollamara being all the land contained i Title Volume 2873 Folio 3837

Give your SMSF Bare Trust its own name. Legal Consolidated prepares the Deed with your chosen name and the asset details you enter. The free hints explain each step as you build.

Your named trust, Deed and supporting records work together.

Explore your SMSF Custodian Deed:

legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

This Bare Trust Deed is made by:

Freshwater Custodian Pty Ltd ACN 393 939 939
1 Coastview Place, Freshwater NSW 2096, Australia

(**Bare Trustee**)

and

J & K Edelman Pty Ltd ACN 838 373 883
289 Ingles Street, Port Melbourne VIC 3207, Australia
as trustee for the Jan and Kevin Edelman Super Fund ABN 93 837 393 030

(**Beneficiary**)

1 Operative

1.1 J & K Edelman Pty Ltd as trustee for the Jan and Kevin Edelman Super Fund (the Beneficiary) is considering making an offer to purchase:

- 287 Viking Street, Nollamara, NSW, 2377, being all the land contained in Certificate of Title Volume 2873 Folio 3837

(**Trust Asset**) from the Vendo

1.2 **The Request** After carrying ou
accountant and a conveyancir
Bare Trustee to make the offe
bare trustee for and on behalf

1.3 **Agreement to Act** The Bare T
Bare Trust Deed known for ad
Custodian Trust.

1.4 The expression Freshwater Cu
identify the trust relationship re
separate legal person, confer any additional power or duty, alter the legal or beneficial ownership of the Trust Asset or permit the Trustee to hold any other asset. A reference to the Freshwater Custodian Trust is a reference to the Trustee acting in its capacity as trustee under this Deed.

1.5 **Single Acquirable Asset and Improvements:** The Trust Asset must be a single acquirable asset within section 67A of the SIS Act. SMSFR 2012/1 explains the ATO's approach to that requirement. Borrowed money must not fund improvements. Any work funded from other money must comply with the SIS Act, including the restrictions on changing or replacing the asset under sections 67A and 67B. Where the Trust Asset is real property, the arrangement must also satisfy the applicable business real property requirements and any relevant transitional provisions.

1.6 **Duty and signing sequence** The parties acknowledge that the timing and sequence of the Contract, this Bare Trust Deed and any minute or other evidence of intention may affect stamp, transfer and other duties. The Preparing Law Firm does not advise on those matters. Each party is

The Bare Trustee holds legal title. Your SMSF trustee holds the beneficial interest for your Fund. Get both names and capacities right: they have different jobs.

Check the parties against the contract, loan and title documents.

Build this document here:
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responsible for obtaining independent advice from a conveyancing lawyer before taking any step that may attract duty.

1.7 **No due diligence, commercial advice or reliance** The parties acknowledge that the Preparing Law Firm has not conducted any due diligence on the Trust Asset, the SMSF, the Loan or the wider transaction. It does not advise on whether the wider borrowing arrangement is lawful, suitable, affordable, commercially prudent or compliant with the SMSF Deed, Investment Strategy, the SIS Act, taxation or duty law, or any lender, titles office or registration requirement.

1.8 The Preparing Law Firm gives
condition, income, liquidity or t
rates; the availability or terms
refinance the Loan; any guara
default.

1.9 The Beneficiary alone decides
arrangement and accepts its c
obtain its own legal, conveyan
advice. No party relies on the
limited retainer stated in this B

Your Deed explains the holding structure in writing. It identifies the parties, records their roles and sets out how the Custodian holds the asset for your SMSF trustee.

Keep the signed Deed with the transaction records.

Explore your SMSF Custodian Deed:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

1.10 **When does this Bare Trust Deed end?** This Bare Trust Deed ends if the proposed purchase does not proceed and the Bare Trustee has no remaining right, asset or liability concerning it. Otherwise, it ends when the Bare Trustee no longer holds the Trust Asset or any proceeds of it and no security relating to the Trust Asset remains in force. It cannot be reused to acquire or hold another asset. Its ending does not affect any accrued right, obligation or liability.

