



**The Property Owners'  
Association of NSW**

**Quarterly Journal | November 2011**

— poa-nsw —



# THE PROPERTY OWNERS' ASSOCIATION OF NSW



02 9363 3949



[www.poansw.com.au](http://www.poansw.com.au)



PO Box 329  
Bondi Junction NSW 1355

**PRESIDENT**  
MR CHRIS YOUNG

@ [chris@poansw.com.au](mailto:chris@poansw.com.au)

☎ 0414 799 864

**Vice President**  
Mr John Gilmovich

@ [john@poansw.com.au](mailto:john@poansw.com.au)

☎ 0418 600 806

**2nd Vice President**  
Mr Gordon Mclean

**Treasurer**  
Mr John Gilmovich

**Secretary**  
Mr Peter Dormia

@ [peter@poansw.com.au](mailto:peter@poansw.com.au)

☎ 0417 065 798

**Honorary Solicitor**  
Mr Paul Egisto

@ [egistosolicitors@bigpond.com](mailto:egistosolicitors@bigpond.com)

☎ 02 9713 2000

**Honorary Accountant**  
Mr Alex Whitehead

☎ 02 9966 4499

**Committee of Management**

Don Davison  
Susanne Gervay  
Gabrielle Keleny  
Paul Egisto  
John Owens  
Rick Banyard  
Victoria Hoffer

# PRESIDENT'S REPORT

## OCTOBER – DECEMBER 2011

With this year in its last quarter this journal will be our last for 2011.

### Rental market

The rental market has been strong but operating costs for landlords are giving low returns on investment property in most situations, the most obvious costs lay in the fixed items such as rates, water costs, insurance, repairs and maintenance, land tax and of course mortgage payments and management.

This is not new news however what is new is that wealth creation in this state and country may be taking a new direction the old adage of property, shares, cash, collectables as the place to make capital improvement of substantial gain and long term growth may be second rate when staked up against the way that the world economy is moving, there has been a large amount of debate recently by commentators on property about new ways to apply tax on property.

The POANSW will continue to be a lobby voice for residential property owners and we will continue to provide quality seminars on property related subjects throughout each year.

### Member highlights

The POANSW committee was delighted to be informed of committee member Susanne Gervay being awarded a OAM as a Author and her contributions to many organizations.

We extend our hearty congratulations for works well done and are proud to have her as a working committee member.

### Legislative change

The POANSW is being asked again to provide comment on property related laws that the new state government are looking at it is a ongoing partnership of cooperation between the POANSW and Government.

### Pool safety

If you have a swimming pool in your property rented out or not the Children's Hospital at Westmead has put together a video on pool safety the current laws and maintenance issues, this is excellent information and if renting out a property with a pool, owners must fully comply so just go to the link to check.

<http://tinyurl.com/pool-fencing>

### 2010

This past year has seen ongoing debate around the new tenancy laws and as always there is considerable room for smoothing out some of the more problematic parts of the legislation. POANSW has been asked and delivered reports/papers on the following:

1. Affordable housing SEPP
2. International Students enquiry

## IN THIS EDITION

President's Report	3
Invite: Super, Property & Death Tax	4
Invite: Annual End of Year Members Dinner	5
Boarding Houses Under Threat	6
International Student Accommodation Crisis In NSW	8
Renovations Get Nod For Self-Managed Super Funds Commercial Market Showing Signs Of Recovery	10
Residential Tenancies Act 2010 - Are We Back To Rent Control?	10
Gearing Your Superannuation Fund - To Purchase Property	11

3. Protected tenancy regulations.
4. Interdepartmental committee on boarding houses.

With all this going on we always look forward to the coming festive season and as this will be this years last opportunity I wish all members and there families the very best for the coming end of year season.

Regards,

*Chris Young*

### Welcome to our new members:

Tina Qiu  
Jespal Dhillon  
Victoria Farrugia  
Veronica Clayton

— poa-nsw —

# PROPERTY OWNER'S ASSOCIATION OF NSW INC.

PO Box 329, Bondi Junction NSW 1355 Ph: (02) 9363 3949

[www.poansw.com.au](http://www.poansw.com.au)

[info@poansw.com.au](mailto:info@poansw.com.au)

## *invitation*

For Property Investors and Boarding House Operators:

### **SUPER, PROPERTY & DEATH TAX**

Find out how you can avoid the pitfalls and reap the benefits  
for your hard earned retirement savings.

