



Niche Finance

Self-Managed Super Fund Lending | Investment Loans

Self Managed Super Limited Recourse Borrowing

"It's your retirement savings - don't you think it's time you took an active role in how it's invested! "

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The background image shows a tropical resort interior. On the left, there is a dark wood coffee table with a glass top, holding a glass of water and a small bowl. To the right, a portion of a wicker sofa is visible. Large windows on both sides offer a view of a tropical beach with palm trees and turquoise water. A large blue speech bubble with a white border is centered in the upper half of the image, containing white text. The speech bubble's tail points towards the bottom right corner.

SUPER is
your retirement
nest egg, doesn't
it make sense to
be in control of
this asset!

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SMSF - Your ability to take control!

After extensive experience within the finance industry, one area that continued to amaze me was people's lack of understanding when it came to their superannuation. This e-book, focusing around the process of borrowing money within super, is the first of a series of education tools, allowing our clients to understand the power superannuation can hold and how becoming actively involved within this environment will give you greater success in achieving a better retirement. Some areas that we will delve into include:

- What is a self managed super fund;
- How does purchasing property in super work;
- Leveraging / Borrowing money in a SMSF;
- Property as an asset choice, and
- The legal structure and responsibilities within a SMSF?

Our role with this document is to explain the process of limited recourse borrowing, and how changes in the SIS (Superannuation Industry Supervision) Act are now allowing everyday Australians to get more active in their retirement planning.

If you are researching your finance options, let me start by stating that a self managed super fund loan (SMSF) is a lot more involved, however with the right support and professionals to support you in this area, lending within a super fund can be a useful tool to support greater growth over the long term.

I often get asked, why shouldn't I just go to my bank for support? Not taking anything away from some of the great staff that work at the branches, the truth is turnover of staff is always a major concern of any branch manager. Also given the specialisation of the self managed super environment, I would be recommending that the team you engage is highly trained and experienced to ensure mistakes are not made, because unlike loans outside of super, mistakes made within the super environment can be very costly.

Our service commitment is to work with you and your service providers (property specialist, conveyancer and lender) and sometimes your other professional affiliates (such as your accountant and financial planner) to ensure we help you obtain the finance that best suits your circumstances and needs.

Thank you for taking the time to read this document and I want you to know that if you have any questions, queries or concerns, know our team is only a call away to get you on the right path.

We look forward to speaking with you soon,

Kind regards,

Holly Bertso (Managing Director)



1. Introduction

Establishing a self managed super fund (SMSF) has become very popular over recent years with the ATO in the SMSF statistical report for June 2014, stating that there are an estimated 534,000 SMSFs in Australia with assets totaling \$557 billion. However interestingly within this ATO report it shows that there was an increase of 6% in total SMSFs and 12.5% in funds under management within the SMSF environment. A major reason for this increase was the community becoming aware of SMSFs and their ability to borrow money. Therefore within this document we are going to study this area in more detail.

Until 2007 the SIS (*Superannuation Industry Supervision*) Act 1993 prohibited a Self Managed Superannuation Fund (referred to as a 'Super Fund' in this document), from borrowing money to purchase assets.

New section's 67A & 67B of the SIS Act permits a Super Fund to borrow money if:

- (a) the money borrowed is applied for the purchase of an asset;
- (b) the asset is held in trust so that the Super Fund acquires a beneficial interest;
- (c) the Super Fund has the right to acquire legal ownership by making payment;
- (d) the rights of the lender against the Super Fund for default are limited to the security.

2. Basic Structure

The Super Fund can only borrow money to purchase an asset if it complies with the following:-

- The Super Fund may select any property, residential or commercial. The purchase must be an 'arm's length transaction' (i.e. the property is purchased from a 'stranger'). There is an exception for 'business assets' (i.e. property leased to a tenant who conducts a business in the property). In this case, the property may be purchased from a related party of the Super Fund.
- The legal title to the property must be held on trust by an independent trustee.
- The beneficial title to the property will be held by the Super Fund.
- The lenders recourse will be limited to the property, thereby providing the Super Fund absolute protection for its other assets). Certain lenders will also require a personal guarantee from all members of the Super Fund.
- All rents will be paid directly to the Super Fund.
- The Super Fund will make loan repayments to the lender.
- Super Funds can deal with the property however and whenever they like, in the same way as you can deal with 'normal' investment properties (e.g. lease, repair, or sell).

