

Your Reference: SMSF
Our Reference: 95925
Telephone: 1800

25 November 20

Build the legal document at
<https://legalconsolidated.com.au/smsf-custodian-bare-trust-deed/>.
We can help you answer the questions.

ABC Bare Trustee Co Pty Ltd ACN 123 456 789
111 Main Street
Blacktown NSW 2148
Australia

Dear Bare Trustee,

SMSF CUSTODIAN TRUST DEED (SISA s67A)

Attached is the SMSF Custodian Trust Deed and 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*.

SMSF WARNINGS – PLEASE READ BEFORE SIGNING

This is a legal document for a regulated SMSF borrowing. Mistakes can lead to significant tax penalties (e.g. 45%) and double stamp duty. The information below is of a general nature only. Legal Consolidated is providing no advice and does not give advice. If you are unsure speak with your accountant, auditor, conveyancer and lawyer. Also you may wish to seek help on the following:

1. **SIGNING ORDER (STAMP DUTY TRAP):** The order you sign this Trust Deed and any Contract of Sale is critical and varies by State.
 - QLD/WA/NT: You must generally sign this Deed **FIRST**, *before* the Contract.
 - NSW/VIC/SA/TAS/ACT: You must generally sign the Contract **FIRST**, *before* this Deed.

Get advice from your lawyer and conveyancer on the correct order for your State. Signing in the wrong order triggers double stamp duty.

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



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
18 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

you are unsure update your SMSF Deed at <https://legalconsolidated.com.au/smsf-deed-variations/>

3. **ASSET DESCRIPTION:** The "Trust Asset" description must be precise (for example, Folio/Volume numbers for real estate) and must be a "Single Acquirable Asset". For example, you cannot use this Bare Trust Deed to buy two separate assets (e.g., two titles) or a "house and land" package where the land and construction are separate contracts.
4. **PASSIVE BARE TRUSTEE:** The Bare Trustee (Custodian) must not open a bank account or mix funds. All money (rent, expenses, loan payments) must flow directly from the Beneficiary's (SMSF's) bank account.

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 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, meticulously check that the Bare Trustee and SMSF Trustee (Beneficiary) names and address are absolutely correct. Also, ensure the Trust Asset is described precisely, including legal identifiers like title references if applicable. Errors cause significant issues later. Legal Consolidated has neither checked nor verified any of the details. To put the matter beyond doubt we have not cited or check the SMSF Deed, any documents and the veracity of the parties involved with this proposed transaction.

After the Bare Trust Deed is signed scan the signed copy and email it to each person and also email a copy for your accountant.

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:** The SMSF Beneficiary must be the "real" or "equitable" purchaser. To help prove this, the SMSF Beneficiary (not the Bare Trustee) pays all costs associated with the purchase directly from the SMSFs (Beneficiary) own bank account. This includes the deposit, settlement funds, stamp duty, and all transactional fees.

2. **Lodge for Stamp Duty:** This Bare Trust Deed is usually a dutiable document. It must be lodged with the relevant State or Territory Revenue Office (SRO) for assessment immediately or at least within the required timeframe.

Failure to do so, or signing documents in the wrong order, results in penalties and the loss of future stamp duty exemptions, potentially leading to double or even triple duty.

3. **Ensure the Bare Trustee Remains Passive:** The Bare Trustee's only role is to hold the legal title. The Bare Trustee must not open a bank account, apply for a TFN, or lodge tax returns for this trust. All income from the asset (e.g., rent) must be paid directly to the SMSF (as the Beneficiary), and all expenses (e.g., rates) must be paid directly by the SMSF (as Beneficiary). The SMSF (as Beneficiary) reports all income and expenses on its own tax return.
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** We do not check your SMSF Deed to see if it allows borrowing. If you are unsure, update your SMSF Deed with us first, which allows borrowing.
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 is a contract

between your Bare Trustee and the Lender. The Bank (or your related party lender) prepares this. We do not review the loan offer or mortgage documents.