#### **Speaker**

Stephen Blackhall

Financial Advisor Superannuation and Retirement Planning  
PATERSONS SECURITIES LIMITED

**7.30pm Wednesday 16th November 2011**

At

The Hughenden Hotel  
14 Queen St, Woollahra

An Optional dinner for Members, speakers, & guests is scheduled before  
hand at The Hughenden Hotel Cafe at 6.00pm for 6.15pm sharp start.

Cost of optional dinner not inclusive of seminar.

Please RSVP directly on 02 9363 4863, or [reservations@thehughenden.com.au](mailto:reservations@thehughenden.com.au)

\$15.00 entry fee for Nonmembers

Seats are Limited!



# PROPERTY OWNER'S ASSOCIATION OF NSW INC.

PO Box 329, Bondi Junction, NSW 1355 Ph: (02) 9363 3949

[www.poansw.com.au](http://www.poansw.com.au)

[info@poansw.com.au](mailto:info@poansw.com.au)



## *invitation*

### **ANNUAL END OF YEAR** **MEMBERS DINNER 2011** **+ SPECIAL GUEST PRESENTATION**

Venue: The Hughenden, 14 Queen Street Woollahra NSW

Time: Arrive 6.30pm for 7.00pm start

Date: Wednesday 7th December 2011

Tickets: \$50.00 includes welcoming wines

RSVP by 1/12/2011 - Email or fax your VISA or MASTERCARD to:

Name:

Card Type:

Card No.

Expiry date:

The Hughenden, 14 Queen Street Woollahra NSW 2025

Email: [reservations@thehughenden.com.au](mailto:reservations@thehughenden.com.au)

Fax: 02 9362 0398

Ph 02 9363 4863

Or post cheque to The Hughenden Hotel

Guests are welcome but must RSVP and prepay in advance.

We look forward to seeing you!



— poa-nsw —

# BOARDING HOUSES UNDER THREAT

## WRITE TO YOUR NSW MEMBER OF PARLIAMENT TODAY

The Department of Aging, Disability & Care have arbitrarily grouped boarding houses into licenced disability and aged accommodation into their proposals for legislation and incorporating them into disability housing.

Boarding houses are not disability and aged housing and the operators have no experience or qualifications to run such operations. They provide accommodation to a varied community requiring housing, operating as managed premises like hotels/motels. It is a hands-on accommodation service that is financially marginal.

The impact of legislation on this already marginal accommodation business threatens the existence of boarding houses and will be detrimental to residents, as evidenced in Victoria. In Victoria where legislation has been introduced, privately run boarding houses have all but disappeared, adding financial burdens to the State while depriving residents of their right to chose to live in boarding houses and depriving the State of a vibrant and unique form of accommodation service.

The Minister of Fair Trading Reba Meagher in 2004 undertook serious investigation of the proposal to introduce legislation protection of boarders and lodgers in NSW. The Minister and The Lord Mayor of Sydney Clover Moore visited boarding and lodgings houses, spoke to boarders and lodgers and owners and supported at that time the Minister's findings:-

'Having personally visited a number of boarding houses, I am aware of the industry and tenancy issues associated with their operation. However following careful consideration of the issues, concerns remain that any specific regulation in this sector may in fact backfire and hurt the people it is intended to help.'  
Minister Reba Meagher.

Boarding house owners have a commitment to their accommodation business which provides a valuable alternative to residential tenancies. It is a vulnerable, non-growth area providing invaluable accommodation services to lodgers and boarders.

Where legislation is introduced which changes the nature of boarding houses, they will cease to exist, causing hardship to residents, not protection.

## Boarding Houses: Managed & Community Premises with non-exclusive usage

Boarding houses provide managed accommodation with non-exclusive occupation of a premise to boarders/lodgers/residents. The legal responsibility of the owners of boarding houses, is to provide accommodation and living services which ensure the welfare of the whole property meeting statutory requirements.

## Residential Rental Properties: Individual self-managed, non community Premises with exclusive usage

Residential rental properties are a type of accommodation where the tenants have exclusive control over a designated area. The legal responsibility of the owner is to provide an exclusive private space to a tenant and meet statutory requirements.

## What are 'Boarding houses'?

'Boarding houses' are as varied as the management and the specific area and community they cater for. Occupants enter a managed premise and are part of a community where individuals have no exclusive control over any specific area.

