



## Borrowing money within your super fund

While SMSFs, and indeed all regulated super funds, have been allowed for some time to borrow money to purchase certain assets inside their fund, the process is complex and the rules are tight.

The ability to borrow has broadened recently – so certain fund trustees may have to comply with two sets of rules, depending on when they borrowed funds. If you have previously borrowed money in your super fund, please see your accountant or licensed financial adviser for the rules that apply to your circumstances.

Previously, borrowing in a super fund was through an instrument called an “instalment warrant”. The term used now is “Limited Recourse Borrowings” (LRBs).

If you are an SMSF trustee and you are looking to avail yourself now of the ability to borrow funds, here are some key points.

From 7 July 2010 a super fund may borrow money under an arrangement where:

1. The money is used to buy a single acquirable asset
2. The acquirable asset is held on trust so that the fund has the beneficial ownership of the asset
3. The fund has the right to acquire the legal ownership of the asset after one or more payments
4. The asset is not subject to any charge except for the purposes of the borrowing, and
5. The rights of the lender, or any other person, against the trustee are limited to the asset purchased with the borrowing

The last point is the definition of “limited recourse”, it addresses the risk of third party claims being made against fund assets that are not part of the borrowing arrangement by providing that the rights of the lender *or any other person* are limited to the rights relating to the financed asset. The inclusion of the words “or any other person” means that no person, whether it be the original lender or a guarantor, can make a claim against the trustee seeking assets that were not the subject of the borrowing.

Any asset can be purchased through the borrowing rules so long as the asset is something that a super fund can ordinarily invest in. Nevertheless, you still need to satisfy what is known as the “sole purpose test” – like any asset your fund invests in, you may not derive a personal benefit as a result. For example, your super fund cannot purchase the house that you live in and then lease the place to you as a tenant.

There are also tax implications, particularly on the treatment of capital gains. The Government has clarified some of these issues in this [media release](#), however legislation to support this media release is yet to be developed. Nevertheless, it’s always a good idea to get advice on taxation specific to your particular circumstances.

Here are a couple of useful links.

**Press release: 10 March 2010:** [Financial services consumer protection framework extended to superannuation borrowing arrangements](#) – the Government is looking to protect consumers seeking to borrow within their funds by requiring anyone advising on this issue to hold a proper license. They've done this because the Government is concerned that some super funds are getting involved in super fund borrowing arrangements through unlicensed and unqualified dealers who do not understand the risks involved.

Please note that the legislation to support this issue is still being developed. The Government issued an exposure draft of the law back in June but has not progressed it since.

[ATO Taxpayer alert](#) – provides a warning from the ATO on setting a proper arms length interest rate where the finance is provided privately from a related party.

Investing in an instalment warrant like product is complicated. It has to be structured correctly through a proper trust structure or risk breaching the rules. The Tax office factsheet and questions and answers on instalment warrants are a good start to learning about instalment warrants.

Link to [ATO Questions & Answers](#) on the borrowing rules.



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