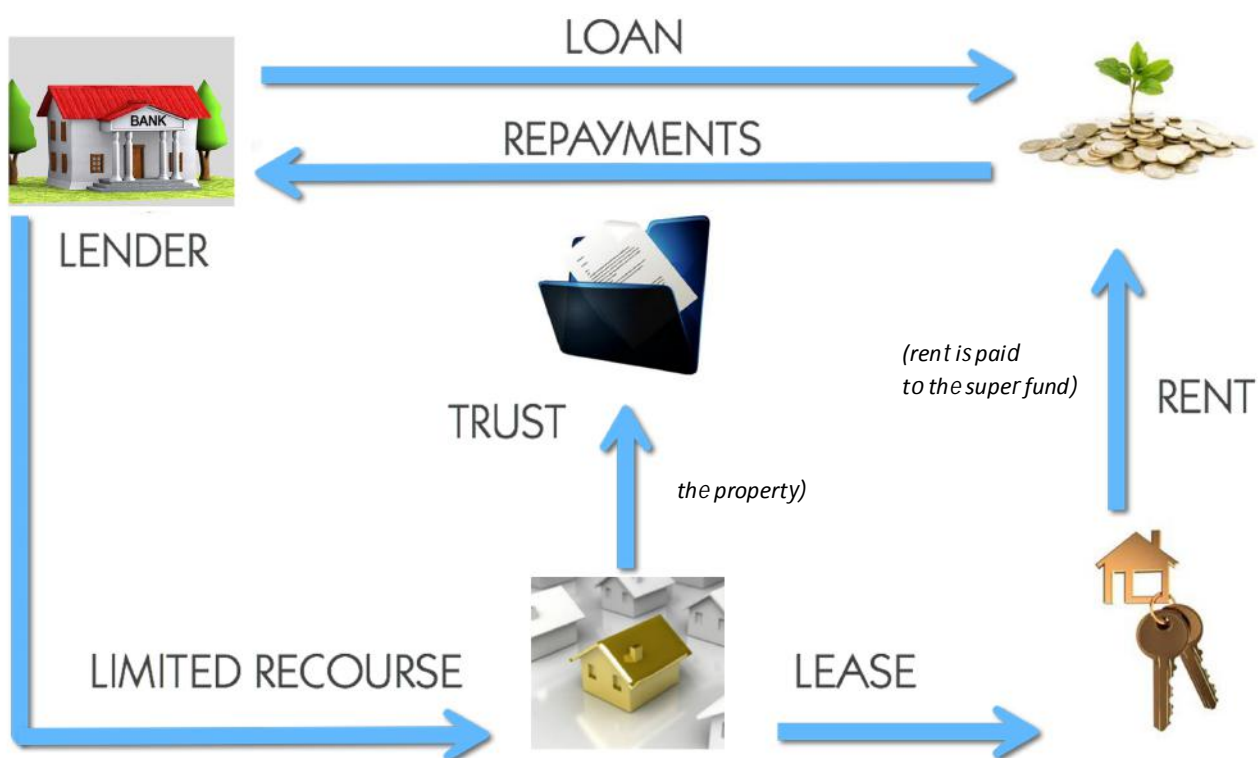
- The Super Fund can pay out or reduce the mortgage at any time (subject to the terms of the relevant loan).
- When the mortgage is paid out in full, title to the property may be transferred to the Super Fund by the Property Trustee, or the Property Trustee may continue as registered proprietor.

Now a lot of this may seem complex however it is important that the structure clearly complies with all the above requirements. Failure to do so may result in the Super Fund being declared 'non-compliant' within the meaning of the SIS Act.


It is also important to adhere to the lenders varying trustee requirements when establishing the legal structure. For example, certain lenders require a corporate trustee for the Super Fund, whilst the others will allow individual trustees. We would recommend talking with the team at Niche Finance before any decision is made to ensure you meet all the necessary requirements.