Although boarding houses cover less than 3% of the accommodation market, they meet the accommodation needs of a diverse groups of residents requiring low to moderate cost accommodation ranging from students, guest house residents, single people, older men, lodgers who seek on site management services, contract workers, those who want a community, those requiring flexibility.

It is a unique form of accommodation, usually managed by an owner and his/her family. Despite low returns, the hands-on nature of the management and the unique history of each accommodation premise, owners work towards maintaining this style of low cost to moderate cost boarding houses.

## Threats to Boarding House Existence

Today boarding houses are financially precarious with:

- High insurance costs
- Increasing fire safety upgrades and fire compliance costs
- Council inspections

- Council requirements and environmental planning policies compliance
- Upgrades to meet modern standards
- Commercial water rates, garbage charges and electricity
- Management costs
- Competition with the unregulated 'share' accommodation or quasi boarding house providers who do not have expense or workload of the onerous financial and government controls in the areas of fire, health, council registration and statutory requirements that apply to boarding houses.
- Positioned in generally high value locations with increasing pressures by developers to sell
- Rent control and length of stay conditions for those who apply for land tax exemption
- Low returns

### Why do Residents Chose to Live in Boarding Houses?

Boarding houses are different to residential tenancies. They are NOT individual accommodations within a block of units. They are managed premises where residents reside within one property. Living is often shared, with communal facilities, with people expecting the owner/manager to resolve problems and ensure the harmony of the community within the boarding house. The accommodation is furnished with residents expecting assistance when needed. For example elderly residents seek management to assist with changing a light bulb and such domestic needs. If there is a disagreement between residents, the Manager resolves it to keep peace and quiet.

Residents chose to reside in their boarding house of choice. They can enter with a nominal deposit on a low to moderate weekly tariff. They have furnishings provided and some services such as cleaning common facilities. They enjoy their independence, yet have the benefits of management and community. They come and go as they please, without a lease commitment.

### Samples of types of 'boarding houses:-

- Short term lodgings (such as Bondi Beach and Manly guest houses)
- Student hostel (such as Unilodge)
- Lodgings houses catering for long term hospital outpatients (around St Vincent's hospital)

- Mixed resident long to short term accommodation in private hotels (inner city locations)
- Temporary contract workers on leave (in North Sydney and Kirrabilli)
- Guest houses and private hotels
- Licensed boarding houses (Licensed Residential Centre LRC) which operate under a 'support and care' based occupancy with rigorous government compliance regulations. \*(See below).

### Why do boarding house residents NOT go into residential tenancies?

Residential tenancies mean:-

- 4 to 6 week bond
- Rent in advance
- Usually not furnished
- Lease commitments
- Responsibility for services such as water usage and electricity
- Tenancy checks which may act as a barrier to gaining a rental premise
- No management
- No community

Boarding houses mean:-

- Management
- 1-3 week deposit
- 1 week tariff in advance
- Furniture & fittings
- Flexible entry into accommodation
- Flexibility of stay
- House Rules
- Management
- Assistance
- Good locations
- Community

When a new occupant enters a community, the onus is on the new occupant to live within that boarding house. The primary right is the community with the boarding house not the individual. For occupants who require exclusive residential accommodation, then there is the residential rental market available.

NFP 'boarding houses' provide for a small marginal group within the boarding house communities. These NFP boarding houses are given financial benefits:-

- Exemptions on commercial charges
- Substantial government subsidies

NFP operators are not suitable for traditional boarders and lodgers who:-

- Seek a unique accommodation service that meets their needs
- Want to operate freely and independently
- Do not want a 'care' organization as their accommodation provider

SAVE BOARDING HOUSES!



## **INTERNATIONAL STUDENT ACCOMMODATION CRISIS IN NSW**

The NSW government has set up a committee chaired by Bruce Notley-Smith (MP-Coogee) to investigate problems relating to International students accommodated in noncomplying accommodation facilities in NSW.

The Property Owners Association of NSW (POA NSW) has made a submission emphasising that a viable and healthy supply of flexible accommodation in NSW is crucially important to the good and efficient functioning of a modern city.

"Boarding house" is a general term for affordable and flexible long term accommodation. Their strength comes from a flexible form of furnished accommodation that caters for a small, but important segment of the accommodation market.

