

# How-to Guide

## Establishing a Superannuation Fund and borrowing to acquire a rental property

October 2023

Description	This guide looks at the considerations and steps involved in establishing a Superannuation fund and borrowing to acquire a property.
Other relevant guides	- <i>How to set up a superfund</i>
Documents Required	<ul style="list-style-type: none"><li>- <i>Resolution to establish a superannuation fund</i></li><li>- <i>Superannuation trust fund deed</i></li><li>- <i>Application for membership</i></li><li>- <i>Resolution to accept member</i></li><li>- <i>Member notification</i></li></ul>
Notes	When forming a superannuation fund and borrowing, a number of considerations need to be resolved before following the steps to its establishment.

### Step 1 – Determine the identity of the trustees and members

#### a) The Trustee

The identity of the trustee of a self-managed superannuation fund is determined by reference to section 17A of the *Superannuation Industry (Supervision) Act 1993 (Cth)*, which has been reproduced in this table.

SUGGESTION: A company should be used as trustee so that the title to property or shares doesn't change if members are added or removed.

TIP: If a borrowing is to be undertaken then the bank will require a company as trustee.

WARNING: The identity of the individual trustees or directors of a corporate trustee of a superannuation fund depends on the identity of the members of the fund.

#### b) The Members

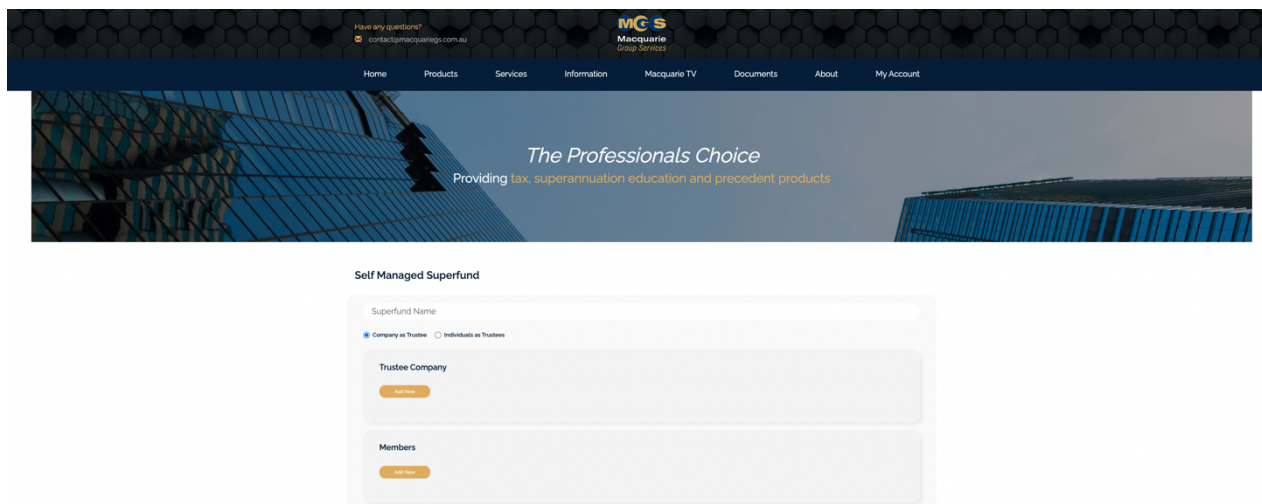
The identity of the members of a superannuation fund will be determined by two basic conditions. Firstly, those persons who may wish to be members and, secondly, the class of persons in respect of whom the trustee of the fund may accept contributions.

SUGGESTION: Avoid making children members of the fund.

WARNING: The identity of the individual trustees or directors of a corporate trustee of a superannuation fund depends on the identity of the members of the fund.

### Step 2 – Complete the instruction sheet or order online

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The screenshot shows the Macquarie Group Services website. The header includes the MGS logo and navigation links: Home, Products, Services, Information, Macquarie TV, Documents, About, and My Account. A banner image of a modern building is displayed with the text "The Professionals Choice" and "Providing tax, superannuation education and precedent products". Below the banner is a form titled "Self Managed Superfund". The form includes a "Superfund Name" input field, radio buttons for "Company as Trustee" (selected) and "Individual as Trustee", a "Trustee Company" section with a "Get help" button, and a "Members" section with a "Get help" button.