3. How Does It All Work?

There are several entities that complete the purchase/borrowing structure, the diagram below illustrates each including their duties & responsibilities.



(trustee agrees to)
 - transfer the property to the super fund once the loan is repaid
 - offer the property to the bank/lender as security for the loan

A tropical resort at night. In the foreground, a swimming pool with a waterfall edge. In the background, palm trees and a building with warm lights. A blue speech bubble with white text is centered over the image.

Don't allow others
to make all the
investment
decisions.

It's your retirement
savings.

GET INVOLVED!

4. The SMSF Loan

Our mission at Niche Finance is to guide you through the maze of Super Fund lending products available in the market today and negotiate 'favourable terms' on your behalf, which ensures you receive the best possible deal.

- The truth is it's an ordinary loan that enables you to purchase residential or commercial property with the Super Fund paying the deposit and any other cost/s, i.e. stamp duty, legal costs, etc.
- Our team and business partners will ensure it complies with the Government Legislation (SIS Act - S67A, 67B);
- We'll make sure it's a 'Limited Recourse Loan', meaning the lender cannot touch any other Super Fund assets other than the property held as security;
- Loan to Value ratios are available up to 80% for residential and 65% for commercial properties.
- Up to a maximum 30 year loan term for residential & 15 years for commercial purchasers.
- Deposit 'Mortgage Offset' accounts are available (with certain lenders).

Loan products are restricted by nature and typically limited to:

- A variable rate loan; or
- A fixed rate loan, 1-5 years.

What other restrictions are there?

It is important to remember that there are loan restrictions associated with this type of borrowing arrangement, including the type of security lenders will accept:

- No construction / refurbishment;
- No vacant land;
- No increase in the loan amount post settlement;
- All Super Fund property purchases must be on a 'stand alone' basis, no other assets inside or outside the Super Fund can be utilised.



5. How Do I Qualify For A Super Fund Property Loan?

Lenders have varying loan servicing, legal structure, assessment principals and qualifying credit criteria that must be met. Therefore care must be taken when selecting your lender and therefore we recommend taking advantage of our services at Niche Finance to ensure that you are compliant with the SIS Act and putting yourself and your fund in the best position possible.

Which Bank/Lender?

Are you seeking a better understanding of your position with a Super Fund property purchase?, wondering which lender is best suited for you?, curious who offers the lowest interest rates in the market?, seeking a second opinion?

If you answered yes to any of these questions, contact us for an obligation free discussion with our Super Fund lending specialist.... you'll be glad you did.



FOR YOUR **FREE SCENARIO** CONSULTATION

Call: **1300 538 726**

6. Is property the right investment?

While an entire book could be dedicated to which investment vehicle to use in your super fund, for the majority of investors, residential property such as apartments, townhouses and houses is a favoured option, as residential property is generally more affordable than commercial or industrial property investments. We would also agree and go further by saying that investing in residential property can offer investors a number of benefits such as diversification, introduction of a tax effective investment, but without doubt the main focus is around the banks allowing for leverage. A question I always put forward to clients is to ask why the major banks will allow you to leverage in most circumstances up to 80% on residential property (within Super and up to 95% outside of Super) if they felt it was a considerable risk. It could be argued that like many Australians, the banks also see residential property as a good investment choice.

Therefore to understand the power of leverage let's have a look at a case study where an average super fund (with \$100,000) all receiving an 8% growth, is A not leveraged; B leveraged at 50% LVR (Loan to Value Ratio), such as a margin loan into the share market and C leverage at 80% LVR, such as investing in residential property:

The Power of Leverage			
	Investor		
	A (No Debt)	B (Margin Loan)	C (No LMI)
Capital	\$100,000.00	\$ 100,000.00	\$100,000.00
Leverage	0%	50%	80%
Debt	\$ -	\$ 100,000.00	\$400,000.00
Total Investment	\$100,000.00	\$ 200,000.00	\$ 500,000.00
Growth at 8%	\$ 8,000.00	\$ 16,000.00	\$ 40,000.00
Return on Capital	8%	16%	40%

Now you can clearly see the power that leverage can have, with a much higher return on capital and while ensuring you surround yourself with the right professionals and information on the investment is critical, I would still argue taking everything else away from the equation, banks agree (by allowing this level of leverage) that residential property is a sound investment choice for clients - so who are we to disagree.