International students are a classic example of boarding house residents. Transient workers, tourists, young people starting up, or people seeking community living also make up a large part of the demand for this form of managed residential accommodation.

The POA NSW outlined the following measures that will strengthen legitimate accommodation providers viability, and lessen operational complications.

These will ultimately keep existing operators in business and encourage new operators in the long run.

The following is a condensed version of the recommendations made in our submission:

### **1. Insurance costs**

This is onerous and prevails despite; higher standards of fire and essential service provisions, tighter compliance standards, and greater management involvement.

Recommendations:

- Insurance costs are artificially elevated by NSW state government duties, such as stamp duties and the Fire Service levy. This Fire Service Levy and Stamp duty should be rebated to legitimate boarding house operators. The state government could fund this from their surplus of fire grants.
- The NSW State government set up and subsidise a government backed insurance scheme for legitimate accommodation providers.

### **2. Essential fire safety compliance costs**

Legitimate boarding houses are required to provide annual fire compliance reports which include maintenance and upgrades to the system. It is both financially draining and structurally not achievable for boarding houses to meet the vast and complex array of BCA provisions, in an environment that continuously changes.

Recommendations:

- There is a need to simplify the process, so as to mitigate the complexity and cost. Streamlining testing is also required, to avoid unnecessary duplication, and "excessive" testing / compliance requirements.
- NSW Fire brigade's false alarm 'call out fees' have increased from \$125 to \$750 in the last few years. Additional concessions to the existing rebate provisions should be made so as to ensure legitimate and responsible operators are remitted any and all false alarm call out fees.

### **3. Utility prices and Sydney Water pricing policies**

Currently if a boarding house has more than 10 rooms, either Sydney Water imposes commercial rates or equivalent separate meter rates. This is despite the fact that the boarding houses generally only have one meter so the owner becomes the end user.



Recommendations:

- All boarding houses should face a single normal residential rate
- Generous rebates on electricity water and gas should be provided for legitimate housing facilities that meet energy efficient targets.

#### 4. Affordable Housing SEPP

The provisions in the Affordable Housing SEPP are a step in the right direction by encouraging the construction of student accommodation. But the Affordable Housing SEPP falls short on many fronts. For example the Affordable Housing SEPP does not extend to heritage listed buildings. Heritage buildings form the bulk of existing accommodation facilities in established areas of Sydney.

Recommendation:

- Limitations and exclusions be removed or water down so that the Affordable Housing SEPP actually applies in most development situations.

#### 5. Proposed Government Legislation

Additional government legislation and/or regulations that place constraints on operators will create greater burdens and stifle complying supply. It will also lead to more underground operators who will take up the surplus demand for accommodation.

For example, Boarder and Lodger legislation in Victoria has had an adverse impact on the supply of legitimate boarding houses in that state.

Recommendation:

- Do not introduce further legislation and regulations on legitimate boarding houses.

#### 6. Positive Marketing of Boarding Houses

Recommendations:

- The NSW State government should promote boarding houses as a genuine alternative to residential housing, so it's better perceived by the public. Awards could be provided to excellent operators, possibly a star rating system could be introduced and promoted. This will further encourage the upgrading of supply.

- DADHC (Dept. Aged Disability & Housing Care) and the current The Inter Departmental Committee (IDC) on housing are incorrectly referring Residential Care facilities as "licenced boarding houses". They are Residential Care Facilities, not Boarding Houses. This should be corrected so as to avoid unnecessary confusion.

#### 7. Subsidised financing

Capital costs for provision of the housing is very high. This is compounded with low yields and high compliance costs.

Recommendation:

- Government subsidies to lessen the burden of financing costs could be provided to legitimate operators to assist alleviate the burden of capital cost of operations.

#### 8. Local Government Authorities

There is a need for local governments to intervene where illegal and grossly noncompliant accommodation suppliers are flaunting the health and safety regulations, endangering people's lives, and profiting by noncompliance.

9. Residential Tenancy Act: Subletting provisions Recently the NSW government enacted new sub-letting provisions to the Residential Tenancy Act. These provisions have opened up a new avenue for "illegal" accommodation facilities.

Recommendation:

- Amend the subletting provisions of the RTA so as to preclude lessee's ability to sub let.

#### Conclusion:

These issues can and should be addressed by the NSW state government if it is genuinely serious about increasing the supply of legitimate affordable housing and clamping down on illegal operators.