2 Interpretation

In this Bare Trust Deed, unless the context requires otherwise:

2.1 the singular includes the plural and vice versa;

2.2 a person includes an individual, body corporate, partnership, unincorporated body, government and government authority;

2.3 a reference to a person described as acting as trustee is a reference to that person acting only in that capacity;

2.4 an obligation imposed on two or more persons binds them jointly and each of them separately;

2.5 a reference to legislation includes its amendment, replacement and any legislative instrument made under it;

2.6 a reference to law includes legislation, common law and equity;

2.7 the expressions “including”, “includes” and “for example” do not limit the words preceding them;

2.8 headings, questions and numbering assist reading only and do not affect interpretation;

2.9 “written” and “in writing” include an electronic communication capable of being retained and reproduced, unless applicable law requires another form;

2.10 an expression used in sections 67A or 67B of the SIS Act and not separately defined in this Bare Trust Deed has the meaning given by the SIS Act; and

2.11 the title page, party descriptions and operative background within this Bare Trust Deed form part of it.

3 Dictionary

3.1 **Contract** the offer and acceptance, exchanged contract or other written agreement under which the Bare Trustee acquires or is to acquire the Trust Asset from the Vendor, including any counter-offer or written amendment forming part of that agreement

3.2 **Lender** the person providing or maintaining the Loan, including any lawful assignee, successor or replacement lender

3.3 **Loan** the borrowing or refinancing forming part of the limited recourse borrowing arrangement concerning the Trust Asset

3.4 **SIS Act** the *Superannuation Industry (Supervision) Act 1993* (Cth)

3.5 **Trust Asset** the Single Acquirable Asset described in this Deed including all indicia of title and all other related benefits attached or related to the Trust Asset as permissible under the SIS Act

3.6 **Vendor(s)**:

Canastin Enginneers Pty Ltd ACN 303 998 838
Floor 27, 87 One World Drive, Redridge QLD 4660, Australia

or such persons who own or collectively own the Trust Asset

4 How does the declar

4.1 The Bare Trustee acknowledge
sign the Contract in the capacity
Beneficiary to facilitate a Limite
SIS Act.

4.2 Upon acquiring legal title to the
Bare Trustee) holds the Trust A
applied to acquire the Trust Ass
whether from its own funds or fr
entitled to the entire beneficial i
the Lender under the Loan and any security.

Your SMSF's other assets matter. A compliant limited recourse arrangement confines recovery against the SMSF trustee to rights relating to the acquired asset. Personal guarantees need separate attention.

The SIS Act, s 67A, sets the limited recourse requirements.

Build this document here:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

5 What beneficial interest does Bare Trustee keep?

5.1 Freshwater Custodian Pty Ltd (the Bare Trustee) also declares and acknowledges that Bare Trustee will have no beneficial interest in the Trust Asset.

5.2 Freshwater Custodian Pty Ltd (the Bare Trustee) must deal with the Trust Asset as lawfully directed in writing by the Beneficiary, subject to this Bare Trust Deed and the Lender's rights under the Loan and any security. When the Loan has been repaid and every security relating to the Trust Asset has been discharged, the Bare Trustee must transfer legal title to the Trust Asset to the Beneficiary at the Beneficiary's written direction and cost. That transfer merely gives effect to the Beneficiary's existing beneficial ownership. It does not change beneficial ownership and no consideration is payable for it.

5.3 Nothing in this Bare Trust Deed alters the Beneficiary's entire beneficial ownership of the Trust Asset, which continues throughout this Bare Trust Deed, subject to the rights of the Lender under the Loan and any security.

5.4 The Bare Trustee must promptly give the Beneficiary any notice, assessment, claim or demand it receives concerning the Trust Asset. The Beneficiary must pay, or cause to be paid, all outgoings concerning the Trust Asset. The Bare Trustee must not pay those outgoings or maintain a bank account for that purpose.

6 Beneficiary's instructions

6.1 The Bare Trustee may act only on a lawful written direction given by J & K Edelman Pty Ltd as trustee for the Jan and Kevin Edelman Super Fund (the Beneficiary) in accordance with the Beneficiary's valid decision-making requirements, or by a person expressly authorised in writing by the Beneficiary.