4. We do not give advice on Guarantees Lenders usually 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.

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 solicitor.

No advice has been provided on FIRB. If any party is not compliant with all FIRB requirements, a penalty foreigner land tax may apply.

This now concludes the letter.

Yours sincerely,



Legal Consolidated

Checklist to see if your SMSF Property Trust is ATO compliant

If you have an existing Bare Trust or are about to build one, contact the provider or law firm that prepared it to confirm the following three points:

1. Is it a "Puppet" Trust? The Custodian Trustee must be stripped of all discretion. It must act *only* on the direction of the SMSF Trustee. If the Deed allows the Custodian to make decisions, open bank accounts, or manage the property independently, this ambiguity breaches SIS Regulations.

2. Does it strictly prohibit "Improvements"? The legislation allows repairs but bans improvements when borrowed money is used. A compliant Bare Trust Deed should expressly restrict the Trustee from carrying out improvements that create a "Replacement Asset". (You can usually improve the asset using the SMSF's own cash, but the Bare Trust Deed must forbid using the loan money for this.)

3. Was the signing order correct for your State? Did the provider give you specific legal advice on whether to sign the Deed or the Contract of Sale first?

- *Example: In NSW, signing the Deed before the Contract can trigger double duty. In QLD, the reverse is often true.*

Legal Consolidated's Bare Trusts comply.

Resolution by the Trustees

Held at

Onday of20.....

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

ABC Bare Trustee Co Pty Ltd ACN 123 456 789
111 Main Street, Blacktown NSW 2148, Australia

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

Notice of Meeting: It was noted that all the above persons receive notice of this meeting and that all consent to the meeting being held and waive any requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any rules, Constitutions or the Companies Act 2006.

Chairperson: It was resolved that the Chairperson be the person named in the deed (Chairperson).

Upon tabling the declared and filed deed,
WAS RESOLVED that:

1. The Trustee(s): accepts

ABC Bare Trustee Co Pty Ltd
111 Main Street, Blacktown NSW 2148, Australia

2. The Trustee acknowledges the legal and auditor advice on many matters including:

- (a) the necessity for the clear evidence trail;
- (b) the legal requirements applicable State Revenue;
- (c) the requirement for the transactions and tax;
- (d) that the Trustee must ensure the transactions must be properly recorded;
- (e) the Beneficiary's obligations, expenses, and liabilities under the Trust Deed;

- (f) the importance of ensuring the 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.

The Trustee has received a copy of the Trust Deed.

Build the legal document at

<https://legalconsolidated.com.au/smsf-custodian-bare-trust-deed/>. We can help you answer the questions.

On our law firm's website, you:

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law document firm's letterhead with the legal
4. As a law firm are responsible for the legal document

Only a law firm provides the above.

Adj Professor, Dr Brett Davies - Partner

3. The Trustee will carry out and perform such duties according to law and further acknowledges the Beneficiary's obligation to indemnify the Trustee against all costs, expenses, and liabilities incurred in performing their duties under the deed.
4. Authority is given for the Trust Deed and all other matters pertaining to the Trust Deed and the Trust Asset, and related information, to be provided to third parties, as required, including the local (stamp) duty regulator, government authorities and the Australian Taxation Office.
5. **Non-Reliance on Deed Provider:** The Trustee and Beneficiary (by signing below) acknowledge and confirm that: (a) The provider or drafter of the Trust Deed has not provided any legal, tax, or financial advice. (b) The provider has not reviewed the Investment Strategy, or compliance strategy, and the Beneficiary will seek their own independent legal, accounting, and financial advice before signing and have not relied on the provider's advice. (c) It is the responsibility to ensure the Trust Deed is acceptable to their Lender and that the signing order is correct for stamp duty purposes.
6. **Acknowledgement of Specific SISA Warnings:** The Trustee and Beneficiary confirm they have read and understood the specific warnings contained in the Introduction of the Trust Deed and government websites, specifically: (a) NALI Risk (Merchant Case): The requirement for all dealings to be on strict arm's length commercial terms to avoid the 45% NALI tax rate. (b) Improvements vs. Repairs: The prohibition on using borrowed funds for improvements (which must be paid from the Beneficiary's cash reserves). (c) Asset & Timing: The "Single Acquirable Asset" rule and the critical importance of the order of signing the Deed and Contract to avoid double stamp duty. (d) SMSF Deed Compliance: The warranty that the Beneficiary's own SMSF Deed and Investment Strategy permit this borrowing arrangement and that it is in the members' best financial interests.