7. The Legal Structure

In order for a Super Fund to purchase an investment property and borrow money, it will be necessary to have a special legal structure in place.

It is estimated that 55 to 60% of legal structures fail to satisfy the lenders requirements, which quite often leads to delayed settlements and penalty interest being applied. This is as a result of the deed rules not containing specific wording/clauses that are unique to each and every lender.

You will have comfort in knowing that our Super Fund deeds have adopted significant changes over the last four years to not only ensure SIS Act and regulatory compliance, but to also accommodate the individual requirements of the lenders.

We guarantee that our Super Fund deeds will pass legal vetting by any lender, however in the rare instance that a particular lenders requirements change without notice, we will make the necessary amendments speedily, and free of charge.

Property/Bare Trust Deed

The Property/Bare Trust Deed is a key component within the legal structure and extreme care is required to ensure there are no adverse GST, taxation or stamp duty consequences.

The SIS Act requires where an asset is acquired with the proceeds from a loan, the asset "is held in trust" with the Super Fund being the beneficial owner to the asset at all times. Once the loan is repaid in full the asset can then be transferred to the Super Fund.

We can assist with structuring the required legal structure which may include a new Super Fund or updating the governing rules of an existing fund, a new trustee company etc.

Property Trust Service

Our 'Property Trust Service' will equip you with the Property/Bare Trust deed and various other legal documents required to ensure compliance, together with a smooth transition to settlement.

You will need the following inclusions:-

- ✓ Property/Bare Trust Deed;
- ✓ SIS Act S67A & 67B, Auditors 'Letter of Compliance';
- ✓ Full Legal Backup;
- ✓ Minutes of Meetings for any/all Corporate Trustees;
- ✓ Beneficial Owner Statutory Declarations;
- ✓ Trustee Statutory Declarations;
- ✓ Trust Deed/s 'signed off' by major banks/lenders;
- ✓ All documentation individually prepared by a Lawyer.

Superfund's Trust Deed

The Super Fund's Trust Deed contains the rules that govern the Super Fund. This being the case, the Trustee of the Fund must ensure that the Trust Deed contains all of the provisions required under the section 67(A&B) of the SIS Act.

8. Case Study 1 - Residential Property Purchase

Grace is 45 years old and has been thinking about purchasing an investment property for around \$450,000. By reading this ebook she became aware of the changes to the borrowing rules that now permits Super Funds to invest in residential property and decided to investigate further.

Grace met with her financial planner who recommended she weigh up the alternative strategies of a "normal" negatively-gearred investment or setting up a Super Fund to purchase the investment, as Grace was wanting to hold this investment into retirement.

It was concluded that it would be a great way to generate wealth for Grace's retirement by using her Super Fund to pay the deposit and any other purchasing costs, i.e. stamp duty, etc.

Grace was astonished to find that, by utilising a Super Fund to purchase the residential investment property, the total projected Capital Gains Tax savings alone on selling the property at age 65 would amount to \$180,416

" ... the total projected Capital Gains Tax savings alone on selling the property at age 65 would amount to \$180,416 "

Assumptions: Purchase price \$450,000, Property value increases by 5% pa, Marginal Tax Rate of 38%, Current Taxation & SMSF laws remain unchanged

Case Study 2 - Commercial Property Purchase

James is 62 years old and runs a successful grocery store from a building he bought in 1993 and has now fully paid off. James wants to retire and let his son Andrew take over the business but Andrew is unable to get a loan to buy the property because, at a value of \$1M, like most people his age Andrew doesn't have enough deposit.