6.2 Subject to law, the Bare Trustee is not liable for acting or refraining from acting in good faith in reliance on a written direction that appears on its face to have been validly given by or on behalf of the Beneficiary, except to the extent that the liability results from the Bare Trustee's fraud, dishonesty, gross negligence or wilful misconduct.

7 Bare Trustee's Limitation of Powers

7.1 Freshwater Custodian Pty Ltd (t
concerning the Trust Asset. The

7.1.1 except where requ
Lender's rights under
on a lawful written dire
expressly authorised i

7.1.2 sign documents c
directed by the Benefi
of the Lender's rights

7.1.3 not deal with, sell,
otherwise alter the Trust Asset unless lawfully directed in writing by the Beneficiary and the action is permitted by the SIS Act and the Loan and security documents;

7.1.4 not open or operate a bank account, receive income, pay outgoings, apply for an ABN or TFN or lodge a tax return in relation to the bare trust, unless required by law;

7.1.5 not carry on a business; and

7.1.6 not acquire or hold any other asset under this Bare Trust Deed.

Think of the Custodian as the title holder, not the investment manager. Give lawful written directions and retain them. Do not let the holding trust drift into running its own business.

The Deed limits the Bare Trustee's independent powers.

Explore your SMSF Custodian Deed:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

8 Limited Retainer and Independent Advice

8.1 Each party acknowledges that:

8.1.1 **Preparing Law Firm** means any law firm involved in preparing, supplying or making this Bare Trust Deed.

8.1.2 In relation to this Bare Trust Deed, the Preparing Law Firm acts only for the first-named Bare Trustee. Its retainer is limited to preparing this Bare Trust Deed from the information supplied.

8.1.3 The Preparing Law Firm does not advise the Bare Trustee on whether it should accept appointment, sign this Bare Trust Deed or participate in the transaction.

8.1.4 The Preparing Law Firm does not act for any other trustee, the Beneficiary, the SMSF, any member, director, shareholder, Vendor, Lender, guarantor, conveyancer or other adviser.

8.1.5 The Preparing Law Firm has not sighted, reviewed or advised on the SMSF Deed, Investment Strategy, Contract, purchaser description, Loan, mortgage, guarantee, title, settlement, duty, taxation, land tax, foreign investment requirements, SMSF compliance or the commercial merits of the transaction.

8.1.6 The Preparing Law Firm has not verified any information supplied, the identity or authority of any party, the ownership or description of the Trust Asset or any requirement of the Lender, revenue authority or titles office.

8.1.7 Each party must obtain its own independent advice on matters outside that limited retainer, including conveyancing, accounting, taxation, financial and lending advice. No person other than the first-named Bare Trustee is the Preparing Law Firm's client under that retainer.

8.1.8 This section records the scope of the drafting retainer. It does not exclude or limit any du
does not permit the Pr

Rent, repayments and expenses belong in the SMSF's records. Keep the Custodian passive and follow the Deed's payment provisions. Ask your accountant to confirm the treatment of your actual arrangement.

Your auditor needs the records as well as the signed documents.

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9 Obligations of the B

Beneficiary to provide funds

9.1 J & K Edelman Pty Ltd as trustee f
Beneficiary) must:

9.1.1 pay directly all am
insure, hold, maintain
repayments, rates, tax

9.1.2 not pay money to the Bare Trustee unless required by law and permitted by the SIS Act;

9.1.3 give the Bare Trustee all lawful written directions and documents reasonably required for the Bare Trustee to perform its limited duties under this Bare Trust Deed; and

9.1.4 ensure that any mortgage or security granted by the Bare Trustee is limited to the Trust Asset and secures only obligations permitted under the Limited Recourse Borrowing Arrangement.

Indemnity

9.2 J & K Edelman Pty Ltd as trustee for the Jan and Kevin Edelman Super Fund (the Beneficiary) indemnifies the Bare Trustee against liabilities and costs properly

incurred by the Bare Trustee in good faith when complying with this Bare Trust Deed or a lawful written direction of the Beneficiary.