If they are not, then inevitably there will be increasing numbers of operators driven "underground", as was the case in Victoria when boarders and lodgers legislation was imposed.

This is the worse possible outcome, and contrary to the interest of all stakeholders.

## **RENOVATIONS GET NOD FOR SELF-MANAGED SUPER FUNDS**

A draft ruling by the Australian Taxation Office (ATO) has given self-managed superannuation fund members the ability to use money from inside their fund to renovate their property. Previously, the ATO said SMSFs could not use money from any source to improve property, however, under the draft ruling they can potentially renovate to improve the value of the property. The the draft ruling would ultimately make real estate a more attractive option to the \$420 billion SMSF sector. The ATO understands that the future buoyancy of the property market will be heavily dependent on SMSFs' investing in property as well as providing rental occupancies for younger people.

But while SMSF trustees will be able to renovate using money within their funds, borrowing to renovate will remain prohibited. The fact that you can now renovate, with non-borrowed money, is very good, but the main problem is that the ATO's draft ruling neutralises or diminishes the sole purpose test which is to provide retirement benefits to members. With the ability to manufacture capital growth through renovation a big draw card for property investors, the same capacity should also be available through SMSFs.

If you're looking to provide retirement income you should be allowed to maximise it. We hope that the ATO would consider this when it came to finalising the ruling in the next month or so.



## **COMMERCIAL MARKET SHOWING SIGNS OF RECOVERY**

The commercial property market is showing some signs of improvement, with vacancy rates tightening in Melbourne, Perth and Brisbane, according to Raine & Horne Commercial.

The real estate group said that while vacancy rates are some way from pre-GFC levels, figures released by the Property Council of Australia show commercial vacancies fell in Melbourne to 5.8 per cent in the six months to July 2011, while Perth (7.8 per cent) and Brisbane CBD (7.4 per cent) were also lower.

"At this stage, the picture is not as rosy in Sydney, with vacancies up from 8.3 per cent to 9.3 per cent, although across the harbour, vacancies fell to 9.2 per cent in North Sydney," the company said.

"Canberra remains in double-digit territory, with vacancy sitting at 13.3 per cent down from 14.1 per cent."

Raine and Horne Commercial added that, a report from financial research and ratings company CANSTAR CANNEX indicated that business lenders were also starting to loosen their grip.

"With vacancy rates starting to fall and a more relaxed business lending environment, it appears the worm is turning for some commercial property markets around Australia," said Angus Raine, CEO, Raine & Horne Commercial.

"It's been a tough few years for the commercial property markets, but despite this we have continued to grow our commercial network with new offices added in Homebush [Sydney] as well as a specialist business recovery and insolvency office.



## **RESIDENTIAL TENANCIES ACT 2010 - ARE WE BACK TO RENT CONTROL?**

A Member of the POA has drawn our attention to Section 94 of the above Act which in his opinion is a return to the Landlord & Tenant (Amendment Act) 1948 (Rent Control) and is detrimental to both Landlords and Tenants.

In brief, Section 94 of the new Residential Tenancy Act 2010 relates to a tenant who has been in continual possession of the same residential premises for a period of 20 years or more. To gain possession of these premises an application has to be made directly to the Tribunal (C.T.T.T.) and the Tribunal has the power to decide whether the circumstances of the case justify a termination of the tenancy. So in effect the landlord does not issue a Termination Notice to end the tenancy rather the CTTT must make an order ending the tenancy on the case's merits for tenancies 20 years+

The matter in question was set down for hearing before the NSW Consumer, Trader and Tenancy Tribunal. At the first hearing the matter was adjourned so further evidence could be submitted by both parties. At the second hearing the Landlord was asked by the Member why he wanted an order for possession. The answer was to re-furbish the entire flat and the building. Evidence was presented that included builders' reports and photographs describing the derelict nature of the property and the squalor of the unit. This work could not be carried out whilst the tenant was in occupation.

This evidence was unacceptable to the tribunal member who required further evidence from the owner. It was implied that it was necessary to seek approval from the Council for the necessary work, all of which was inside the building and all of which came under Exempt Development within the Local Environment Plan. Furthermore the owner was told that if he proceeded with the matter on the day the member would probably find the case against him and that there is no further right for the landlord to re-apply for another hearing. In effect, giving the tenant the right to occupy the premises for life.

The owner withdrew the application and is now applying to Council for approval and will proceed at another date with the eviction.