Build the legal document at
<https://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:

.....

Other names for a Custodian Bare Trust:

There is no definitive expression or name for a Custody Bare Trust under the Act.

*While not defined in the SIS Act, a bare trust has the following (see *Herdegen v FCT* [\[1988\] FCA 419](#)):*

- the trustee holds property without any interest, other than that existing by reason of the office and the legal title as trustee; and*
- the trustee has no discretion and no active duties, other than to convey the trust property on demand to the beneficiary or beneficiaries or as directed by them.*

An SMSF Custodian Bare Trust is also commonly known by other names, such as:

- SMSF Bare Trust Deed*
- SMSF Custodian Trust*
- SMSF Property Trust*
- Limited Recourse Borrowing Arrangement (LRBA) Trust*
- Holding Trust*
- Custodian Deed*
- Bare Trust Declaration*
- Debt Instalment Trust*
- Instalment Warrant Trust*

How to borrow money in your Self-Managed Super Fund

Does your SMSF want to borrow money to buy an asset? You cannot expose your Self-Managed Super Fund, which has many other assets, to this debt. Instead, your SMSF needs to borrow on a limited recourse basis. Therefore, if your SMSF cannot pay the debt or the asset becomes worthless, the SMSF can walk away free of the debt. There is no recourse against the SMSF or its assets by the banker.

This structure is also known as an SMSF Property Trust, Holding Trust, or Bare Trust Deed.

Build the legal document at <https://legalconsolidated.com.au/smsf-custodian-bare-trust-deed/>

Trust Deed

In compliance with SISA section 67A SISA

- 29 Bay Street, Double Bay NSW 2028
Lot 343 in Deposited Plan 6045 being
the land contained in Folio Identifier
1/6045

This Deed is made by:

ABC Bare Trustee Co Pty Ltd ACN 123 456 789
111 Main Street, Blacktown NSW 2148, Australia

(Trustee)

and

Sally Samantha Thompson
of 101 New Street, South Kingsville VIC 3015, Australia
as trustee for the My Super Fund ABN 12 345 678

Seth Sebastian Trent
of 123 Smith St, North Greenbushes WA 6254, Australia
as trustee for the My Super Fund ABN 12 345 678
(Beneficiary)

1 Introduction

1.1 The Beneficiary as trustee of a Self-Managed Superannuation Fund, considering making an offer to purchase

- Details of the asset

(Trust Asset) from the Vendor (Contractor)

1.2 **The Request** After carrying out due diligence with the accountant and auditor, the Beneficiary has accepted the offer and sign any ensuing Contract of Sale on behalf of the Beneficiary.

1.3 **Agreement to Act** The Trustee agrees to act as trustee of the SMSF Deed.

1.4 **Legislative Compliance (SISA s67A)** The Beneficiary is a Self-Managed Superannuation Fund. An SMSF arrangement is established specifically for the purposes of the Superannuation Industry (Supervision) Act 2001 (SISA) to borrow money to acquire the Trust Asset. This Deed is to be read down and construed accordingly.