9.3 The indemnity does not apply to the extent that a liability or cost results from the Bare Trustee's fraud, dishonesty, gross negligence or wilful misconduct.

9.4 Every right of indemnity, reimbursement or recourse arising under this Bare Trust Deed is limited to rights relating to the Trust Asset as permitted by the SIS Act. The Bare Trustee has no recourse against any other asset of the Beneficiary, the SMSF or any member.

Protect your SMSF's other assets. This Deed limits the Custodian's indemnity and recourse to rights relating to the Trust Asset, as permitted by the SIS Act.

The SIS Act, s 67A, also addresses recourse by other persons.

Explore your SMSF Custodian Deed:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

10 Who pays for this Ba

10.1 J & K Edelman Pty Ltd as trustee f
Beneficiary) must directly pay all le
and other costs lawfully payable in
Bare Trust Deed.

10.2 The Bare Trustee must not pay an
Trustee is required to pay an amou
reimburse the Bare Trustee. That r
to the Trust Asset as permitted by the SIS Act.

11 Compliance, Reading Down and Severance

11.1 This Bare Trust Deed is intended to form part of a Limited Recourse Borrowing Arrangement under sections 67A and 67B of the SIS Act. It must be interpreted and administered consistently with those sections, including the requirements concerning the acquisition and holding of a single acquirable asset, the Beneficiary's beneficial interest and right to acquire legal title, limited recourse on default, permitted charges and replacement assets.

11.2 Mandatory law prevails over any inconsistent provision of this Bare Trust Deed.

11.3 If a provision would otherwise be invalid, unlawful or unenforceable, it must be read down to the minimum extent necessary to make it valid, lawful and enforceable.

11.4 If the provision cannot be read down, the offending part is severed. The remaining provisions continue to operate.

11.5 Reading down or severance does not change the facts, cure substantive non-compliance or create any entitlement to a taxation, duty, land titles or other concession.

12 No Partnership or Joint Venture

Nothing in this Bare Trust Deed creates a partnership or joint venture between the Bare Trustee and J & K Edelman Pty Ltd as trustee for the Jan and Kevin Edelman Super Fund (the Beneficiary). Their relationship is the bare trust relationship expressly recorded by this Bare Trust Deed.

13 Governing Law and Jurisdiction

13.1 This Bare Trust Deed is governed by the law of the State or Territory in which the Trust Asset is situated.

13.2 If the Trust Asset has no single location, this Bare Trust Deed is governed by the law of the State or Territory in which the principal address of the SMSF stated in this Bare Trust Deed is located.

13.3 Each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

14 Signing and Execution

14.1 This Bare Trust Deed may be executed in any number of counterparts. All executed counterparts together constitute one instrument.

14.2 Each party may sign and exchange this Bare Trust Deed electronically, but only to the extent permitted by the law applying to its execution.

14.3 Each party must comply with any applicable witnessing or attestation requirements.

14.4 A party signing this Bare Trust Deed intends its signature to constitute delivery of this Bare Trust Deed.

14.5 Nothing in this section requires the other person to accept electronic e

Two companies. Two separate signing capacities. The Bare Trustee and SMSF trustee each execute the Deed. Check the authorised signatories for each company before signing.

Company execution: Corporations Act 2001 (Cth) s 127.

Build this document here:
legalconsolidated.com.au/smsf-custodian-bare-trust-deed/

Signed as a Deed on _____ of ___

EXECUTED for and on behalf of
Freshwater Custodian Pty Ltd
ACN 393 939 939
by authority of its Directors in accordance with section 127 *Corporations Act* 2001 (Cth)

_____ _____

Signature of Director or Secretary | Signature of Director (if a 2nd)

EXECUTED for and on behalf of
J & K Edelman Pty Ltd
ACN 838 373 883
by authority of its Directors in accordance with section 127 *Corporations Act* 2001 (Cth)

_____ _____

Signature of Director or Secretary | Signature of Director (if a 2nd)