POA Members should read Section 94 very carefully, particularly sub section (1) (c) "the tribunal may make a termination order if it is satisfied that it is appropriate to do so in the circumstances of the case."

Our POANSW member is of the opinion that this is a return to Rent Control. What evidence will be good enough to satisfy the "Circumstances of the case" if it is not enough to prove that the premises are in a derelict state. If there are no grounds for appeal on these decisions, what Landlord will allow tenancies to continue up to the twenty year mark. This clause of the Act doesn't work for the tenant either!

This scenario is very similar to the provisions of Section 62(m) of the Landlord and Tenant (Amendment) Act, 1948 as amended where a landlord is entitled to issue a Notice to Quit on the Grounds of Demolition and Reconstruction. Under this Ground it is mandatory for Council Permission be sought to carry out the work. Even when the landlord complied with all Council conditions the Court can still find against him on the grounds of "relative hardship".

Our POA member will now issue Termination Notices on all his long term tenants (over 15 years) and suggests that after perusing Section 94 all members should do the same. Section 94 is a catastrophe for all landlords and tenants. It was opposed when the Bill was drafted and will be continued to be opposed by the Property Owners Association of NSW.

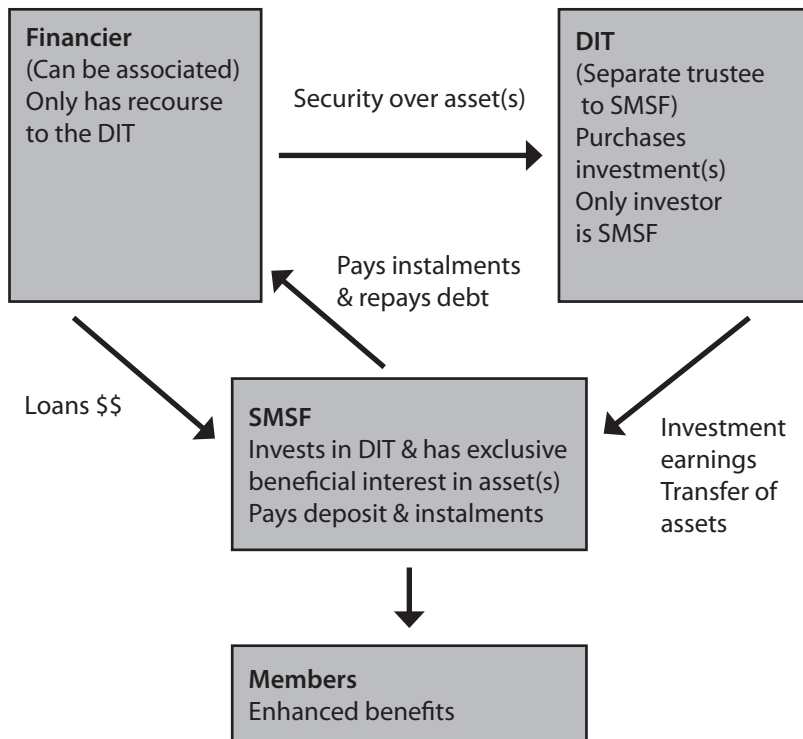
.....

## **GEARING YOUR SUPERANNUATION FUND - TO PURCHASE PROPERTY**

In September 2007 the Government passed laws that, in effect, allow superannuation funds to use gearing to purchase investments, and last year tightened the regulations to effectively limit the investment to property (a single asset). That's right! A self-managed superannuation fund (SMSF) can borrow to make investments.



Through the use of a special purpose bare trust which is broadly being referred to as a Debt Instalment Trust (DIT), a superannuation fund is now able to use its own cash plus borrowed funds to purchase investments via the DIT. The following diagram illustrates how the DIT would work in conjunction with an SMSF:



Any investment can be made through the DIT that the superannuation fund could have purchased in its own right under Superannuation Law, providing the following conditions are met:

- The trustee of the superannuation fund and the DIT are different entities.
- Any borrowings the superannuation fund makes must be used to acquire an asset in the DIT. Borrowings cannot be used for any other purpose.
- The borrowing can only be used to purchase a single asset (or assets of the same type that are dealt with as a single asset).
- The asset cannot be improved – the ATO has just released a draft ruling which could relax this provision somewhat.
- The superannuation fund can only deposit cash into the DIT. Existing fund assets (E.g. existing shares, property etc..) cannot be used.
- The superannuation fund must
- Have sole beneficial ownership in the asset(s) of the DIT and the right to acquire the asset(s) outright through the payment of instalments.