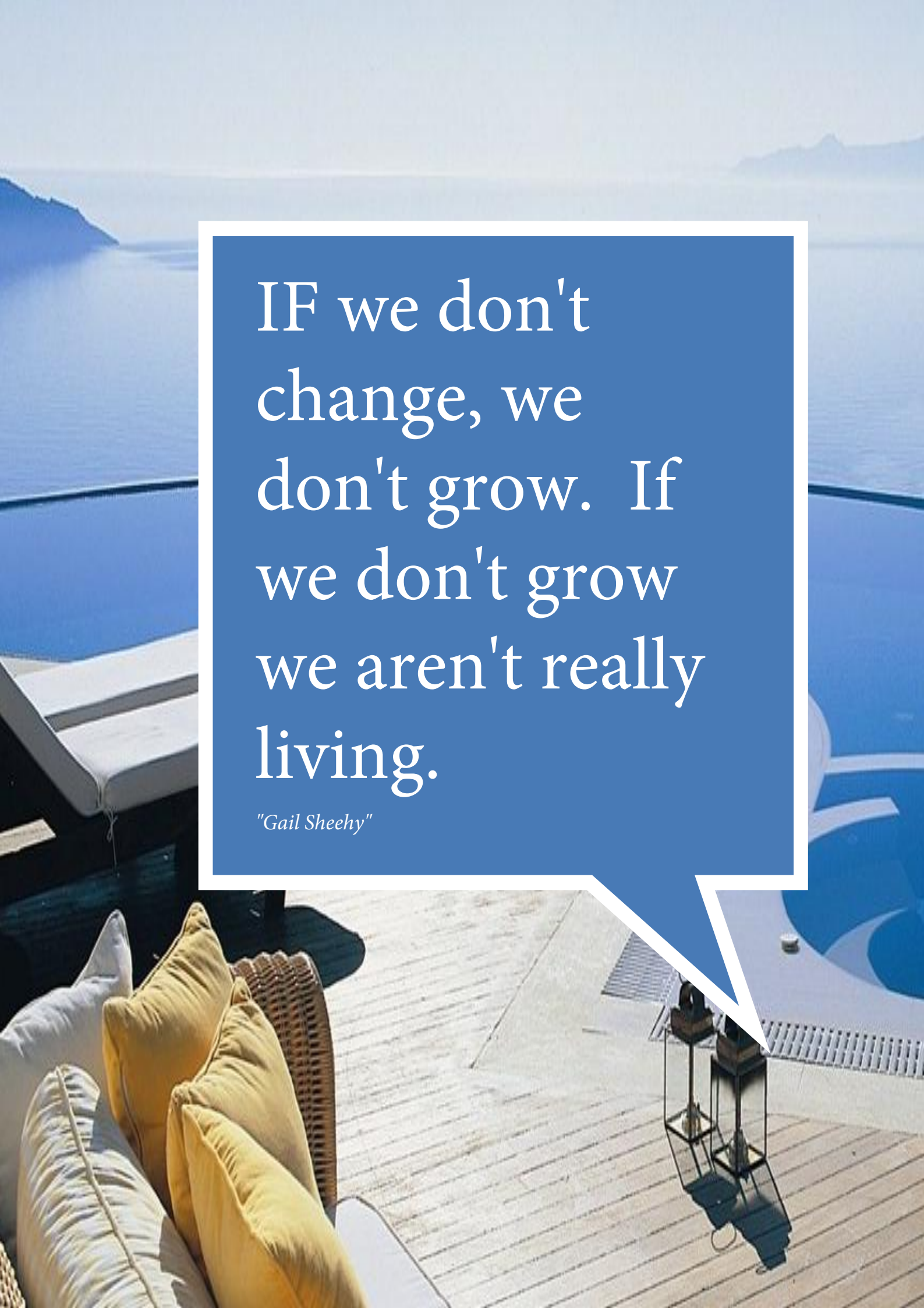
James, his wife and Andrew have a Super Fund with total assets of \$500K. In discussions with his Accountant Andrew learns that the super fund can acquire the property using a super fund loan.

The family's super fund invests in the property by taking out a \$650K loan and the Super Fund uses its existing funds for the \$350K deposit and other transaction costs. James and his wife receive \$1M, which they use to top up their super and produce a retirement income stream.

No capital gains tax (CGT) is payable as the sale was exempt under the small business retirement provisions. James and his wife each get a tax deduction for up to \$50K of the super contribution and can receive up to \$85K p.a. tax-free income.

Andrew's business pays the same tax deductible rent as before, except now the \$75K p.a. goes to the super fund. James doesn't have to worry about selling the business or premises to an outsider and Andrew doesn't have to worry about being evicted or suffering 'unfair' rent increases.