1.5 **Single Acquirable Asset & Development** The Beneficiary warrants that the Trust Asset consists of a single acquirable asset in SMSFR 2012/1. The Trustee and Beneficiary

1.5.1 **No Development:** This Trust Asset is not for the business of property development. It must pass the "Sole Purpose Test" per SMSFR 2012/1.

1.5.2 **No Multiple Titles:** The Trust Asset must be a single interest. If the property is on two titles, the Beneficiary must include unattached goods (chairs, tables, etc.) and

1.5.3 **Precise Description:** The description of the Trust Asset where applicable include the specific details of the asset.

How to gear your SMSF: the 5 Golden Rules

Step 1: Does your SMSF Deed allow borrowing?

Before you look at real estate or the shares to buy, check your SMSF Deed.

Does it explicitly allow borrowing? Many modern SMSF deeds ban gearing. If your SMSF Deed is silent or outdated, update it: <https://legalconsolidated.com.au/smsf-trustee-and-member-update/>

Step 2: Pre-Approval: finding the money to gear your new SMSF asset

Unless you are self-funding, speak with your financial planner and accountant.

You need to know exactly how much your SMSF can borrow.

SMSF gearing warning: Do not sign a Contract of Sale yet. If you sign the contract in your own name or the SMSF's name before the structure is set up, you trigger double stamp duty.

Step 3: Build the "Puppet" Structures (SMSF Bare Custody Trust)

You build two specific entities before you sign the contract to purchase or any loan.

1. **The Corporate Trustee:** [Build a separate new company](#) to act as the trustee of the SMSF Bare Trust.

2. **The Bare Trust Deed:** Press the above Start Building for Free.

estate. It cannot be changed after signing
double stamp duty.

- 1.6 **Improvements vs Repairs** The parties acknowledge that 67B, borrowed monies may be used for repairs (repairs cannot be used for improvements (enhancing the property) and that any future improvements will be funded solely from the internal cash reserves to avoid creating a "Replacement" which would invalidate the Limited Recourse arrangement.
- 1.7 **Non-Arm's Length Income (Merchant Case)** The parties acknowledge the Federal Court decision in *Merchant v Commissioner of Taxation* 498 regarding the application of the taxation anti-avoidance provisions warrant that all dealings between the Trust and related parties (including the Lender) are and will be on an arm's length terms to avoid the application of the (NALI) tax rate of 45%.
- 1.8 **Timing of Execution (Stamp Duty)** The parties warrant that this Deed is signed relative to the Contract of Sale in which they have obtained independent legal advice and warrant that they have obtained independent legal advice in their order of signing for their jurisdiction. For example, if the Trust is in VIC, TAS, SA, and ACT, this Deed must be signed BEFORE the Contract of Sale; and (c) Failure to execute in the correct order of signing is a breach of duty. The above is not the provision of legal advice.
- 1.9 **No Due Diligence & Non-Reliance** The parties warrant that the provider of this Trust Deed has not conducted due diligence on SMSF's compliance status. The Beneficiary warrants that it has its own lawyer, financial planner, accountant, and auditor and borrowing arrangement: (a) Is permitted by the SMSF Investment Strategy; (b) Complies with the SIS Act and (c) Is in the best financial interests of the members.

2 Interpretation

In this Deed unless the context indicates a contra

- 2.1.1 words importing persons include corporations
- 2.1.2 a reference to a person includes that person's representatives successors in title transferees
- 2.1.3 a reference to any Act or Statute (Statutes) includes amendments and re-enactments for the time being in force. The headings used in this Deed are for ease of reference and do not affect its construction or interpretation
- 2.1.4 any covenant or agreement in favour of or between the parties binds them jointly and severally and further binds their heirs, assigns and parties. If any of the parties are parties to this Deed the covenants and agreements shall bind and be observed and performed by them jointly and severally

Step 4: Sign the Contract of Sale
to buy the geared SMSF asset

Now that your Company and SMSF Custody Bare Trust are both in place, sign the contract of purchase. The purchaser under the agreement must be clearly stated as the **Bare Trustee** (the company you set up in Step 3), **NOT** your SMSF Trustee.