- The underlying investments in the DIT must be allowable investments under Superannuation Law E.g. You cannot have 'in-house' assets of greater than 5% of the value of the fund, residential property cannot be let to members and/or their relatives and the fund cannot acquire assets from related parties unless they are listed securities, business real property or widely held trusts (managed funds) etc.
- The payment of (and the security over) any liability must be limited to the assets of the DIT and there must be no obligation on the superannuation fund to make any future payments i.e. the financier cannot take security over other superannuation fund assets (the ATO has even suggested that they would not be comfortable with a personal guarantee provided by a trustee).
- If the fund borrows from a related party then it must be on commercial terms E.g. A commercial rate of interest must be charged.

If you do not adhere to these conditions (and any others that may apply) then: interest concessions from related parties could count towards annual contributions' caps and result in penalty taxes, or could be treated as an early release of benefits which could be considered a compliance breach; you could pay capital gains tax (and potentially GST and stamp duty on property transactions) on the transfer of the asset from the DIT to the superannuation fund; or worse still, your superannuation fund could be deemed noncomplying by the ATO and taxed at 45% on its income and most of its capital.



It cannot be emphasised enough how important it is to get professional advice in this area and ensure you set up your arrangements correctly and you adhere to all the regulations.

However, given that superannuation generally cannot be withdrawn, there will be guaranteed cash flow (SGC and other contributions) and relatively low loan to valuation ratios (ratios of around 50% to 60% are being seen from finance providers in the market) – all responsible gearing practices – DITs can provide some extremely valuable benefits to trustees and members of SMSFs for whom gearing is appropriate.

Following is an example of an SMSF could purchase a commercial property (potentially a related business could even lease the property from the SMSF) and through the utilisation of gearing (via the DIT) conduct the purchase in a tax-effective manner.

### Purchase of a commercial property

Assumptions:

1. You and your spouse are over age 50, employees/directors in your family business, and members of your family's SMSF
2. You would like to purchase a property for \$500,000 for use by your business
3. The property yields 8%
4. You have \$200,000 deposit and you borrow \$300,000
5. 10% interest is payable on loan
6. Your other income places you in the 38.5% tax bracket (including Medicare Levy)

Gearing personally (combined)		Gearing through SMSF & DIT	
Income:	\$100,000	Contributions:	\$100,000
Rent:	\$40,000	Rent:	\$40,000
Interest expense:	(\$30,000)	Interest expense:	(\$30,000)
Tax payable @ 38.5%	(\$42,350)	Tax payable @ 38.5%	(\$16,500)
Net funds to pay off loan principal	<b>\$67,650</b>	Net funds to pay off loan principal	<b>\$93,500</b>

As you can see in this example by running the gearing and purchasing this property through their SMSF as opposed to gearing up and purchasing in their own names, these clients have saved themselves \$25,850pa or an improvement of 38% over what they could have achieved personally.

You should also note: By gearing personally this couple will almost certainly pay capital gains tax (CGT) on the eventual sale of the property (if it does not qualify as a 'small business' asset). Whereas there may be no CGT payable on the property purchased through the SMSF & DIT, if both members are retired and taking full pensions when the property is eventually sold.

As has been seen in recent years gearing can compound an investor's losses. But past experience shows that gearing used prudently to purchase solid blue-chip investments, and as part of a properly constituted investment strategy (reviewed on a regular basis), can also enhance performance and provide a vastly superior return to investors.

*Stephen Blackhall*  
*Financial Adviser*  
*Superannuation & Retirement Planning*  
*Representative, SMSF Specialist Advisor™*  
*Patersons Securities Limited*  
*ABN 69 008 896 311 AFSL No. 239 052*

*Phone: (03) 8803 0127*  
*Email: sblackhall@psl.com.au*



**The Property Owners' Association of NSW**

02 9363 3949



[www.poansw.com.au](http://www.poansw.com.au)



PO Box 329  
Bondi Junction NSW 1355



*DISCLAIMER: Views expressed by the various authors are not necessarily the views of the Property Owners' Association of NSW and the association does not take any legal responsibility for any offending articles. All care is taken not to offend and to be accurate but this is not always possible.*