"Andrew' business pays the same tax deductible rent as before except now the \$75K p.a. goes to the super fund."



IF we don't
change, we
don't grow. If
we don't grow
we aren't really
living.

"Gail Sheehy"

9. Commonly Asked Questions

Q1. How does my Super Fund purchase a property?

- While we would recommend speaking with a property specialist, the Super Fund chooses the property it wishes to invest in, in the ordinary way. Residential property must be purchased from an arm's length vendor, which we recommend speaking to a specialist about. Non-residential property can be purchased for full value from "related vendors" so long as the property is used for business purposes. Some of the other details, such as the contract of sale being purchased in the name of the Property Trustee/Bare Trust (as owner of the legal interest in the property), is why we highly recommend surrounding yourself with the right team.
- The Super Fund obtains a loan approval. The loan will be in the name of the Super Fund. The Super Fund's own lawyer/conveyancer acts on the purchase in the ordinary way.
- The Super Fund pays the deposit, stamp duty and any other associated costs (i.e. legal fee/s), with the balance of monies required to effect settlement funded by the bank/lender.
- On completion of the purchase, the Super Fund borrows from the Lender and charges its beneficial interest in the property to the Lender.
- The Property Trustee then manages the asset in the same way as you would with any other real estate investment.

Q2. Can fund members occupy Residential property?

No. If fund members or related persons occupy the property, the "in-house asset rule" will have been breached.

Q3. Can fund members occupy Commercial property?

Yes. Fund members or related persons can occupy 'real business' commercial property.

Q4. Who pays what and when?

As the beneficial owner of the property and the borrower of the loan, the Super Fund is responsible for paying all the usual amounts that you would expect to if you had bought an investment property and borrowed money on it outside a Super Fund.

For example, the Super Fund will be required to pay the following costs, that is unless the tenant assumes responsibility for covering these costs:-

- council rates, water rates, and land tax (if any);
- interest and other loan repayments;
- lender's fees;
- repairs;
- property management costs; and
- insurance premiums.

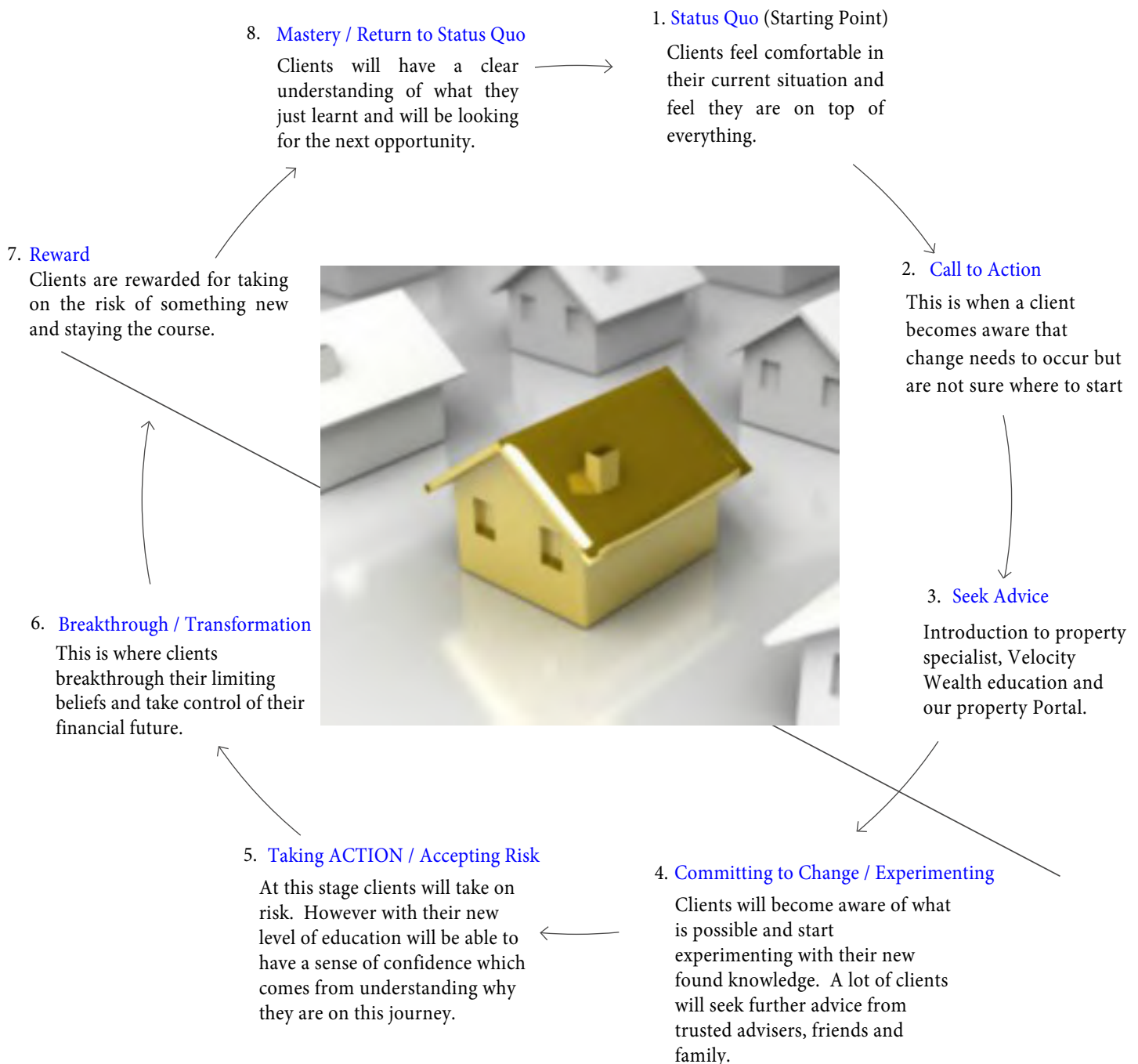
As the Super Fund is the beneficial owner of the property, land tax is payable by the Super Fund and not by the Property Trustee. The Super Fund will only have to pay land tax if the total land value of properties owned by the fund exceeds the prescribed amount. Land tax is payable in all States and Territories except the Northern Territory.