*E.g. Mechani Street Pty Ltd ACN
838383838 as trustee for the
Bare Trust dated on 28
December 2026.*

Step 5: Settlement and Registration of the geared SMSF asset

The loan is drawn down, the property or shares settle, and the title is registered in the name of the Bare Trustee. Your SMSF now “beneficially” owns the asset and collects the rent or dividends. Your SMSF declares the income and expenses (not the geared bare trust).

- 2.1.5 except for any writings on the front page or in any reference schedule headings will not affect the interpretation of this Deed
- 2.1.6 a reference to one person is a reference to one or more persons
- 2.1.7 the Introduction is by reference included in the operative provisions of this Trust Deed
- 2.1.8 the Deed is interpreted to ensure compliance with section 67A of the *Superannuation Industry (Supervision) Act 1993* and any provision inconsistent with a Limited Recourse Borrowing Arrangement is read down or severed to ensure compliance

3 Dictionary

- 3.1 **Contract** includes any contracts from counter-offers or amendments to the offer
- 3.2 **Lender** the entity providing the financial accommodation (Loan) to the Beneficiary to acquire the Trust Asset, and includes any assignee of the Lender
- 3.3 **SIS Act** the *Superannuation Industry (Supervision) Act 1993* (Cth) and its associated Regulations
- 3.4 **Trust Asset** the Single Acquirable Asset described in the Introduction including all indicia of title and all other related benefits attached or related to the Trust Asset
- 3.5 **Vendor(s):**
ABC Co Pty Ltd ACN 999 999 999
24 South Terrace, Salisbury SA 5108, Australia
or such persons who own or collectively own the

4 How does the declaration of trust

The Trustee acknowledges that the Trustee is to make any the capacity of Bare Trustee for the sole benefit of Beneficiary Recourse Borrowing Arrangement under the SIS Act.

5 What beneficial interest does Trust

- 5.1 Trustee also declares and acknowledges that Trust interest in the Trust Asset.
- 5.2 The Trustee must at the request and cost of the Beneficiary Asset to the Beneficiary or otherwise deal with the directs.
- 5.3 Nothing in this Trust Deed entitles the Trustee to be Trust Asset or to deprive the Beneficiary of the right (including the right of possession) of the Trust Asset
- 5.4 The Trustee must notify the Beneficiary of all notices demands which the Trustee receives for the Trust outgoings including rates, taxes and charges of all the Beneficiary.
- 5.5 The Trustee acts in the best interests of the Beneficiary the rights of the Lender under the mortgage or any

What is an SMSF Custodian Bare Trust (LRBA)?

To borrow money, the *Superannuation Industry (Supervision) Act 1993* (SISA) requires a special bare trust structure. This is called a **Limited Recourse Borrowing Arrangement (LRBA)**.

To allow the borrowing, you borrow and hold the asset all in a specific type of bare trust. The **Legal Consolidated SMSF Custodian Bare Trust Deed** complies with the ATO, the SISA legislation, and lenders, such as banks.

6 Beneficiary's instructions

- 6.1 The Trustee may accept any instruction or direction in writing and either from the Beneficiary personally or company which the Trustee may have reason to believe is acting on behalf of or with the authority of the Beneficiary.
- 6.2 The Trustee will not incur liability or be responsible for acting on or carrying out any such instruction or direction.
- 6.3 If there is more than one Beneficiary, the Trustee will act in accordance with the direction of any one or more of the Beneficiaries.

