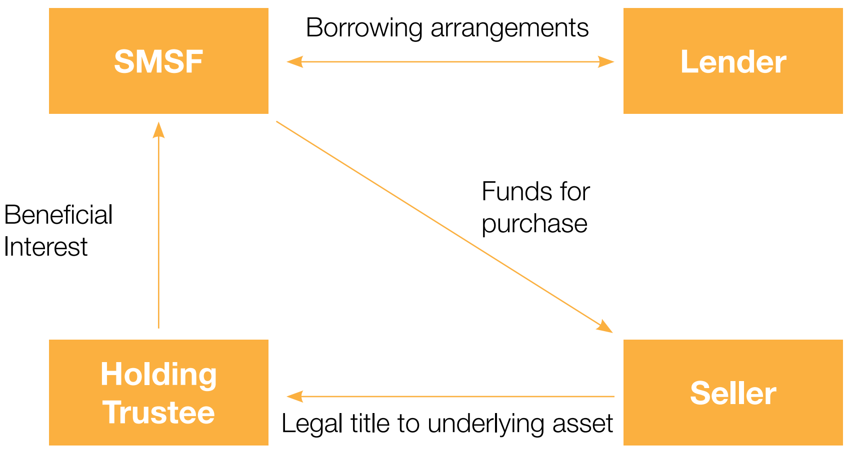
smsf limited recourse borrowing arrangements

In recent years, self-managed super funds borrowing prohibitions have been relaxed so that funds are now able to borrow through ‘limited recourse borrowing arrangements’ to acquire listed shares and property.

A separate trust is used (a “holding trust”) to obtain legal title to the asset being acquired from the seller using finance provided by the lender, together with any initial payment from the fund.

The asset is held by the holding trust, on trust for the fund which acquires the **beneficial interest** in the asset and has the **right to acquire legal ownership** of the asset after making one or more specified payments.

In the event of a default in payments, the lender’s recourse against the fund trustee is limited to the asset itself. Other assets owned by the fund are not at risk.



Of course, other issues need to be considered before proceeding such as capital gains tax and stamp duties on transfer of the asset from the holding trust. In addition, the trustees would need to ensure that such an investment is a sound investment for the fund and that the borrowing arrangements fully comply.

The trustees of the fund also must ensure the acquisition of any asset by limited recourse borrowing arrangement does not breach any of the continuing investment rules and regulatory requirements:

- sole purpose test
- trust deed
- arm’s length dealings
- acquisition of assets from related parties
- in-house assets

Strict criteria must be satisfied as failure to do so is likely to be detrimental to the fund, hence sound advice is essential (e.g. non-compliance may result in the fund losing its tax rate concession where the maximum tax rate of 45% instead of 15% may be imposed on its income and assets!).

a clear difference

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