

LRBA Wind Up Documentation

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When winding up a limited recourse borrowing arrangement ('LRBA'), appropriate documentation is required.

Broadly, an SMSF trustee has the right to acquire legal ownership of an LRBA asset (ie, from the relevant custodian/bare trustee) after the loan is fully repaid. Refer to s 67A(1)(c) of the *Superannuation Industry (Supervision) Act 1993* (Cth).



DBA Lawyers offers a suite of documents to evidence repayment of an LRBA loan along with the requisite direction by the SMSF trustee to the custodian/bare trustee to transfer the legal title to the LRBA asset back to the SMSF trustee.

Overview

The kit provides practical guidance on concluding LRBA's after the loan has been fully repaid. In particular, this kit includes:

- A covering letter.
- Suggested resolutions for the SMSF trustee and the custodian.
- A direction from the fund's trustee to the custodian for the LRBA.
- A letter from the lender to the fund's trustee confirming the end of the loan.

For further information and to place an order, please see here: [Click here](#).

The price for the kit is \$880 (incl GST) per bare trust.

The above fee does not include any advice, meetings or other attendances.

Please note that mortgage, charge or security documents are not included in the package and will need to be ordered separately through your preferred provider.

CGT implications

We note that ss 235-820 and 235-840 of the *Income Tax Assessment Act 1997* (Cth) broadly provide that a bare trust is subject to a 'look through' treatment for tax purposes. Accordingly, it is generally the case that any income tax consequences associated with an LRBA asset are attributable to the SMSF trustee (ie, as the beneficiary of the bare trust) and not the custodian/bare trustee entity. Indeed, generally a custodian/bare trustee should not have an ABN/TFN or be submitting annual returns.

For completeness however, we note that in certain circumstances CGT withholding obligations can arise for custodian/bare trustees on the transfer of the relevant asset from the bare trustee to the SMSF trustee.

We note that non-resident CGT withholding obligations can apply directly to custodians/bare trustees, particularly where a clearance certificate has not been obtained. Expert advice should be obtained if there is any doubt.

Related articles

- [Unwinding an SMSF limited recourse borrowing arrangement](#)
- [SMSFs -- the CGT withholding regime on property transfers is far broader than many think](#)

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This article is for general information only and should not be relied upon without first seeking advice from an appropriately qualified professional.

Note: DBA Lawyers hold SMSF CPD training at venues all around. For more details or to register, visit www.dbanetwork.com.au or call 03 9092 9400.

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