7 Trustee's Limitation of Powers

- 7.1 The Trustee acknowledges that it has no independent Trust Asset. The Trustee must:
- 7.1.1 only act on the written instructions of the Beneficiary
 - 7.1.2 sign all documents, contracts, mortgages, etc. by the Beneficiary
 - 7.1.3 not deal with, sell, encumber or in any way dispose of the Trust Assets in the Beneficiary's direction
 - 7.1.4 strictly not acquire any other assets

8 Seek advice from a lawyer, accountant and financial planner

- 8.1 The parties expressly and irrevocably acknowledge that:
- 8.1.1 the law firm that prepared the Trust Deed is [La Trobe, BOQ and Liberty](#) and only in that person's personal capacity (and not in its position of as a trustee) as set out in the Deed
 - 8.1.2 further the law firm only acts for the above Trustee in its personal capacity, not in its position of as a trustee. The trust and the trust relationship need to seek its own independent legal, accounting and financial planning advice
 - 8.1.3 the law firm does not act for the Beneficiary or the trust itself (such persons need to seek their own independent legal advice)
 - 8.1.4 the law firm has not given advice or review on taxation and stamp duty consequences on the Deed or the nature of the Trust Assets to which the Trust Deed relates. All parties, including the first named Trustee, need to seek their own independent legal advice, conveyancing, accounting and financial planning advice on such matters and title
 - 8.1.5 all parties have been advised to seek their own financial planning and accounting advice before signing the Trust Deed
 - 8.1.6 the Beneficiary has carried out its own due diligence and identification on the transaction and veracity, trustworthiness and reputation and of the Trustee

How do you make the SMSF Bare Trust Bank-Ready?

Lenders are defensive. They look for reasons to reject risky loan applications. If your Custodian Deed gives the Trustee too much power, the Bank's legal team rejects it.

Standard bare-trust deeds fail because they are "active" trusts.

The Legal Consolidated SMSF Custodian Bare Trust Deed is uniquely drafted as a "Puppet Trust". We strip the Trustee of all independent discretion. The Trustee is forced to act only on the SMSF's direction.

This "Puppet" status is what Lenders (such as [La Trobe](#), [BOQ](#) and [Liberty](#)) require.

- 8.1.7 the law firm has not cited nor advised on the SMSF Deed and whether the SMSF can or should seek to enter into transactions of this nature

9 Obligations of the Beneficiary

9.1 Beneficiary to provide funds

The Beneficiary must provide the Trustee with all moneys which may be required by the Trustee to enable the Trustee:

- 9.1.1 To hold and to continue to hold and maintain the Trust Asset on trust for the Beneficiary.

- 9.1.2 The Trustee is expressly authorised to create a Mortgage or Charge over the Trust Asset to secure the Loan.

9.2 Indemnity

- 9.2.1 The Beneficiary indemnifies the Trustee for any loss suffered because of any actions or claims made by the Trustee acting as Trustee of the Trust Asset.

- 9.2.2 The Trust Asset is charged with and the Beneficiary is liable for performance of these trusts for all rights and obligations and indemnity arising under this Trust Deed.

- 9.2.3 Consistent with section 67A of the SISA Act, the Beneficiary is to the Trust Asset and any income derived from the Trust Asset right of indemnity against the Beneficiary.

10 Who pays for this Trust Deed?

- 10.1 The Beneficiary pays and reimburses the Trustee for the costs of the instructions for and the preparing signing and paying for the Trust Deed and the counterparts and duplicates of this Trust Deed and Capital Gains Tax payable on this Trust Deed.

- 10.2 The law firm preparing this Trust Deed has given no undertaking to pay any duty or other taxes and imposts relating to this Trust Deed or any other matters.

11 What happens if part of this Trust Deed is unenforceable?

If any part of this Trust Deed is or becomes void or unenforceable, the remaining parts shall remain in full force and effect and be unaffected by any invalidity or non-compliance with the Limited Recourse Borrowing Arrangement.

12 No Partnership

The Trust Deed does not create the relationship of partnership between the Beneficiaries nor as between each other or between any of them and the Trustee.

How the SMSF Custody Trust and Lender interact

The structure must separate the "Borrower" from the "Legal Owner". This is mandatory under SISA Section 67A.