The Super Fund can direct the Property Trustee to sell the property to any third party (subject to paying out the loan and any other amounts which might be outstanding).

At Niche Finance you can be assured that you will get the best advice for your super fund loan which has been built up over years of experience in the finance industry. Our experience and professional partners in this field will also ensure the legal structure is established correctly, at minimal cost and in line with the banks individual requirements .

To gain a better understanding of what your position is with purchasing an investment property through your super fund, or to discuss the various lending options available to you, contact us for further information .

The Investor's Journey



FOR YOUR **FREE SCENARIO** CONSULTATION
Call: (07) 5668 1842

12. Our Business Partners



Business Partner - Max Capital Investments (SMSF Specialist)

Max Capital Management is a Self Managed Superannuation Fund (SMSF) specialist advisory firm. We specialise in helping clients to take control of their superannuation and grow their retirement savings through direct investments. We utilise a variety of tools and strategies that can include the purchase of direct residential investment property.

Whilst we do not advise which specific property to purchase, we do set up and manage the structures required to achieve the client's wealth creation objectives in the most tax effective and cash flow positive manner.



Business Partner - Velocity Wealth (Property Specialist)

Velocity Wealth's mission is to provide a specialist service to identify the best opportunities in the market through an extensive networks of suppliers and properties, Australia wide, making selections based on client needs. This means that we can present options that genuinely match your goals, objectives and budget. As property investors too, we understand and respect the importance of the decisions you are about to make.

We understand the challenges that people face and structure our approach to ensure that you are the centre of everything we do. Through the support of our extensive business partner relationships, we have access to the best businesses to support you in every area when it comes to building your financial future.



The information provided within this document is of general information only and provided as a guide to the steps involved in borrowing money and purchasing property through a Self Managed Superannuation Fund (SMSF). This information is not legal or financial advice and strongly recommend that you should obtain professional legal, financial and taxation advice before applying for any loan or purchasing any property through your SMSF. Niche Finance or any of it's business partners excludes all liability for any losses suffered by you as a result of your reliance on the information contained within this document. Please contact us if you need further clarification.