

MEMO

SUBJECT: Bare Trustees (SMSF Borrowing) - Purchaser details required for Western Australian Contracts for the Purchase of Land

DATE: 17 November 2023

Scope

1. This memo considers how self-managed superannuation fund (SMSF) instalment warrants (custodians as bare trustees for the SMSF) should sign contracts for the purchase of land in WA.

Purchaser name on the contract of sale for an SMSF purchase in WA

2. There is mixed commentary on how to write the purchaser's name on the contract for purchase of land for the Bare Trustee of an SMSF in WA. In most States, only the name of the Bare Trustee Company is required to be on the Contract. However, in WA either of the following must be used to describe the purchaser on the contract:
 - a. Bare Trustee Pty Ltd (ACN XXX XXX XXX) as trustee for Name of Holding Trust;
or
 - b. Bare Trustee Pty Ltd (ACN XXX XXX XXX) as trustee for Name of Holding Trust
for the SMSF Trustee Pty Ltd ACN XXX XXX XXX as trustee for Name of SMSF.
3. The Bare Trust Deed must be signed and dated before the sale of land contract is executed.
4. Lenders will insist on the correct name being used on the contract and the Bare Trust Deed being signed/dated before the contract is executed.

Disclaimer

5. Purchasers who do not adhere to the above requirements risk being subject to double duty and/or having their finance applications declined. Any delay in settlement may also attract penalty interest.
6. This memo is not intended to be legal advice and each purchaser should seek their own legal and financial planning advice before entering into a contract for the purchase of land in WA.
7. Legal advice for the purchase of land in WA should be provided by a lawyer who practices in that jurisdiction. Please contact Robert Hughes, solicitor at Capital Legal, at robert@capital-legal.com.au or 08 9364 5444 if you require legal advice.