1. The Loan Agreement: Lender to SMSF The SMSF Trustee is the Borrower. The funds flow from the Lender to the SMSF (or are directed to settlement). The SMSF pays the deposit. The SMSF makes all loan repayments from its own bank account.

2. The Mortgage: Lender to Custodian of the Bare Trust The Custodian holds the Legal Title. Therefore, only the Custodian signs the Mortgage. Our Deed expressly directs the Custodian to sign this mortgage. Without this specific "Bank-Ready" clause, the Bank cannot register its security. The loan fails.

13 Severing to reduce tax and stamp duty

- 13.1 The Trust Deed is interpreted to reduce taxes, imposed (including State and Federal) (**Taxes**) and avoid any nonethless fails to reduce Taxes or is illegal, it is severed as required, from the Trust Deed to the extent of the reduction of the Taxes.
- 13.2 The Trust Deed is read down so that no mandatory provisions, to time, are contravened that would lead to an unfavorable outcome.
- 13.3 For any land ownership registration requirements, in change of Trustee, then all powers in the Trust Deed are fettered, as required, and vesting restricted, as required, stamp duty in the relevant jurisdiction.
- 13.4 Each party acknowledges and warrants that the law has provided no advice or information on the Taxes.
- 13.5 Each party acknowledges that it needs to get its own Taxes.

14 What law applies to this Deed?

Unless the parties unanimously agree in writing otherwise, the law of the Territory in which the Trust Asset is situated.

15 Decision making in more than one jurisdiction Notices

- 15.1 This Trust Deed may be executed and signed in different identical documents and all counterparts together constitute one and the same deed.
- 15.2 Meetings and decision making can be conducted in person, by telephone, the Internet or other means.
- 15.3 Notices may be provided via the post or email.

Signed as a Deed on _____ of _____

EXECUTED for and on behalf of
ABC Bare Trustee Co Pty Ltd
ACN 123 456 789
by authority of its Directors in
accordance with section 127
Corporations Act 2001 (Cth)

3. The Bare Trust Deed:

Custodian to SMSF The Custodian holds the title on trust for the SMSF. The Custodian has no beneficial interest. The Custodian is a "puppet". It acts *only* on the instructions of the SMSF Trustee. It cannot make decisions, renovate, or sign contracts without direction.

4. Limited Recourse: Protecting

your other SMSF assets If the SMSF defaults on the loan, the Lender can seize

the **Property** (held by the Custodian in the Bare Trust).

Critically, the

Lender **cannot** touch the SMSF's other assets (cash, shares, and other properties). Our Bare Deed enforces this protection. It prevents the Custodian from claiming against the SMSF's general pool of assets. This keeps your superannuation fund compliant.

Signature of Director or Secretary

Signature of Director (if a 2nd)

SIGNED, SEALED AND DELIVERED by
Sally Samantha Thompson

Sally Samantha Thompson

(Signature of witness)

(Name of witness)

SIGNED, SEALED AND DELIVERED
Seth Sebastian Trent

(Signature of witness)

(Name of witness)

How is an SMSF Custodian Trust's "indemnity" limited to protect the SMSF's other assets?

Standard bare trust deeds often allow the Trustee (the trustee of the bare trust) to be indemnified against any assets held by the Beneficiary (the SMSF). This is dangerous for an SMSF.

If a loan goes bad, the Bank seeks to recover from the Custodian Trustee. If the Custodian had a standard indemnity, it can then seize your SMSF's other assets (like your share portfolio and cash).

Legal Consolidated protects you. We hard-wire a "Limited Recourse Indemnity" into the Deed.

- The Custodian Trustee can only claim against the **single asset** in the Bare Trust.*
- Your SMSF's other assets remain safe and untouchable.*
- This ensures you remain compliant with SISA Section 67A.*

Build the legal document at

<https://legalconsolidated.com.au/smsf-custodian-bare-trust-deed/>