


# LRBAs and Related Party Loans – Traps and Pitfalls

*Why 98% of related party loans are wrong!*

This webinar will commence at 11am AEDST. Please use the chat feature to ask any questions throughout the webinar.

17 September 2020





Limited Recourse Borrowing Arrangements (LRBA) have been around since 2007 and are still going strong. The big banks have moved out of the space leaving some of the smaller players and now the junior banks and lenders looking at developing product for this space.

On top of this there is always the opportunity to use related party money as well as refinancing a current LRBA. Plus now that we are 13 years in many LRBAs are coming to an end with the borrowings fully repaid – so what to do with the property – keep it in the holding trust or keep it going.

And now there is ATO advice that the borrowing can be done through the Holding Trust itself and not the SMSF potentially streamlining the process. And of course Covid .....



**Grant Abbott, CEO I Love SMSF**

# The Issues



- Let's look at bank and second tier lending. What is required and ensure that your deed is upgraded first and any holding trust is sent for approval or expect a delay
- Related party financing is a world unto it's own and advisers must be super careful when completing a transaction as one step missed makes the whole arrangement void
- Some key issues to look at:
  - Related party financing often deals with the transfer of an asset from a related party to a SMSF – this can be a direct asset such as property, listed shares or SISR 13.22C trust units
  - Which way is the best will often depend on liquidity and also whether there is a related party loan



# Simple Case Study



- John and Mary, aged 60 live in Manly and have an office building that they want to transfer into a SMSF – pretty simple
- They own it outright and it is worth \$1M and they receive \$100,000 rent from a third party
- They acquired the property for \$600,000 in 2010 so with a capital gain discount, they each have \$100,000 capital gain to be added to current income to date (which has been put on hold thanks to rent reduction for Covid)
- They have a SMSF which holds \$600,000 for each of them and would like to transfer the property into super. They have not made any non-concessional contributions this year and are not engaged in a three year bring forward contribution as yet





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# LRBA Case Study

- John Smith is a builder and is looking to retire. He buys and develops land into house and land packages completing each development through a company for asset protection purposes as per his accountant's advice
- His latest development in Develop Pty Ltd has left the company with two completed houses valued at \$650,000 each standing side by side at Mudjimba in the Sunshine Coast. There is a profit of \$150,000 on each property which is assessable to the company upon disposal.
- John wants to rent the properties out to provide him with retirement income

# LRBA Case Study continued

- The company holds only the properties and there is no borrowings
- John is 60 years of age and he and his wife Sally, who is also 60 are members of the Smith Family Super Fund. They have equal balances of \$750,000 totalling \$1.5M with a \$500,000 commercial property and \$1M in cash from the sale of some properties in July 2020
- John has decided to retire and travel. He would like to use his SMSF as best as possible and also live off the dividends from the properties in the company

# LRBA the laws and background

- Let's review the laws and start with section 67 – what assets can and cannot be acquired and borrowed against?
- Key features are section 67A, section 67B of SISA 93 and the ATO guidelines on related party financing as seen in the safe harbour guideline: PCG 2016/5
- Renovations, restorations, repairs and reconstructions – where does it all stand?
- There is also the backdrop of NALI and more importantly NALE which does not appear to be discussed to any great extent



# Review of the Assets for section 66

- Section 66 precludes the trustee of a SMSF from acquiring property from a related party
- For John's purposes there are two potential acquisitions:
  - The properties themselves – issues around whether the properties are business real property as John and Sally are now in retirement
  - The shares in Develop Pty Ltd

# Heads up

- Part two of the Advanced case studies will delve deeper into the case study with a set of overlaid facts
- Part two will be on the 5 August at 12.30pm and we will also look at any questions that you may have from Part one or LRBAs in general
- On 30 July we will be looking the legal process for the completion of Wills from a light touch for basic wills and EPOAs to a more immersive option using Abbott & Mourly sign off by way of zoom meetings and recordings
- Coming up for Strategists and Licensees only is the Moat and Castle plus we will be adding Advanced Health Care Directives and Enduring Guardians to the platform for all round Succession and Estate Planning

# Australia needs you help



Justice Jeremy Curthoys, who was scathing of lawyers' "indefensible" legal fees. Credit: WA News

Perth

## Legal fee scandal: Lawyers 'feast' on Perth family estate

The COVID19 attack on our society and economic, personal and financial freedoms has brought estate and life planning into sharp focus. How many Australians do not even have an enduring power of attorney or a Will? How many a newsagency Will? And how many a Will constructed by a lawyer many years ago that is not specific enough or really is not up to scratch in terms of trustee companies, shareholdings and protection from family provisions claims?

It is time to step up and with the LightYear Docs and Abbott & Mourly Lawyers solution you can control the process, build great Wills and EPOAs in a single client meeting without breaching any legal professions laws, charge premium fees and look after a client's family.

# The Financials for the LYDWill and EPOA

<b>Number of LYDClient Wills + EPOA pm</b>	<b>Fees \$ \$1,600 per couple</b>	<b>Time per Will and EPOA - 2 hours</b>	<b>Per Annum Fees \$</b>
2	\$3,200	4 hours	\$38,400
4	\$6,400	8 hours	\$76,800
6	\$9,600	12 hours	\$115,200
10	\$16,000	20 hours	\$160,000

<b>Number of LYDClient Wills + EPOA with Protector per month</b>	<b>Fees \$ \$4,500 per couple</b>	<b>Time per Will and EPOA 3 hours</b>	<b>Per Annum Fees \$</b>
2	\$9,000	6 hours	\$108,000
4	\$18,000	12 hours	\$216,000
6	\$27,000	18 hours	\$324,000

# ESTATE PLANNING ROADMAP FOR ADVISORS



## 01 Preparation of Data Capture Sheet

Advisor collects the information from the client and then inputs that information via the LY Estate Planning platform. Cost agreements prepared any other ancillary documents

## 02 LY Generates the Estate Planning Documents

LY system produces the Will, EPOA & any other Estate Planning Documents as required by the client



## 04 Zoom with Advisor & Client (45-60Mins)

Advisor arranges a Zoom Conference with the client to obtain any final instructions relating to any amendments to the documents.



## 03

Estate Planning Documents Reviewed by Abbott Mourly.



## 05 AM finalizes the documents

AM finalizes the documents and documents are sent back to Advisor & client. Another Zoom is then arranged for signing and Witnessing



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