**NOTE:** There are generally no restrictions to the naming of a superannuation fund, e.g. there would be no prohibition on naming your fund the “Westpac Superannuation Fund” or the “Mercedes Superannuation Fund”.

## Step 3 – When the fund documentation arrives, ensure that:

1. The trustees execute and date the resolution to establish the fund, and what the trustees and members execute and date the trust deed in the presence of a witness;
2. The members complete and sign an application for membership;
3. The trustees sign the resolution and notification to the members regarding acceptance of their application; and
4. That the members may then make contributions to the fund.

**NOTE:** The superannuation fund doesn’t exist until after a contribution has been accepted by the trustee.

**WARNING:** The signatures of the trustee and the members need to be witnessed, and the witness himself will need to sign the deed.

## Step 4 – Apply to the Australian Taxation Office for the fund to be a regulated superannuation fund

**NOTE:** The application to the ATO must be irrevocable and in accordance with subsections 19(2) to 19 (4) of the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

**WARNING:** The application to be a regulated superannuation fund must be made within 60 days of the fund coming into existence.

## Step 5 – Rollover existing superannuation accounts

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Apply to have your existing superannuation balances rolled out of the industry or retail superfund into your newly created self managed superfund.

WARNING: You will need to advise your employer of your new self managed superfund so that contributions made on your behalf go to your self managed superfund.

## **Step 6 – Establish a company and bare trust to hold the property**

A bare trust needs to be established with the self managed superfund as the sole beneficiary. The banks require the trustee to be a company. These documents need to be executed before exchanging.

## **Step 7 – Find a property to purchase**

Find a property and if necessary, exchange using funds from the self managed superfund. It is advisable to get an extended settlement. The usual 6 to 8 weeks should be extended to 10 to 12 weeks. This time is needed for the bank to approve the loan and documentation.

NOTE: You should exchange the property in the name of the company that is acting as trustee of the bare trust which was established at Step 3.

WARNING: The deposit should be paid from the bank account of the self managed superfund.

## **Step 8 – Settle the purchase of the property**

Settle on the property using the loan funds from the bank and any additional funds from the self managed superfund as required.

## **Other Important Information**

### Establishing the Self Managed Superannuation Fund

1. A superannuation fund must be indefinitely continuing (i.e. it must not have a predetermined final date);
2. If the trustees of a superannuation fund are individuals, then all of its members must be its trustees;
3. If the trustee of a superannuation fund is a company, then the directors of the trustee company must include all of the members of the superannuation fund;
4. A self-managed superannuation fund must have fewer than 7 members;
5. Additional members of a superannuation fund can be added at any time;
6. Concessions may be lost where a self-managed superannuation undertakes borrowings;

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7. Concessions may be lost where a self-managed superannuation fund acquires assets from a member or other related party;
8. A superannuation fund is eligible to receive the general 50% Capital Gains Tax discount;
9. A self-managed superannuation fund must have an investment strategy;
10. A self-managed superannuation fund can invest in a related unit trust, under certain circumstances.

### Borrowing in your Self Managed Superannuation Fund to acquire a property

1. A bare trust needs to be established to undertake the borrowing;
2. Residential property cannot be acquired from a member or a related party of a member;
3. The trustee of the bare trust should be the purchaser on the contract for sale of land and transfer;
4. Only a single asset which the superfund would have been allowed to acquire without debt may be acquired under the borrowing legislation;

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**NOTE:** The above information is meant as a general guide only, and the information applies to Superannuation Funds provided by Macquarie Group Services.

**Advice Warning:** This document is intended to provide general information only and has been prepared by Macquarie Group Services Pty Ltd ABN 70 090 831 039 (AFSL 399059) without taking into account any particular person's objectives, financial situation or needs. Investors should, before acting on this information, consider the appropriateness of this information having regard to their personal objectives, financial situation or needs. We recommend investors obtain financial advice specific to their situation before making any financial investment or insurance decision.